

# City of Morro Bay

## City Council Agenda

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### *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.*

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**REGULAR MEETING – AUGUST 14, 2012**

**PUBLIC SESSION  
VETERANS MEMORIAL HALL - 6:00 P.M.  
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS

CLOSED SESSION REPORT

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

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

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

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

A. CONSENT CALENDAR

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

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JULY 24, 2012; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 LETTER IN RESPONSE TO GRAND JURY REPORT TITLED “A VITAL FUNCTION OF THE JUDICIAL SYSTEM: LAW ENFORCEMENT PROPERTY AND EVIDENCE ROOMS”; (POLICE)

**RECOMMENDATION: Direct staff to send the attached letter to the Presiding Judge of San Luis Obispo County Superior Court in response to the Grand Jury report.**

A-3 RESOLUTION NO. 43-12 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO 2012/2013 VESSEL TURN-IN PROGRAM FUND CONTRACT WITH THE DEPARTMENT OF BOATING AND WATERWAYS; (HARBOR)

**RECOMMENDATION: Adopt Resolution 43-12.**

A-4 RESOLUTION NO. 44-12 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO 2012/2013 ABANDONED WATERCRAFT ABATEMENT FUND CONTRACT WITH THE DEPARTMENT OF BOATING AND WATERWAYS; (HARBOR)

**RECOMMENDATION: Adopt Resolution 44-12.**

A-5 ADOPTION OF ORDINANCE NO. 579 REPEALING, AMENDING AND REENACTING CHAPTER 14.72 OF THE CITY OF MORRO BAY MUNICIPAL CODE, ENTITLED FLOOD DAMAGE PREVENTION; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Ordinance No. 579.**

A-6 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL; (COUNCIL)

**RECOMMENDATION: Adopt Resolution 45-12.**

A-7 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DECLARING HOW MEASURE Q FUNDS ARE ALLOCATED AND SPENT; (COUNCIL)

**RECOMMENDATION: Adopt Resolution No. 46-12.**

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 APPEAL OF MINOR USE PERMIT #UP0-240, COASTAL DEVELOPMENT PERMIT #CP0-294 AND PARKING EXCEPTION #AD0-043 FOR THE CONVERSION OF 820 SQUARE FEET OF COMMERCIAL SPACE TO A RESIDENTIAL UNIT AND A PARKING EXCEPTION TO WAIVE THE REQUIREMENT OF TWO COVERED AND ENCLOSED PARKING SPACES AND PROVIDING TWO OPEN AND UNCOVERED PARKING SPACES; (PUBLIC SERVICES)

**RECOMMENDATION: Overturn the Planning Commission's denial and approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Findings included as Attachment "1" and the Conditions of Approval as included as Attachment "2" and the site development plans dated May 3, 2012.**

C. UNFINISHED BUSINESS - NONE

D. NEW BUSINESS

D-1 REQUEST FOR A PLAN CHECK AND AFFORDABLE HOUSING IN-LIEU FEE REDUCTION FOR 1885 IRONWOOD; (ADMINISTRATION)

**RECOMMENDATION: Review the request and determine whether to grant the requested reduction.**

D-2 RECOMMENDATION TO MOVE FORWARD IN MASTER PLANNING THE NORTHERN EMBARCADERO AREAS INCLUDING COLEMAN PARK, TARGET ROCK AND THE MORRO ROCK PARKING LOT; (RECREATION & PARKS)

**RECOMMENDATION: Direct staff to enter into a contractual agreement to master plan the Northern Embarcadero areas to include Coleman Park, Target Rock and the Parking Lot at the base of Morro Rock.**

D-3 DISCUSSION ON PARKING OPTIONS ON THE EMBARCADERO BETWEEN BEACH AND PACIFIC STREETS; (PUBLIC SERVICES)

**RECOMMENDATION: Review past action regarding parking, including the adopted Parking Management Plan, and provide direction to staff.**

D-4 DISCUSSION ON THE NEED FOR A VOLUNTEER “COMMUNITY SERVICES COORDINATOR”; (ADMINISTRATION)

**RECOMMENDATION:** Review the staff report and provide direction with the hopes of forwarding the concept to the Recreation & Parks Commission for their input.

D-5 DESIGNATION OF VOTING DELEGATE AND ALTERNATE VOTING DELEGATE AT LEAGUE OF CALIFORNIA CITIES 2012 ANNUAL CONFERENCE BUSINESS MEETING; (ADMINISTRATION)

**RECOMMENDATION:** Appoint a voting delegate and alternate to attend the Annual Business Meeting during the League of California Cities Annual Conference.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

**THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.**

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

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

**AGENDA NO: A-1**

**MEETING DATE: 08/14/2012**

MINUTES - MORRO BAY CITY COUNCIL  
CLOSED SESSION – JULY 10, 2012  
CITY HALL CONFERENCE ROOM - 5:00 P.M.

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

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

#### CLOSED SESSION

Mayor Yates adjourned the meeting to Closed Session.

Mayor Yates read the Closed Session Statement.

#### **CS-1 GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR:**

Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.

#### **CS-2 GOVERNMENT CODE SECTION 54956.8; PROPERTY TRANSACTIONS:**

Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- **Property: Rose's Landing – Lease Site 82-85/82W-85W**  
Negotiating Parties: Doug Redican and City of Morro Bay  
Negotiations: Lease Terms and Conditions
- **Property: Sea One Solution LLC- Lease Site 124-128/124W-128W & 113W**  
Negotiating Parties: Sea One Solutions, LLC and MMBS, LLC and City of Morro Bay  
Negotiations: Lease Terms and Conditions

#### **CS-3 CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION - GOVERNMENT CODE SECTION 54956.9(c):**

- Parties: Martony and City of Morro Bay

The meeting adjourned at 5:50pm.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – JULY 10, 2012  
VETERAN’S MEMORIAL HALL – 6:00P.M.

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

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

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CLOSED SESSION REPORT – City Attorney Robert Shultz reported that City Council met in Closed Session and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Brian French, owner of Estero Bay Sustainable Solutions, presented the Morro Bay Business Report. This is a local solar energy installer to the Estero Bay communities – residential and businesses both. Their goal is to provide the best possible customer service possible. They are often at the Saturday Farmer’s Market, can be reached at (805) 235-5521 or at eb-ss.com .

Barry Brannon spoke on the WWTP Project hoping that given the fact that the June 12, 2012 JPA meeting was canceled, there will still be an opportunity to get an update on the progress of the project.

Trina Dougherty spoke on behalf of the 4<sup>th</sup> of July Committee thanking all who attended the celebration. She also thanked the sponsors and volunteers who really made the event work.

Nancy Barta presented an update on the Bus Stop remodel project.

Paul Carrol has been a Morro Bay visitor for the last 40 years. He spoke on behalf of Priscilla Cole, the new owner of the Morro Bay Sandpiper Hotel stating it is his favorite place to stay when he visits Morro Bay.

Nicole Dorfman felt compelled to speak in defense of Betty Winholtz in her role with the Save the Park organization. In her role as President of Save the Park, Betty represents people who believe the Cerrito Peak needs to be preserved and protected.

Cynthia Hawley, Attorney for Save the Park, responded to the previous week's comments by property owner, Dan Reddell. She stated that it wasn't their intent for the lawsuit to stop development in the City, just stop the violations.

David Nelson stated that Dynegy has terminated their permit as they can't conform to the new water standards. He also has concerns regarding the lease between Dynegy and the City regarding the 3 parking lots, specifically with regards to page 3, section 5 of the agreement with regards to possible hidden pollution. Finally, he stated that the outfall destroys our Estuary and he hopes the City will not renew the outfall lease.

John Barta spoke on the proposed Master Fee Schedule with regards to single family residential costs to build. He feels it would be really nice to know how much it really costs to build a home as the schedule doesn't seem clear.

Betty Winholtz spoke on the Master Fee Schedule stating that she feels the Impact Fees are very important as those fees pay for City services. She also spoke on the Paperless Agenda concept, she has concerns about training as well as use and possible abuse and hopes there will be a policy document on their use as a form of protection. She also questioned whether the City had an unmarked police car and if so, why.

Garry Johnson spoke on the years of business experience the current City Council has as well as their detailed their accomplishments over the last 2 years. He also hoped that if we decide to move the sewer, the Council will let the residents know what the true costs will be.

Priscilla Cole, new owner of the Sandpiper Inn, spoke endorsing her business.

Mayor Yates closed the public comment period.

A. CONSENT CALENDAR

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

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JUNE 26, 2012; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 AUTHORIZATION TO FILL ONE RECREATION AND PARKS DEPARTMENT MAINTENANCE LEAD WORKER POSITION – BUILDINGS/INFRASTRUCTURE; (RECREATION & PARKS)

**RECOMMENDATION:** Authorize staff to hire a replacement for the upcoming vacancy of a Maintenance Lead Worker.

A-3 AUTHORIZATION TO FILL THE RECENTLY VACATED ASSISTANT PLANNER POSITION; (PUBLIC SERVICES)

**RECOMMENDATION:** Authorize filling the recently vacated Assistant Planner position.

A-4 AWARD OF CONTRACT FOR MAINTENANCE OF THE CLOISTER ASSESSMENT DISTRICT; (RECREATION & PARKS)

**RECOMMENDATION:** Award the project contract to K.D. Janni Landscaping Inc. in the amount of \$80,928.00.

A-5 AUTHORIZATION TO FILE NOTICE OF COMPLETION FOR THE DEL MAR TENNIS COURTS; (RECREATION & PARKS)

**RECOMMENDATION:** Authorize staff to File Notice of Completion for the Del Mar Tennis Courts Project.

A-6 UPDATE ON CONTRACT FOR AUDITING 2009 – 2011 TRANSIENT OCCUPANCY TAX AND LEASE SITES REVENUES; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION:** No action is recommended as this is an informational item only.

A-7 RESOLUTION NO. 36-12 ESTABLISHING THE ANNUAL PROPOSITION 4 APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2012/13; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION:** Adopt Resolution No. 36-12.

A-8 AWARD OF CONTRACT TO SPECIALTY CONSTRUCTION, INC. OF SAN LUIS OBISPO, CA FOR THE PROJECT NO. MB-2012-WC01: LIFT STATION 3 UPGRADE SANITARY SEWER FORCE MAIN; (PUBLIC SERVICES)

**RECOMMENDATION:** Award the project contract to Specialty Construction, Inc. in the amount of \$1,191,052.

A-9 NORTH T-PIER REPAIR PROJECT UPDATE; (HARBOR)

**RECOMMENDATION:** No action is recommended as this is an informational item only.

A-10 AUTHORIZATION TO FILE NOTICE OF COMPLETION FOR PROJECT NO. MB2011-WC01: SEWER SECTION 6 REHABILITATION; (PUBLIC SERVICES)

**RECOMMENDATION:** Authorization to file Notice of Completion for Sewer Section 6 Lining Rehabilitation Project.

A-11 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND DYNEGY REGARDING THE USE OF THREE PARKING LOTS OWNED BY DYNEGY; (CITY ATTORNEY)

**RECOMMENDATION:** Approve the lease agreement with Dynegy for the use of three parking lots for public purposes.

A-12 REQUEST FOR APPROVAL OF ASSIGNMENT OF LEASE AGREEMENT FOR LEASE SITES 124-128/124W-128W & 113W FROM SEA ONE SOLUTIONS, LLC TO MMBS, LLC AND APPROVAL OF AMENDMENT #3 TO THE LEASE AGREEMENT FOR LEASE SITE 124-128/124W-128W & 113W (1215 EMBARCADERO); (RECREATION & PARKS)

**RECOMMENDATION:** Approve the Assignment of the Lease Agreement for Lease Sites 124-128/124W-128W & 113W from Sea One Solutions, LLC to MMBS, LLC and approve Amendment # 3 to the lease to allow for the phasing of water improvements.

Councilmember Johnson pulled Item A-3, Councilmember Borchard pulled Item A-9, Councilmember Smukler pulled Item A-11 and Mayor Yates pulled Item A-12 from the Consent Calendar.

**MOTION:** Councilmember Borchard moved the City Council approve Items A-1, A-2, A-4, A-5, A-6, A-7, A-8, A-10 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

A-3 AUTHORIZATION TO FILL THE RECENTLY VACATED ASSISTANT PLANNER POSITION; (PUBLIC SERVICES)

Councilmember Johnson pulled Item A-3 questioning what the difference in salary and qualifications would be between an Assistant Planner and an Associate Planner as she would like to see us hiring somebody with more experience.

**MOTION:** Councilmember Johnson moved to advertise at both the Assistant and Associate Planner levels and then hire the best applicant. The motion was seconded by Councilmember Borchard and carried unanimously 5-0.

A-9 NORTH T-PIER REPAIR PROJECT UPDATE; (HARBOR)

Councilmember Borchard pulled Item A-9 so that Harbor Director Eric Endersby could present the update on the North T-Pier repairs.

MOTION: Councilmember Borchard moved approval of Item A-9 of the Consent Calendar. The motion was seconded by Councilmember Smukler and carried unanimously 5-0.

A-11 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND DYNEGY REGARDING THE USE OF THREE PARKING LOTS OWNED BY DYNEGY; (CITY ATTORNEY)

Councilmember Smukler pulled Item A-11 to ask City Attorney Rob Schultz a question - with the agreement, can we utilize the properties as noted? And, when can we anticipate being able to use them?

MOTION: Councilmember Smukler moved for approval Item A-11 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

A-12 REQUEST FOR APPROVAL OF ASSIGNMENT OF LEASE AGREEMENT FOR LEASE SITES 124-128/124W-128W & 113W FROM SEA ONE SOLUTIONS, LLC TO MMBS, LLC AND APPROVAL OF AMENDMENT #3 TO THE LEASE AGREEMENT FOR LEASE SITE 124-128/124W-128W & 113W (1215 EMBARCADERO); (RECREATION & PARKS)

Mayor Yates pulled Item A-12 so that Councilmember Leage can step down from the dais as his business is located within 500 feet of the lease site in question.

MOTION: Councilmember Johnson moved for approval of Item A-12 of the Consent Calendar. The motion was seconded by Councilmember Borchard and carried 4-0-1 with Councilmember Leage abstaining.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 579 REPEALING, AMENDING AND REENACTING CHAPTER 14.72 OF THE CITY OF MORRO BAY MUNICIPAL CODE, ENTITLED FLOOD DAMAGE PREVENTION; (PUBLIC SERVICES)

Public Services Director Rob Livick presented his staff report stressing that this will allow current and new residents to participate in the National Flood Insurance Program.

Mayor Yates opened the hearing for public comment.

Betty Winholtz has questions on whether or not this would have any impact on the current Embarcadero lease sites; the affects it may have on the Wastewater Treatment Plant on its current site; whether this includes private people's property or just public projects; and how can people see a map of where the flood planes are if they are renters.

Mayor Yates closed the hearing for public comment.

MOTION: Councilmember Borchard moved the City Council accept the Introduction and First Reading of Ordinance No. 579 repealing, amending and reenacting Chapter 14.72 of the MBMC, entitled Flood Damage Prevention. The motion was seconded by Councilmember Smukler and carried unanimously 5-0.

B-2 APPEAL OF CONDITIONAL USE PERMIT #UP0-348 AND COASTAL DEVELOPMENT PERMIT #CP0-372 FOR NEW CONSTRUCTION OF A SINGLE FAMILY RESIDENCE AT 281 MAIN STREET; (PUBLIC SERVICES)

Planning Manager Kathleen Wold presented her staff report.

Appellant, Betty Winholtz presented her arguments in favor of upholding the appeal.

Cathy Novak, representing the applicant, presented her arguments in favor of denying the appeal.

Mayor Yates opened the hearing for public comment.

Dorothy Cutter has a problem with the fact that the developer/owner of the land also owns all the adjoining properties and feels he should have presented a total plan for the properties. Also, there is a proposed addition of a solid wall with a back to Main Street and the City has a precedent not allowing this. Finally, she also sees problems with the lighting plan as well as with the potential for archeologically significant artifacts.

Mayor Yates closed the hearing for public comment.

Councilmember Smukler had visual concerns as he isn't able to see what the project will look like in context to the surrounding area.

All other Councilmembers were comfortable with the project as submitted

MOTION: Mayor Yates moved the City Council deny the appeal of Conditional Use Permit #UPO-348 and Coastal Development Permit #CPO-372 for new construction of a single family residence at 281 Main Street. The motion was seconded by Councilmember Leage and carried 4-1 with Councilmember Smukler voting no.

C. UNFINISHED BUSINESS

C-1 RESOLUTION NO. 38-12 ADOPTING THE FISCAL YEAR 2012/13 OPERATING BUDGETS OF THE HARBOR DEPARTMENT; (ADMINISTRATIVE SERVICES)

City Manager Andrea Lueker presented the staff report.

Councilmember Borchard understood the need for a Business Coordinator was a more appropriate use than utilizing an employee working out of class but isn't in support of having a Harbor Business Coordinator in addition to both the full time and ¾ time Office Assistant IV. She would support this with the elimination of the ¾ time position.

Mayor Yates and Councilmembers Leage and Johnson agreed with Councilmember Borchard.

Councilmember Smukler feels the need to make this shift but feels we may be setting ourselves up as we will need to cut back eventually. He could support the concept that Councilmember Borchard suggested.

MOTION: Councilmember Borchard moved for approval of Resolution 38-12, adopting the Fiscal Year 2012/13 Operating Budgets of the Harbor Department with the change to staffing to include funding the Harbor Business Coordinator and one full-time Office Assistant IV and eliminate the funding for the  $\frac{3}{4}$  time Office Assistant IV. The motion was seconded by Councilmember Smukler and passed unanimously 5-0.

C-2 CONSIDERATION OF PURCHASING BIG BELLY SOLAR POWER TRASH COMPACTOR GARBAGE RECEPTACLES FOR THE ROCK PARKING LOT; (RECREATION & PARKS)

Recreation & Parks Director Joe Woods presented his staff report recommending that the City purchase 4 Big Belly solar powered trash compactor garbage receptacles to replace all the garbage cans at the Rock parking lot.

Mayor Yates is very supportive of this concept; he proposes to borrow the funds from the reserves acknowledging that it will get paid back. He would like to look at purchasing all 7 Big Bellies as opposed to just purchasing 4.

Councilmember Smukler also would like to look into purchasing more than the 4 that were proposed.

Councilmember Leage also stated that 4 were not enough to cover the entire Rock parking lot needs during the busy times of the year. He too likes the idea of purchasing all 7.

Both Councilmember Johnson and Borchard thought that purchasing 4 to start out with is a good idea as they will be able to see if the monies are really able to be paid back. Councilmember Smukler noted that by the time we would be able to place the Big Bellies, the summer would already be over so possibly purchasing the 4 would give Council and staff the time to see what happens, see if the return on investment occurred and see if there would actually be a need for more than 4 at the parking lot.

MOTION: Councilmember Smukler moved the City purchase 5 Big Belly Solar Powered Trash Compactor Garbage Receptacles for the Rock parking lot to be funded through and returned to the General Reserve Fund and for a report to come back at the 1<sup>st</sup> meeting in March, 2013 to see if the purchase of additional cans is warranted. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

C-3 RECOMMENDATION ON THE PAPERLESS AGENDA CONCEPT; (ADMINISTRATION)

City Manager Andrea Lueker presented her staff report.

Councilmember Borchard stated that this seems to be the trend; she was curious if the bandwidth upgrade necessary at the Veteran's Hall could be paid out of the PEG Access Funds.

Councilmember Johnson has an iPad and finds it very easy to use; she sees it as the wave of the future.

Both Mayor Yates and Councilmember Leage can support the purchase.

Councilmember Smukler, while nervous and wants the ability to be able to measure the effectiveness, can also support the purchase.

**MOTION:** Councilmember Borchard moved the Council approve Item C-3, the purchase of iPads for Councilmembers as well as Department Heads. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

**D. NEW BUSINESS**

**D-1 RESOLUTION NO. 37-12 ADOPTING 2012/13 REVISIONS TO THE MASTER FEE SCHEDULE; (ADMINISTRATIVE SERVICES)**

Administrative Services Director Susan Slayton presented her staff report.

There was Council consensus from Mayor Yates and Councilmembers Borchard, Johnson and Leage not to charge the CPI on Planning Fees and Building Impact Fees.

Councilmember Smukler stated that it was only a 2% increase and by postponing the increase will only create a bigger hit down the road.

**MOTION:** Mayor Yates moved for adoption of the 2012/13 Revisions to the Master Fee Schedule with the exception of all Building Impact Fees and Planning Fees. The motion was seconded by Councilmember Johnson and carried 4-1 with Councilmember Smukler voting no.

**E. DECLARATION OF FUTURE AGENDA ITEMS**

Councilmember Borchard requested a report on the findings of the Building Study Group; there was Council consensus for this.

Mayor Yates requested a Resolution regarding Council direction on how Measure Q Funds are allocated and spent; Councilmember Johnson and Borchard concurred.

Councilmember Leage requested a report on parking options on the Embarcadero between Beach and Pacific; Mayor Yates and Councilmember Johnson concurred.

Councilmember Smukler requested a discussion of a possible Citizen's Oversight Committee option with the Police Department; Mayor Yates and Councilmember Leage concurred.

Councilmember Smukler requested a discussion on the processing and licensing of Temporary Use Permits and how it relates to new businesses; Mayor Yates and Councilmember Borchard concurred.

ADJOURNMENT

The meeting adjourned at 9:20 p.m.

Recorded by:

Jamie Boucher  
City Clerk



AGENDA NO: A-2

MEETING DATE: 8/14/12

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 27, 2012

**FROM:** Mike Lewis, Chief of Police  
Rob Schultz, City Attorney

**SUBJECT:** Letter in Response to Grand Jury Report Titled "A Vital Function of the Judicial System: Law Enforcement Property and Evidence Rooms."

## **RECOMMENDATION**

Staff recommends the City Council direct staff to send the attached letter to the Presiding Judge of San Luis Obispo County Superior Court responding to the Grand Jury report Entitled "A Vital Function of the Judicial System: Law Enforcement Property and Evidence Rooms."

## **FISCAL IMPACT**

There is no fiscal impact.

## **BACKGROUND**

On June 5, 2012 the City received a report prepared by the San Luis Obispo County Grand Jury entitled "A Vital Function of the Judicial System: Law Enforcement Property Rooms." (Attachment A).

The report makes the following findings:

Finding #4: The Morro Bay Police Department advised that it will complete a full inventory of its evidence room with the hiring of a new Property/Evidence Technician.

The report makes the following recommendations:

Recommendation #1: All law enforcement agencies in the County should adhere to their respective policies relating to property/evidence room inspections.

Recommendation #9: All personnel assigned to property/evidence rooms in the county should

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

continue their training and/or update their knowledge through professional organizations. It is also highly recommended that they join the county chapter of CAPE.

Recommendation #11: The following police departments shall submit evidence of a full property/evidence room audit to the Grand Jury: Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, San Luis Obispo and the Sheriff's Department.

Recommendation #12: The Grand Jury recommends that the Police Chiefs and County Sheriff explore the feasibility of a county-wide property/evidence room consolidation, possibly under a joint powers agreement.

The report specifically requires the Morro Bay City Council submit a response to Finding # 4 and Recommendations #'s 1, 9, 11 and 12 to the Presiding Judge of the San Luis Obispo Superior Court by September 4, 2012.

### **DISCUSSION**

The San Luis Obispo County Grand Jury released a report on June 5, 2012 entitled, "A Vital Function of the Judicial System: Law Enforcement Property and Evidence rooms."

Under Penal Code Section 933.05, the City is required to indicate one of the following responses to the findings:

1. The respondent agrees with the finding; or
2. The respondent disagrees partially or wholly with the findings and why.

Furthermore, as to each Grand Jury recommendation, the responding party shall report one of the following actions:

- a. The recommendation has been implemented, with a summary regarding the implemented actions.
- b. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- c. The recommendation requires further analysis.
- d. The recommendation will not be implemented because it is not warranted or is not reasonable and an explanation why.

### **CONCLUSION**

After review of both the "Findings" and Recommendations" found in the Grand Jury Report, as well as the City's response to each, it is staff's hope that the attached letter can be approved and sent onto the Presiding Judge of San Luis Obispo County Superior Court.



# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6205

August 14, 2012

Presiding Judge Barry T. LaBarbera  
Superior Court of California  
1050 Monterey Street  
San Luis Obispo, CA 93408

Re: Grand Jury Report entitled "A Vital Function of the Judicial System: Law Enforcement Property and Evidence Rooms"

Dear Judge LaBarbera:

On behalf of Council of the City of Morro Bay, thank you for the information provided by the Grand Jury in the report entitled "A Vital Function of the Judicial System: Law Enforcement Property and Evidence Rooms". This report was presented and reviewed by the City Council at their meeting held on August 14, 2012. After carefully considering the report and its findings and recommendations, the City Council offers the following responses:

**Grand Jury Finding #4:** The Morro Bay Police Department advised that it will complete a full inventory of it's evidence room with the hiring of a new Property/Evidence Technician.

**City Response:** *The City Council agrees with this statement. In addition, an audit of all money, drugs and weapons was completed when the Interim Police Chief started with the City on April 23, 2012 and this audit found no discrepancies. A full audit of the all property/evidence will be completed by September 28, 2012.*

**Grand Jury Recommendation #1:** All law enforcement agencies in the County should adhere to their respective policies relating to property/evidence room inspections.

**City Response:** *The City Council agrees with this statement. As noted in their report, the Grand Jury stated that the Morro Bay Police Department inspection practice exceeded the Lexipol policy.*

**FINANCE**  
595 Harbor Street

**ADMINISTRATION**  
595 Harbor Street

**FIRE DEPT.**  
715 Harbor Street

**PUBLIC SERVICES**  
955 Shasta Avenue

**HARBOR DEPT.**  
1275 Embarcadero Road

**CITY ATTORNEY**  
595 Harbor Street

**POLICE DEPT.**  
850 Morro Bay Boulevard

**RECREATION & PARKS**  
1001 Kennedy Way

**Grand Jury Recommendation #9:** All personnel assigned to property/evidence rooms in the county should continue their training and/or update their knowledge through professional organizations. It is also highly recommended that they join the county chapter of CAPE.

**City Response:** *The City Council agrees with this statement. The Morro Bay Police Department belongs to the San Luis Obispo Chapter of CAPE and our new Property/Evidence Technician is scheduled for training in November 2012.*

**Grand Jury Recommendation #11:** The following Police Departments shall submit evidence of a full property/evidence room audit to the Grand Jury: Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, San Luis Obispo & the Sheriff's Department.

**City Response:** *The City Council agrees with this statement. A full audit of all property/evidence will be completed by September 28, 2012 and a confirmation of the completion and results of this audit will forwarded to the Grand Jury.*

**Grand Jury Recommendation #12:** The Grand Jury recommends that the Police Chiefs and County Sheriff explore the feasibility of a county-wide property/evidence room consolidation, possibly under a joint powers agreement.

**City Response:** *This recommendation requires further analysis. On June 13, 2012 the Sheriff discussed the Grand Jury recommendation of consolidation with the Police Chiefs of the County at the monthly Criminal Justice Administrators Association (CJAA) meeting. There was agreement that on the surface this appeared worthy of further study however there was the opinion that a consolidation using a central facility would result in a significant increase to operational costs and create logistical difficulties for municipal police agencies, which would have to be resolved. The Sheriff has contacted San Mateo County and learned that they are only looking to consolidate this function with contract cities they provide law enforcement for and not other police agencies. The Sheriff and Chiefs agreed to continue to look for opportunities to collaborate and consolidate this function.*

Please let the City know if you have any further questions or would like additional information.

Sincerely,

William Yates  
Mayor

August 14, 2012  
Page 2



## GRAND JURY

RECEIVED

JUN 05 2012

ADMINISTRATION OFFICE  
CITY OF MORRO BAY

June 5, 2012

### CONFIDENTIAL

Mayor William Yates  
City of Morro Bay  
595 Harbor St  
Morro Bay, CA 93422

Dear Mayor Yates and Council:

The San Luis Obispo County Grand Jury has completed the attached report titled "**A Vital Function of the Judicial System: Law Enforcement Property and Evidence Rooms.**" This copy of the report is being provided to you two days in advance of its public release, as required by California Penal Code §933.05 (f), which states:

*A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.*

Please check the last page of text of the report for the timing of your response, if any, as required by the Penal Code. Sections 933 through 933.05 of the Penal Code are attached for your reference.

Please keep in mind that this report must be kept confidential until its public release by the Grand Jury.

Respectfully,

Norman A. Baxter, Foreperson  
2011-2012 San Luis Obispo County Grand Jury

Enclosures

NAB:sm



## California Penal Code

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

# **A VITAL FUNCTION OF THE JUDICIAL SYSTEM: LAW ENFORCEMENT PROPERTY AND EVIDENCE ROOMS**

## **SUMMARY**

The proper collection and retention of evidence is a foundational element of our judicial system. While most commonly attributed to the prosecution of criminal acts, it can also be of vital importance in the exoneration of the innocent. The results of the Grand Jury's review of management and control of property and evidence rooms in law enforcement agencies in San Luis Obispo County varied widely. Some agencies allocated the staff and budget resources needed to meet compliance, while others were not in compliance with their policies and acknowledged that improvements were needed.

## **ORIGIN**

The 2011-2012 San Luis Obispo County Grand Jury decided to examine all law enforcement agency property and evidence rooms within the county to determine compliance with recommended policies of recognized property/evidence organizations, as well as with their own internal policies.<sup>1</sup>

## **METHOD**

In order to determine whether the law enforcement agencies in San Luis Obispo County are following the proper procedures for the security and control of property and evidence, the Grand Jury:

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<sup>1</sup> The Grand Jury has no jurisdiction regarding state agencies, CHP and Cal Poly State University.

- Requested that agencies complete selected sections of the *Property & Evidence System Audit Guide* written by the California Commission on Peace Officer Standards and Training (POST)<sup>2</sup>
- Consulted with a representative of POST regarding available training/certifications
- Interviewed a consultant who specializes in the evaluation of property/evidence rooms throughout California
- Reviewed *Commission on Accreditation for Law Enforcement Agencies (CALEA)*<sup>3</sup> *Property and Control Standards*
- Reviewed International Association for Property and Evidence (IAPE)<sup>4</sup> audit policies
- Reviewed each agency's internal policies and procedures related to property and evidence room functions and audits
- Conducted on-site inspections of each agency's property and evidence room using the POST audit and safety policies
- Conducted interviews with the designated property and evidence room representative from each agency

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<sup>2</sup> POST: The State Commission on Peace Officer Standards and Training (POST) was established in 1959 to set minimum selection and training standards for California law enforcement.

<sup>3</sup> CALEA: A national Commission on Accreditation for Law Enforcement Agencies, Inc. created in 1979 as a credentialing authority. The purpose of this national accreditation program is to improve the delivery of public safety services, primarily by: maintaining a body of standards covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.

<sup>4</sup> IAPE: International Property and Evidence Association is a non-profit organization offering training, certification and resources pertaining to all aspects of the handling, storage, maintenance, and disposal of law enforcement held property and evidence.

## NARRATIVE

This report first discusses general property/evidence room management practices and then reviews the results of the Grand Jury's inspection of each agency's property/evidence room.

Property/evidence rooms store not only evidence from crimes but also found property, property for safekeeping, contraband, and property for destruction. Evidence must be collected, packaged and properly stored. Often referred to as the "chain of evidence," documentation is necessary to show where the evidence is located, who located the evidence and every person who comes in possession of the evidence, from the initial collection through the judicial process. Ultimately, when the item is no longer of evidentiary value, it is returned to its owner, sold at auction or destroyed.

### Property/Evidence Room Management

Audits and inventories should be conducted to ensure the continuity of the custody of property and evidence. POST's *Property and Evidence System Audit Guide*, states "It is the responsibility of management to see that a sound system of internal control is developed and implemented."<sup>5</sup>

The reason for periodic audits and inventories is "Audits and inventories, on an ongoing basis, will enhance the safekeeping of property and evidence and minimize mismanagement which can easily lead to court cases not being filed, loss of public confidence (and that of collateral criminal justice system agencies), personnel problems, litigation, and possible financial loss."<sup>6</sup>

As stated in the *Audit Guide*, "An inspection is conducted to determine whether:

- the property/evidence room is clean and orderly;
- the integrity of the property and evidence is being maintained;
- departmental provisions and policies are being followed;
- property/evidence is being protected from damage or deterioration;

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<sup>5</sup> *Property & Evidence System Audit Guide*, p. Intro, V.

<sup>6</sup> *Ibid.*, p. Intro, IV.

- employee health and safety is protected;
- property/evidence accountability procedures are being used; and
- property having no further value as evidence is being promptly disposed.”

More than 600 agencies statewide participate in the POST Program and are eligible to receive the Commission's services and benefits, which include training programs and management counseling through its Management Counseling Services Bureau (MCB). All law enforcement agencies in San Luis Obispo County, with the exception of Pismo Beach, adhere to the policies and procedures of POST. Pismo Beach is the only agency accredited by CALEA. However, since POST and CALEA are similar in nature, Pismo Beach effectively follows POST guidelines.

The Grand Jury's review of each agency's policies relating to property/evidence room management revealed that all agencies in the county have adopted or are in final draft review of policies provided by Lexipol, LLC, a provider of risk management resources for public safety organizations. The company uses a unique, web-based development system with an integrated training component. The Lexipol management system has aided law enforcement, custody and fire agencies in reducing litigation risk, while providing clear and concise policy guidance to public safety organizations and their employees. The Lexipol policy regarding evidence room inspections states:

804.8 Inspections of the Evidence Room

- (a) On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the [Designated Officer].
- (c) An annual audit of evidence held by the department shall be conducted by a [Designated Officer] not routinely or directly connected with evidence control.
- (d) Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual(s) not associated to the

property room or function to ensure that records are correct and all evidence/property is accounted for.

The Grand Jury found that management practices within agencies vary widely. Some comply with their policies, others do not. Audits and inventories in some agencies are far from routine, while others exercise strong management practices in this area. To their credit, some agencies recognized the need to address deficiencies prior to the Grand Jury inspections. Other agencies have made or are planning changes as a result of the Grand Jury's inquiries into the management practices of their property/evidence rooms.

### **Staffing and Training**

It is of vital importance that each Property/Evidence Technician effectively manages the property/evidence room function to maintain the highest standards. Each law enforcement agency in San Luis Obispo County operates its own property/evidence room and, depending on staffing, incurs considerable expense to conform to its own policies. Based on information provided by the agencies (with the exception of Paso Robles which was unable to provide this information), the yearly salary and benefit expenditures for the property/evidence room function in county law enforcement agencies total nearly \$700,000.

The Grand Jury learned through its investigation that San Mateo County is considering consolidating individual police property/evidence rooms into one central evidence room. Consolidation could possibly increase the efficiency of operations and reduce costs.

To ensure proper operation, each Property/Evidence Technician should receive ongoing training to remain current with evidence case law and new procedures/policies. Most personnel assigned to the property/evidence rooms within the county have had some training either through CAPE (California Association for Property and Evidence)<sup>7</sup> or POST.

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<sup>7</sup> CAPE was formed to promote professionalism in property and evidence gathering, processing and retention. Emphasis is placed on information sharing, training and support.

POST offers a single course in Property and Evidence and has no certification program for property and evidence. It does, however, provide management guides, such as the *Property & Evidence System Audit Guide* referenced in this report. The guides are excellent and allow agencies to conduct a self-assessment of their property/evidence management practices.

### **Tracking and Inventory**

In each agency, documentation of all property/evidence is computer-controlled. The software provides a detailed custody history from the receipt of the item through release or disposal. All property/evidence is labeled with a bar code generated from the evidence tracking software. By scanning the bar code, all information relevant to the evidence, such as case number, item number, type of property, date, officer name, and description of the item, can be examined. All agencies in the county utilize the PsNet software with the exception of the San Luis Obispo Police Department, which uses Spillman software.<sup>8</sup>

### **Purging/Disposal Process**

Managing a property/evidence room is a formidable task. Each agency has a limited amount of space and staff and management does not know from day-to-day how much evidence may await processing by the Property/Evidence Technician. Certain evidence, such as that from a homicide, is kept indefinitely, while other evidence must be kept under refrigeration, sometimes for years, depending on the case. Other evidence may be discarded after the statute of limitations has elapsed. For certain offenses that have been referred to the District Attorney's Office for prosecution, an order must be issued prior to the return/disposal of evidence. Depending on the nature of the offense, if the conviction is appealed, evidence may be held for years after a conviction. The purge process can be complicated and time-consuming.

During the Grand Jury interviews, several agencies reported a delay in obtaining destruction authorization from the District Attorney's Office for evidence held in their property/evidence

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<sup>8</sup> PsNet and Spillman: Public safety software covering areas of dispatch, records management, mobile digital communications, and web-based applications.

rooms. The primary concern was storing marijuana occupied excessive space in their property/evidence rooms and requests for disposal were not processed in a timely fashion. During its inspection of the Sheriff's Department, the Grand Jury also viewed carts of evidence (not marijuana) waiting for destruction authorization.

The Grand Jury reviewed the topic of evidence destruction with a representative from the District Attorney's Office and found that it does not have a formal policy/procedure governing the purging/disposal of evidence. The Grand Jury found that other counties do have formal policies/guidelines that concisely set out purging/disposal procedures. As an example, a copy of Butte County's policy is attached as Appendix A. Another guideline was developed in Santa Clara County,<sup>9</sup> but it was not included as an appendix due to its length (64 pages).

The District Attorney's Office provides each agency with monthly Agency Case Disposition Reports. It is incumbent upon each agency, with some exceptions, to review the disposition reports to determine if evidence may be destroyed.

The process to determine if evidence can properly be destroyed is complex. If each case is not reviewed properly, prosecution or exoneration of a person may be jeopardized in the event that evidence is improperly destroyed. While not all-inclusive, some of the criteria to be considered for disposal of evidence are:

- Statute of limitations
- Post conviction
  - a. Plea or no contest
  - b. Convicted by Jury
  - c. Murder case (187 Penal Code) and life sentence cases
- Post dismissal/cases not filed
  - a. Dismissed due to lack of evidence or interest of justice
- DNA evidence, required length of evidence retention

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<sup>9</sup> Santa Clara Regional Association for Property and Evidence (SCRAPE)

- Sexually Violent Predators, required length of evidence retention
- Domestic Violence/Elder Abuse/Child Abuse (Evidence Code 1109), length of retention
- Drug Diversion Cases
- Search Warrant evidence (1136 Penal Code)
- Weapons Destruction Order (12028 Penal Code)
- Narcotics Destruction Order (11367,11473,11473.5 Health & Safety Code)

The District Attorney's Office is in the process of establishing Memoranda of Understanding (MOUs) with local jurisdictions regarding medical marijuana held as evidence. Once agreement is reached, property/evidence technicians will have guidance regarding the retention, release and/or disposal of medical marijuana only.

Some purged items have monetary value and are eligible for auction. All agencies in the county use a service called propertyroom.com. This service collects items of value and performs the auction in accordance with Civil Code Section 2080 et al.<sup>10</sup> A percentage of the sale is returned to the jurisdictions. Contraband, drugs, guns, and hazardous materials are not auctioned. They are transported to specific disposal sites where law enforcement personnel witness their destruction.

The Grand Jury calculated a purge rate for each agency by comparing the number of items taken as evidence in the past five years to the number of items purged/disposed of during the same five year period. A higher percentage reflects a more efficient operation and use of space. Purge rates ranged from 20% to 87%.

The following pages summarize the results of the Grand Jury's inspections of the individual agencies.

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<sup>10</sup> California Civil Code Section 2080 et al. provides regulations for the proper care and disposition of found property.

## **Arroyo Grande Police Department**

Facility: The Arroyo Grande property/evidence room is approximately 247 square feet and contained 3,211 items of evidence (near capacity) at the time the POST audit form was completed. The Support Services Technician indicated that an additional 150 square feet would be beneficial. Personnel access to the room is limited. The Grand Jury found that the items inside the caged, secure area appeared to be packaged properly and were stored in an orderly fashion.

Staffing: The Support Services Technician has primary control and two other supervisory personnel have authorized access. The Support Services Technician also performs other duties in the agency not related to property/evidence. He estimated approximately 30 hours per week are allocated to the property/evidence function. Based on salary information provided to the Grand Jury, annualized salary with benefits (prorated to 30 hours per week) totals \$77,922.

Purging/Disposal: In view of Arroyo Grande's limited space, the purging or disposal of evidence is critical to managing the property/evidence room. In the past five years, a total of 5,234 items of evidence were accepted into property/evidence. During the same time period, 1,042 items were purged/disposed of. The purge rate of 20% was the lowest in the county.

Audits/Inventories: The Arroyo Grande Police Department is not in compliance with their stated Lexipol policies:

- An annual audit of evidence held by the department shall be conducted by a Division Commander (as appointed by the Chief of Police) not routinely or directly connected with evidence control.
  - The last inventory was conducted two years ago.
- Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual(s) not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.

- The Evidence Technician has been in that assignment for approximately three years and no inventory was conducted at the time of his initial assignment.

Safety Policies: The Grand Jury found that the Arroyo Grande Police Department was in compliance with safety policies with the exception of the following:

- No ventilation system exists to outside air, required for drug/narcotics storage<sup>11</sup>
- Appropriate storage containers for flammables are not explosion-proof (storage area for flammables is located outside)
- Storage area for flammables is not appropriately ventilated
- Safety manuals are not provided to employees
- No emergency evacuation plan is established

### **Atascadero Police Department**

The Atascadero Police Department's property/evidence room is excellent in both management and day-to-day operation. Over the past several years, and during several police administrations, there has been a commitment to continued improvement in the operation of the property/evidence function. It is a model for other agencies to follow.

In 2005, the department began auditing and improving its property/evidence room. The Atascadero Police Department is the only agency in the county which contracts with an outside consultant to audit its property/evidence room. The department implemented the consultant's recommendations and another audit was authorized in 2008. The 2008 audit set forth additional recommendations that were also implemented. The consultant's last audit was conducted in June 2010 and the agency received the highest rating, "MEETS STANDARDS++." The consultant commented in his report that in over 60 performance audits he has conducted over 12 years, no other agency has been rated so highly. Consequently, the consultant rates the Atascadero Police Department in the top 10-15% of property/evidence rooms in California.

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<sup>11</sup> A requirement of *POST Evidence Management Guide* 3-3, 66261.4 CCR.

Facility: At the time of the Grand Jury inspection, the 368 square foot property/evidence room was neat and orderly, and examined evidence appeared to be packaged properly. Data is backed-up and access to the system is limited to authorized police administrators. The evidence area is secure and only the Property/Evidence Specialist has primary access. The Grand Jury members were required to sign an entry log prior to entering the secure area, an excellent security procedure. The size of the property/evidence area is adequate to meet the needs of the agency.

Staffing: Atascadero has one Property/Evidence Specialist assigned to the property/evidence room. Additional duties include crime scene investigation. The Specialist has attended training from CAPE, has had five years of in-house training, and additional basic and advanced crime scene investigation training. The position is full-time and total compensation, including benefits, is \$92,307.

Purging/Disposal: At the time the audit survey was completed, there were 4,154 items in property/evidence. In the past five years, 22,035 items of property/evidence were logged into the property/evidence room and, during that same period, 19,224 were purged/disposed of. The purge rate is outstanding at 87%.

Audits/Inventories: Atascadero Police Department will be adopting the Lexipol policy. At the time of the Grand Jury inspection, the policy was in "draft" form and had not yet been adopted. At the time of the Grand Jury inspection, the department was in compliance with its existing policy and (as indicated in the consultant's report) it is also in compliance with the following policies: CALEA Property and Control Standards, CAPE, IAPE, California POST, and IACP guidelines (International Association of Chiefs of Police).

Safety Policies: Atascadero Police Department complies with nearly all the safety guidelines as outlined in the POST audit. Two exceptions were noted in their survey response:

- No appropriate explosion-proof containers are available
- A lack of appropriate safety signage

## **Grover Beach Police Department**

Facility: The Grover Beach Police Department property/evidence room is neat and orderly, containing approximately 4,400 items. The room is adequate but is close to or at capacity. The square footage was not provided. The evidence examined by the Grand Jury members was packaged properly, stored neatly and bar coded. The room is secure and the Property Room Technician and the Division Lieutenant are the only people allowed access. An access log is maintained for any other people requesting access to the controlled area. The Grand Jury learned during interviews that the department has tentative plans to convert a larger office space into the property/evidence room because the current evidence room does not have required ventilation and the proposed space is ventilated.

Staffing: Currently, there is one Property/Evidence Technician who is also assigned to the Records Division. The Technician has received POST training. The time spent solely for the property/evidence function is estimated at 600 hours per year. The pro-rated salary, plus benefits, for the Property/Evidence Technician totals \$19,332 per year.

Purging/Disposal: In view of the space constraints, purging/disposal of property/evidence is important in maintaining an orderly property/evidence room. In the past five years, 7,835 items of evidence were placed into evidence and 2,618 items were purged/disposed of during that same period. The purge rate is 33%.

Audits/Inventories: The Grand Jury learned through interviews that, prior to 2009, no purging or audits had been conducted for at least 18 to 20 years. However, the administration of the department as well as management of the property/evidence room has improved in the past three years. In April 2011, the Grover Beach Police Department adopted the Lexipol policies for property/evidence room procedures as well as for other functions of the agency. The policy exceptions to property/evidence inspections/audits are:

- On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.

- The Division Lieutenant estimated that monthly inspections occur 75% of the time.
- An annual audit of evidence held by the department shall be conducted by a Division Lieutenant (as appointed by the Chief of Police) who is not routinely or directly connected with evidence control.
  - A full audit of the property/evidence room is currently underway and the estimated completion date is April 2012. The Division Lieutenant who is responsible for evidence control is conducting the audit. Technically, the *other* Division Lieutenant, who is not connected with evidence control, should conduct the audit. There is no record of any previously conducted audits.
- Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual(s) not associated with the property room or function to ensure that records are correct and all evidence property is accounted for.
  - The last personnel change occurred in 2009. A full audit is now in progress.

Safety Policies: The Grand Jury inspection revealed the following safety issues:

- Respirators are not supplied.
- The property/evidence room is not ventilated.

### **Morro Bay Police Department**

Facility: The Morro Bay Police Department property/evidence room is limited in size with approximately 230 square feet. Additional storage for large items, such as bicycles, is located off-site. The room is neat and orderly, and the evidence inspected was packaged properly. Security was adequate; no entry log is maintained to document who enters the secure area beyond the property/evidence technician. There have been recent improvements to the property/evidence room. Grant funds were used to purchase new evidence lockers that include a refrigerated locker for perishable evidence. Once removed from the refrigerated evidence locker, items are placed in a larger refrigerator inside the evidence room for long-term storage.

Staffing: The recently filled Property/Evidence Technician position had been vacant since 2009. The new position is part-time, without benefits, and is funded by a yearly grant in the amount of \$17,000. The agency has provided in-house training to the Property/Evidence Technician and further training is being considered through CAPE.

Purging/Disposal: The disposal or purge rate of evidence for the past five years exceeds the amount taken in during the same five-year period. Evidence had not been purged in many years, thus 4,099 items were purged and 2,217 were taken in during the same period. Recognizing that the evidence room was disorganized, the Chief of Police authorized a full audit/inventory in 2009 and property/evidence no longer of significance was purged or disposed of. Currently, there are 2,217 items of evidence in the property/evidence areas and items are purged when authorized by either the District Attorney's Office or by department policy.

Audits/Inventories: The Morro Bay Police Department inspection practice exceeds the Lexipol policy. The Grand Jury was advised that the Police Commander, who is not affiliated with the property/evidence function, conducts monthly inspections. Now, monthly inspections by the Commander focus on adherence to policies, unannounced inspections and monthly audits in lieu of annual audits. The Support Services Manager completed the last full audit/inventory in March 2009 due to a personnel change. Another audit/inventory is planned with the recent hiring of the new, part-time Property/Evidence Technician.

Safety Policies: Appropriate safety procedures are in place. The property/evidence room is ventilated and policies are in place for the handling of biohazards, hazardous and flammable items. The Grand Jury noted only one exception:

- Respirators are not provided for the evidence technician

## **Paso Robles Police Department**

Facility: The Paso Robles Police Department is located in a relatively new building (2003) that is also the headquarters for the Department of Emergency Services. The main property/evidence room is located inside the main building. At the time the agency completed the audit form for

the Grand Jury, a total of 10,570 items were located in the main area as well as in secondary secure, storage areas. The combined property/evidence area totals 898 square feet.

While the main evidence area is spacious, items requiring additional security (guns, money and drugs) are located in a separate secure room. Those items were not stored in an orderly fashion. Guns, money and drugs were piled on top of each other; some guns were stored in evidence boxes while others, not boxed, were lying on shelves. Additional space for these items is needed to permit orderly storage.

Staffing: A Supervising Lieutenant and two detectives currently staff the property/evidence room. A previous full-time dedicated position was eliminated from the budget. The staff typically rotates every two to four years. At the time of the Grand Jury inspection, the plan was to train two dispatchers to staff the evidence room, in addition to the Supervising Lieutenant and two detectives, for a total of five personnel. The agency was unable to provide labor expense figures for the property/evidence room operation.

Purging/Disposal: The agency uses PsNet tracking software. Unfortunately, data entry errors over a period of time listed items checked out as "Disposed" evidence when in fact they were checked out for court, lab analysis or other valid reasons. The disposition of "Disposed" evidence items was not changed when the item(s) was returned to the property/evidence room. Due to this property/evidence documentation tracking error, the Supervising Lieutenant and two detectives planned a full audit of every item beginning in February 2012. The full inventory was expected to take approximately one month to complete.

In view of the PsNet entry error, the purge rate could not be calculated. Of the 10,570 items at the time of survey, 7,916 were taken into evidence in the past five years. Because the number of items purged/disposed of was not available, the purge rate could not be calculated.

Audits/Inventories: The Paso Robles Police Department is in partial compliance with its Lexipol policy pertaining to evidence room inspections:

- On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures
  - According to the Supervising Lieutenant, a few evidence items are checked monthly on a random basis

The department is not in compliance with its remaining policies. The last partial inventory was completed in June 2011 and pertained to drug evidence only. Prior to that date, an inventory of guns, money and drugs was conducted in 2009. The last full inventory was conducted in 2003. A full audit is planned for 2012.

Safety Policies: With regard to health and safety for evidence room personnel, the agency is in compliance with the policy guidelines set forth in the POST audit form, with only two exceptions:

- Ammunition/black powder is not being stored separately from other property
- Explosion-proof storage containers are not provided

### **Pismo Beach Police Department**

The Pismo Beach Police Department is the only agency in the county to receive CALEA accreditation, a process that took several years. After meeting all CALEA proofs of compliance, the department became an accredited agency in 2007. The administration and staff are to be commended for their dedication in obtaining the accreditation.

Facility: The property/evidence room is located inside the police department, and is clean and well-organized. The 445 square foot area is secure and only the primary Property/Evidence Technician has routine access. All others requesting access must sign the entry log, document their purpose, and be escorted by the technician or the supervisor of the property/evidence room. During the Grand Jury's inspection, inspected evidence was properly packaged and the labeling was consistent with standard practices.

Staffing: The Property/Evidence Room Technician has been employed by the agency for the past nine years and maintains a neat and well-organized evidence room. The technician is also the president of the local property/evidence room association, CAPE. The technician's dedication to her position, as well as promotion of the professionalism of the property/evidence room function throughout the county, is to be commended. The annual expense (salary and benefits) for the full-time Property/Evidence Room Technician totals \$82,659.

Purging/Disposal: At the time the audit form was completed, there were approximately 11,065 items of evidence. In the past five years, 5,984 items were entered into evidence and 2,586 were purged/disposed of. The purge rate is 43%.

Audits/Inventories: In addition to using CALEA standards regarding property and evidence control, Pismo Beach relies on Lexipol policies in other areas of operation. CALEA and Lexipol policies are very similar in form and content. The CALEA standard for inspections/audits states:<sup>12</sup>

84.1.6 In order to maintain a high degree of evidentiary integrity over agency-controlled property and evidence, the following documented inspections, inventory, and audits shall be completed:

- a. An inspection to determine adherence to procedures used for the control of property is conducted semi-annually by the person responsible for the property and evidence control function or his/her designee;
- b. An inventory of property occurs whenever the property and evidence custodian is assigned to and/or transferred from the position and is conducted jointly by the newly designated property and evidence custodian and a designee of the CEO to ensure that records are correct and property annotated;
- c. An annual audit of property and evidence held by the agency is conducted by a supervisor not routinely or directly connected with the control of property and evidence; and

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<sup>12</sup> Commission on Accreditation for Law Enforcement Agencies (CALEA)<sup>12</sup> Property and Control Standards

- d. Unannounced inspections of property storage areas are conducted, as directed by the agency's CEO, at least once a year.

The Pismo Beach Police Department is in compliance with all CALEA policies. Their last annual audit was completed in June 2011.

Safety Policies: In view of the POST audit pertaining to safety, the following deficiencies were found:

- Respirators are not provided
- Safe storage for chemicals is not provided
- The flammable storage area is not appropriately ventilated
- No outside storage for flammables exists
- Designated storage containers are not explosion-proof

### **San Luis Obispo Police Department**

The San Luis Obispo Police Department is the largest municipal police agency in the county. The department tracks all property/evidence through Spillman software. If the system is not accessible, the Evidence Clerk has devised a manual filing system that allows for the retrieval of evidence based on date. This system is unique to the San Luis Obispo Police Department and the Evidence Clerk should be commended for implementing a simple, logical, back-up filing system.

Facility: Due to space limitations, property/evidence is stored in several different locations. The combined space totals 1,685 square feet. All areas are properly secured. As a result of the Grand Jury inspection, an entry log for escorted persons will be implemented. The evidence room areas were neat and orderly, with the exception of hand gun storage.

Numerous hand guns were piled on a shelf, limiting the orderly removal/examination of a particular firearm. Many agencies in the county place guns in evidence boxes designed for safe storage. It is the preference of the Evidence Clerk to be able to examine the weapon to ensure that it is unloaded and in safe condition prior to acceptance into the property/evidence room.

The approach is logical. However, if the agency prefers to store handguns without packaging, it should store them individually, in a neat and orderly manner.

Staffing: The primary control of the property/evidence room is assigned to one full-time Property/Evidence Clerk who is responsible for the day-to-day operation. The Property/Evidence Clerk has attended IAPE and CAPE training. The clerk has been in the position for approximately seven years with an annual compensation (salary and benefits) reported to be \$100,000 per year.

Purging/Disposal: There were 26,043 items in evidence at the time the audit survey was completed. A total of 38,471 items were logged into evidence during the past five years and 31,524 items were purged/disposed of during that time. The purge rate is an impressive 82%. It is noteworthy that the San Luis Obispo Police Department donates unclaimed bicycles to at-risk youth.

Audit/Inspections: The San Luis Obispo Police Department is in compliance with its audit/inspection policy. The current policy is that the Property/Evidence Technician, assisted by the Investigation Sergeant and Investigation Lieutenant, conducts an audit every six months. Audits were conducted in March and October 2011. The audits focused on three areas: firearms, money and drug/narcotics. Per their policy, all firearms and money are examined during the audits, as well as forty randomly selected narcotics cases and forty random pieces of evidence. Audited items are checked for proper sealing, packaging and identification. A report of the findings is forwarded to the Chief of Police, noting any discrepancies. A full inventory of every item is scheduled for March 2012.

The San Luis Obispo Police Department is in the process of changing its department policies, and will adopt the Lexipol standard in the near future. The department is currently reviewing each Lexipol policy prior to acceptance and implementation. Some policies may be modified to best suit the needs of the agency. Once the Lexipol policies are adopted, those provisions pertaining to evidence room inspections/audits will be followed.

Safety Policies: A review of the POST audit forms on safety shows that the department is in compliance with POST standards, with one exception:

- Annual biohazard update training.

### **San Luis Obispo County Sheriff's Department**

Facility: The security of the County Sheriff's property/evidence room is adequate; however, at 2,500 square feet, the building size is not adequate for the volume of property/evidence stored. The property/evidence room currently contains over 75,000 items in a space that is not well designed or orderly. Additionally, the surplus shelving in use does not maximize the current space. While the evidence area is cluttered, the evidence observed was packaged properly and the evidence tracking software is used properly. Sheriff Ian Parkinson described the space as a "disaster"<sup>13</sup> and he has made correcting the property/evidence room deficiencies a top priority.

Plans have been approved to move the evidence room to another site approximately twice as large as the current property/evidence room, with additional adjacent space available when needed. Funding has been secured; the new location is expected to be fully operational and compliant with policy and standards by the end of 2012.

Staffing: The agency has two full-time, non-sworn, property technicians who are responsible for the property/evidence room function. Recently, the agency added a part-time employee to assist in managing the high volume of evidence. The total cost of all employees to operate and maintain the property/evidence room, including benefits, is \$300,070.

Purging/Disposal: In the past five years, according to property system records, 516,284 items of evidence were logged into evidence; of that number, 242,910 items were purged/disposed of. The purge rate is 47%. The Sheriff's Department is proactive in the management of its available space, but their authority to dispose of certain types of evidence has been slowed awaiting

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<sup>13</sup> C. Lambert, (Top 10 Stories of 2011: No. 10: Parkinson Brings Changes to County Sheriff's Office. *The Tribune*, December 23, 2011

approval by the District Attorney's Office. The Grand Jury viewed carts of evidence waiting approval by the District Attorney's Office; some disposal requests date as far back as 2009.

Audit/Inspections: The Sheriff's Department is not in compliance with its Lexipol policies on audit procedures. The last audit was four years ago.

Safety Policies: According to the POST audit forms completed by the department, only minimal safety equipment is supplied (respirators, gloves and protective clothing). Specific deficiencies include:

- No safety manuals
- Annual safety training does not take place
- Emergency evacuation plans do not exist

## CONCLUSION

All agencies use computerized inventory methodology, which, when managed correctly, provides excellent tracking and control of property and evidence.

All agencies have adopted, or are about to adopt, the Lexipol property/evidence room policies for audits and inspections. The Lexipol policies are fundamentally consistent with those of other recognized organizations, such as IAPE, CALEA and POST. While all agencies have similar policies, not all agencies comply with their stated policies.

There are several independent consulting firms that perform property/evidence room audits on a contract basis. Such firms provide an unbiased perspective on the management and operation of law enforcement agency property/evidence rooms. The City of Atascadero has utilized such an independent auditor for many years and, as a result, the operation and maintenance of its property/evidence room has continuously improved.

Some county agencies could benefit from POST management counseling, which can be requested by any agency. The POST Management Counseling Services Bureau (MCB) provides many services to local law enforcement agencies to improve the quality of police services at each level of the organization. The authority to provide counseling is pursuant to California Penal Code Section, 13513.<sup>14</sup> Local agencies in San Luis Obispo County can request management counseling services from POST related to the operation of Property/Evidence rooms. For example, POST conducted an exhaustive property/evidence room audit in 2006 for the Berkeley Police Department after the internal theft of drugs.<sup>15</sup>

There are several professional organizations that offer standards and training, and promote the proper operation of property/evidence rooms. IAPE, for example, offers a certification. POST

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<sup>14</sup> California Penal Code section, 13513: Upon the request of a local jurisdiction, the commission shall provide a counseling service to such local jurisdiction for the purpose of improving the administration, management or operations of a police agency and may aid such jurisdiction in implementing improved practices and techniques.

<sup>15</sup> City of Berkeley, Policy Review Commission Police Report, Evidence of Theft within the Berkeley Police Department, October 12, 2007.

offers only guidelines. Given the numerous certificate programs offered by POST, the Grand Jury was surprised to learn that POST does not offer a certificate program for Property/Evidence Technicians.

In the purging process, all agencies in the county use propertyroom.com for the auctioning of eligible items. There is one notable exception to this practice. San Luis Obispo Police Department donates its bicycles to the Sheriff's Department for repair prior to being donated to their juvenile delinquency program. This practice benefits the community by providing projects for inmates, as well as benefiting at-risk youth.

Several agencies commented that destruction requests to the District Attorney's Office are not processed promptly and the delay reduces available storage space. The Sheriff's Department, for example, has requests dating as far back as 2009 that have had no response. The delay has adversely affected their ability to properly manage the property/evidence room. The primary complaint was that they were not receiving disposal authorization for marijuana stored at their facilities.

There is a variety of management practices of property/evidence rooms within San Luis Obispo County and property/evidence retention/disposal requirements are complex. However, the county lacks a standardized policy/procedure for all law enforcement agencies in the county.

At present, county law enforcement agencies spend approximately \$700,000 for property/evidence room employee salaries and benefits. Supervision, material, transportation, and facility costs increase this number and are difficult to quantify. There may be significant cost savings available if the multiple property/evidence rooms in the county were consolidated into one.

## FINDINGS

1. The Police Departments of Arroyo Grande, Grover Beach, and Paso Robles, and the Sheriff's Department are not in full compliance with their respective policies pertaining to evidence room inspections.
2. The Police Departments of Atascadero, Morro Bay, Pismo Beach, and the City of San Luis Obispo are in compliance with their respective policies pertaining to evidence room inspections.
3. The Grover Beach Police Department is currently conducting a full inventory of its evidence room.
4. Morro Bay Police Department advised that it will complete a full inventory of its evidence room with the hiring of a new Property/Evidence Technician.
5. Paso Robles Police Department was unable to advise the number of evidence items purged due to a data entry error that occurred routinely over a period of time.
6. Paso Robles Police Department has advised the Grand Jury that it will complete a full inventory within the year.
7. Paso Robles Police Department does not store guns, money and drugs in a neat and orderly manner.
8. In the Paso Robles Police Department, five people have access to the evidence room and staff rotates every two to four years.
9. Arroyo Grande Police Department and the Grover Beach Police Department do not have ventilated property/evidence rooms for storage of drugs/narcotics.
10. The San Luis Obispo Police Department does not store handguns in a neat and orderly manner.
11. The San Luis Obispo Police Department is planning a full inventory within the year.
12. The Sheriff's Department has advised that it will move its property/evidence room operation to a new facility.
13. The District Attorney's office does not have formal, written property/evidence retention policies.
14. The District Attorney's Office is currently establishing a Memorandum of Understanding with each jurisdiction regarding the retention/destruction of medical marijuana.

15. As a result of the Grand Jury audit, changes are already being made to improve the property/evidence room function in some of the law enforcement agencies in the county.

## **RECOMMENDATIONS**

1. All law enforcement agencies in the County should adhere to their respective policies relating to property/evidence room inspections.
2. The Arroyo Grande and Grover Beach Police Departments should ventilate their evidence rooms containing drugs/narcotics.
3. The Paso Robles Police Department should maintain their property/evidence room in a neat and orderly manner.
4. The Paso Robles Police Department should consider using the services of POST or an independent consulting service to conduct a full review of its property/evidence room function.
5. To reduce audit-related personnel costs, the Paso Robles Police Department should consider staffing the property/evidence room with a single dedicated Property/Evidence Technician.
6. The San Luis Obispo Police Department should store handguns in a safe, neat and orderly manner.
7. The District Attorney's Office should develop a formal property retention policy that will assist each law enforcement agency with the proper retention/destruction of property evidence.
8. The District Attorney's Office should establish a liaison between its office and each law enforcement jurisdiction to regularly review existing and new property/evidence laws and procedures.
9. All personnel assigned to property/evidence rooms in the county should continue their training and/or update their knowledge through professional organizations. It is also highly recommended that they join the county chapter of CAPE.
10. The Grand Jury encourages the county law enforcement agencies to utilize the services of either POST for management assistance or a qualified consultant specializing in property/evidence room management.

11. The following police departments shall submit evidence of a full property/evidence room audit to the Grand Jury: Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, San Luis Obispo, and the Sheriff's Department.
12. The Grand Jury recommends that the police chiefs and County Sheriff explore the feasibility of a county-wide property/evidence room consolidation, possibly under a joint powers agreement.
13. While the Grand Jury does not have jurisdiction over a state agency, it would highly recommend that the California POST Commission consider a statewide certification program for Property/Evidence Technicians that establishes minimum training, education and experience requirements.

## COMMENDATIONS

The Atascadero Police Department is to be commended for its continued commitment to improving the operation and management of its property/evidence room. Since 2005, the department has retained the services of an independent property/evidence room consultant. Based on the consultant's recommendations and follow-up inspections in 2008 and 2010, continued improvements were made resulting in Atascadero being rated one of the best property/evidence rooms in California. The current Property/Evidence Technician, Ryan Infantino, as well as his predecessors, are to be commended.

The Pismo Beach Police Department has demonstrated its support and dedication to the property/evidence room function through its CALEA certification and adherence to POST standards. Specifically, Property/Evidence Technician Rachelle LaPan is to be commended for her management of the property/evidence room and her contribution as President of the local CAPE chapter.

The San Luis Obispo County Sheriff's Department recognized the necessity of moving its property/evidence room to larger facilities and reorganizing the manner in which evidence is stored. The move and reorganization are underway and the new facility should be operational by the end of 2012. Sheriff Ian Parkinson included the auditing of the property/evidence room as a top priority prior to his election as Sheriff. He is to be commended for keeping his pre-election promise.

## REQUIRED RESPONSES

The Police Department of Arroyo Grande is required to respond to Findings 1 and 9, and Recommendations 1, 2, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Atascadero is required to respond to Recommendations 1, 9 and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Grover Beach is required to respond to Findings 1, 3 and 9, and Recommendations 1, 2, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Morro Bay is required to respond to Finding 4 and Recommendations 1, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Paso Robles is required to respond to Findings 1, 5, 6, 7, and 8, and Recommendations 1, 3, 4, 5, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Pismo Beach is required to respond to Recommendations 1, 9 and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of San Luis Obispo is required to respond to Findings 10 and 11, and Recommendations 1, 6, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The San Luis Obispo County Sheriff is required to respond to Findings 1 and 12, and Recommendations, 1, 9, 10, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **August 6, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The San Luis Obispo County District Attorney is required to respond to Findings 13 and 14, and Recommendations 7 and 8. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **August 6, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The mailing addresses for delivery are:

Presiding Judge	Grand Jury
Presiding Judge Barry T. LaBarbera Superior Court of California 1050 Monterey Street San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93402

The e-mail address for the Grand Jury is: [GrandJury@co.slo.ca.us](mailto:GrandJury@co.slo.ca.us)

**APPENDIX A**  
**BUTTE COUNTY**  
**PROPERTY RETENTION POLICY**

**PURPOSE**

The purpose of this policy is to establish standard criteria for Law Enforcement Agencies with regard to property retention.

**POLICY**

This document gives all agencies within \_\_\_\_\_ the authority to purge all property taken into their possession based on meeting the criteria outlined below. This was created with the input of all Butte County Law Enforcement Agencies, in conjunction with the Butte County District Attorney's Office.

**PROCEDURE**

**Evidence Retention Considerations**

- 1) Post conviction
- 2) Post dismissal
- 3) Case not filed
- 4) DNA/Biological evidence
- 5) Sexually Violent Predators (SVP) cases
- 6) Domestic Violence/Elder Abuse/Child Abuse
- 7) Juvenile cases
- 8) Drug diversion cases
- 9) Bench warrant vs. arrest warrant
- 10) Search warrant
- 11) General purge considerations
  - a) Statute of limitations considerations
  - b) Agency may initiate
  - c) Currency
- 12) Photograph and release option

**Attachments**

- 1) Statute of limitations

- 2) Warrant purge criteria
- 3) Return of service order (1536 PC)
- 4) Weapons destruction order (12028 PC)
- 5) Narcotics destruction order (11367, 11473, and 11473.5 H&S)

### **Purge criteria**

Absent a directive by the District Attorney, the following criteria shall apply permitting the purging of property or evidence.

#### **1) Post conviction**

If case was a plea or no contest, the investigating agency can purge property as soon as they receive the Butte County District Attorney's Evidence Release Memo (hereinafter referred to as Evidence Release Memo). There is no need to hold onto the evidence any longer.

If convicted by jury, evidence shall be held for 60 days on misdemeanors and 90 days on felonies for possible appeals. This time is based on the date of the case adjudication and is for those cases in which an Evidence Release Memo is received.

In 187 PC and life sentence cases, there will not be an Evidence Release Memo sent until the (s) is deceased or released from prison and is on parole. If the (s) dies while in custody, this information may come to either the DA or the local agency. Once this information is received, it is important that both are made aware of this information. Therefore, always ensure the other party involved has been contacted and is aware of the status. Once the suspect has been released from prison or is deceased, the property can be purged. In order to check on the status of a particular inmate, contact Chico Parole. They will be able to provide you with parole information or a deceased notification on your suspect.

#### **2) Post dismissal**

The District Attorney's office shall send an Evidence Release Memo for cases that are dismissed due to lack of sufficient evidence or in the interest of justice. These evidence releases shall state the reason for the dismissal. Once an Evidence Release Memo has been received, the property section will verify the status with their case agent prior to disposal of property. The District Attorney will not move forward with the case unless the case agent has further information.

In co-defendant cases, the first Evidence Release Memo will state the fact there is a co-defendant. The subsequent release will state the final release of evidence.

### **3) Case not filed**

The District Attorney's office shall send an Evidence Release Memo for cases that are either declined due to lack of sufficient evidence, or declined in the interest of justice. These Evidence Release Memos shall state the reason of the case being declined. Once an Evidence Release Memo has been received, the property section will check with their case agent prior to disposal of property. The District Attorney will not move forward with the case unless the case agent has further information.

For any cases without an arrest, all property can be purged at statute of limitations. For further information regarding statute of limitations, see Attachment 1.

### **4) DNA/Biological evidence**

DNA evidence used to convict must be maintained until the (s) is released from prison, unless authorized by the District Attorney. The (s) has the right to have the DNA evidence retested at any point in time during their incarceration. However, if the proper documents have been signed by the (s), the (s) attorney, the DA, and the judge, all property can be purged after conviction. This documentation would accompany any evidence release memo sent by the District Attorney.

Each agency shall be held responsible for the retention of evidence when there is a John Doe warrant issued based on DNA. The agency shall verify status of any potential warrants prior to the disposal of DNA evidence at the statute of limitations.

### **5) Sexually Violent Predators (SVP) cases**

CART interviews shall be conducted using DVD media and forwarded to the individual agencies.

Sexual assault cases have a statute of limitations of ten (10) years. No evidence in such cases, unless unfounded, can be purged prior to the statute of limitations. For the retention of any DNA evidence, refer to the DNA section of this document.

### **6) Domestic Violence/Elder Abuse/Child Abuse**

All photos and interviews shall be maintained for a period of ten (10) years from the date of incident on all domestic violence/elder abuse/child abuse convictions. This is pursuant to

California Evidence Code Section 1109. This is due to the fact that all prior convictions of such a crime are admissible for future cases. This allows the District Attorney to attempt to show a pattern of this behavior for the (s) to include motive, intent, and opportunity.

All property, other than photos and interviews, may be purged once the Evidence Release Memo is received from the District Attorney's office.

#### **7) Juvenile cases**

The District Attorney's office will send an Evidence Release Memo on Juvenile cases based on case adjudication. Property may be purged upon receiving these releases.

If an Evidence Release Memo is not received, each agency may look up the case status in HOD. Once the case shows closed in HOD, the investigating agency may purge the property.

For cases without a suspect, property may be purged based on statute of limitations (see Attachment 1).

#### **8) Drug diversion cases**

All evidence seized in criminal cases that result in drug diversion will be maintained until the suspect completes their diversion process. Once diversion is successfully completed, an Evidence Release Memo will be sent to the investigating agency. If the suspect fails to complete diversion, the evidence will remain active. In all narcotics cases, the evidence will be considered active until an evidence release memo is received by the investigating agency.

In cases in which the suspect pleads, an Evidence Release Memo will be sent prior to the completion of drug diversion. The evidence will no longer be needed and can be purged.

All agencies are authorized to destroy all needles/syringes taken as evidence of Business and Professions Code Section 4140 after the seizing officer photographs (Xerox is also acceptable) the item and identifies the same with the agency case number. Hypodermic syringes containing suspected controlled substances are subject to the same procedure with the addition that a portion of the contents should be presumptively tested for proper criminal charging. The contents are then to be placed into a vacuum tube (void of preservative) and sent to the lab for analysis.

## **9) Bench warrant vs. arrest warrant**

Bench warrant is issued after a person has appeared in court, but fails to show for additional court appearances.

Arrest warrants are issued for persons law enforcement maintains is a (s) in a case, but has yet to arrest with regard to the incident.

Firearms taken in cases in which there is an arrest or bench warrant, it can be purged after one year on possession cases only. Law Enforcement must document and photograph the firearm thoroughly, but can purge it as abandoned property after one year.

For purge criteria on misdemeanor cases, refer to Attachment 2. *This criteria is for those misdemeanor cases over seven (7) years old that have gone to warrant.*

## **10) Search warrant**

All evidence taken as part of a search warrant must have a court order (1536 PC) prior to the return or purging of any property. If the original warrant service included a return (1536 PC) order, the property can be released by an evidence memo issued by the District Attorney upon case adjudication. All property considered to be stolen/recovered will be photographed and released to the rightful owner, refer to Attachment 3.

## **11) General purge considerations**

### **a) Statute of limitations considerations**

Purging of property in criminal cases is sometimes based on the statute of limitations. If there has not been an arrest on a case and there is not an outstanding warrant, purging is based on the statute of limitations. For the most part, the statute of limitations runs one (1) year on misdemeanor crimes and three (3) years on felony crimes. However, this is not a set standard. For clarification based on criminal code section, see Attachment 1. An example of crimes that do not meet this basic statute of limitations would be sex crimes or violent crimes against person.

**b) Agency may initiate**

Individual agencies may have individual purge criteria set up for various non-criminal or civil cases. A list of such cases includes, but is not limited to: 27491 GC, traffic collisions, and cases they deem are unfounded.

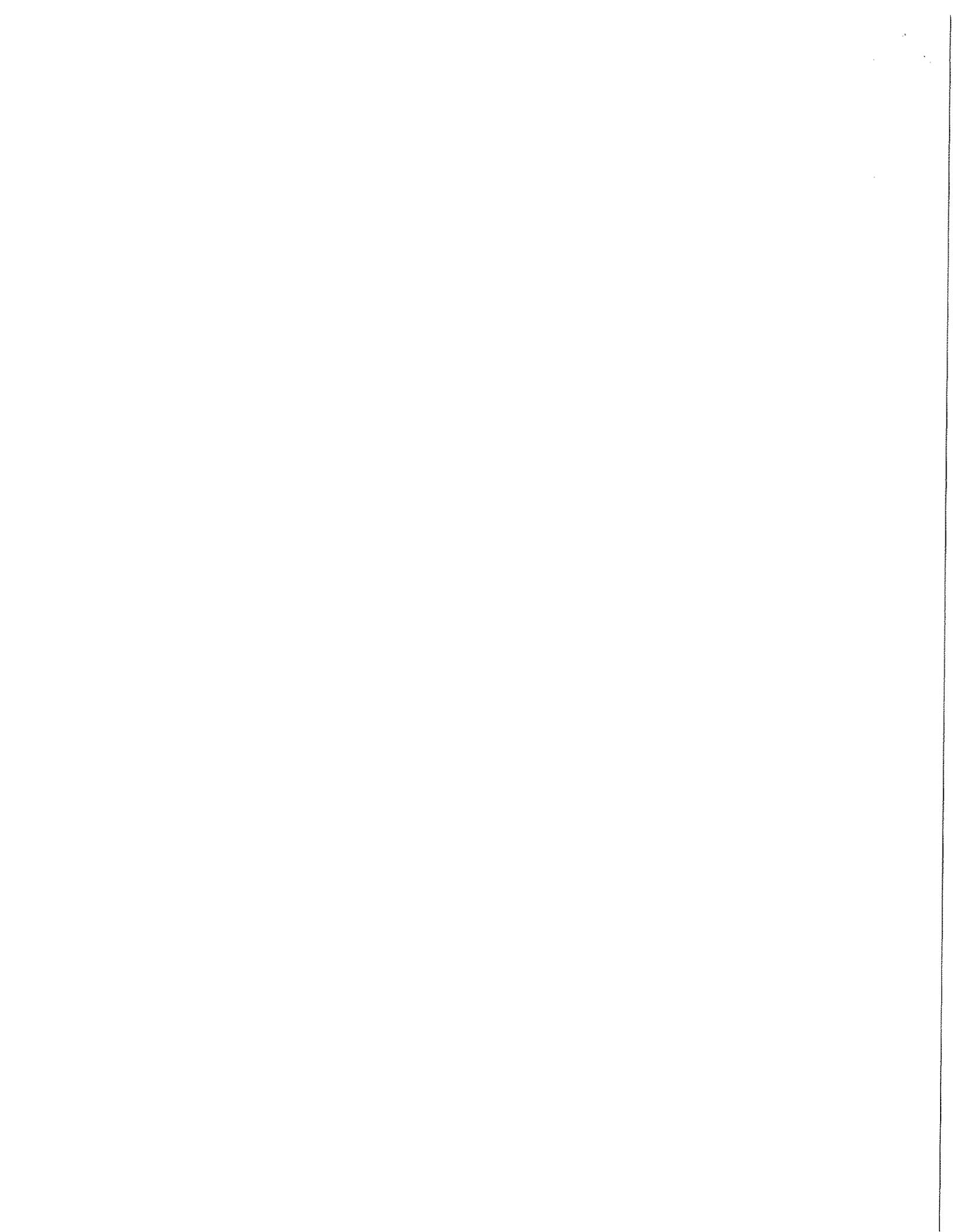
**c) Currency**

Any currency taken into the custody of local law enforcement agencies as part of a narcotics sales case will be handled by the District Attorney-Asset Forfeiture Unit.

In embezzlement cases, the money may be returned to the victim upon case adjudication. If the victim has filed a claim with their insurance company and received compensation, the money would then be released to the insurance company.

**12) Photograph and release procedure**

Stolen/Recovered items will be photographed and released to the (v). There is no need to maintain stolen/recovered property as evidence. Proper documentation (which includes obtaining and photographing the serial numbers) and photographing of all evidence must occur prior to the release of any property. These photos should include the (v) with the items to be returned. The (v) must also be informed to maintain possession of this property until the criminal case is adjudicated, in case it is needed for prosecution.





AGENDA NO: A-3

MEETING DATE: 8/14/12

## Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** August 7, 2012

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Resolution No. 43-12 Authorizing the City of Morro Bay to Enter Into 2012/2013 Vessel Turn-In Program Fund Contract with the Department of Boating and Waterways

### **RECOMMENDATION**

Staff recommends that City Council adopts Resolution #43-12 authorizing the Harbor Director to execute the attached \$7,000 Vessel Turn-In Program (VTIP) grant contract agreement #12-214-525 with the California Department of Boating and Waterways (DBW) for assistance with demolition of surrendered vessels prior to abandonment.

As stewards of the harbor and ocean environment, this grant would enable the Harbor Department to accept surrendered vessels for demolition prior to them becoming abandoned and posing hazards to navigation or the environment.

### **FISCAL IMPACT**

Approval of this \$7,000 grant agreement provides funding for demolition of several surrendered vessels. City is required to provide a 10% funding match, or \$700, which will come from existing budgeted funds.

### **BACKGROUND**

VTIP was recently established by DBW from enabling Legislation in 2009. It provides a funding mechanism for local agencies to identify vessels in danger of being abandoned (generally older vessels at or beyond their useful life and falling into dereliction) and accepting ownership of those vessels from willing owners for demolition prior to them being abandoned and becoming a hazard to navigation or the environment. The City has accepted one prior grant from DBW under the VTIP program. To date the City has disposed of numerous vessels of various sizes under the VTIP and Abandoned Watercraft Abatement Fund (AWAF) grant programs. VTIP is a sister program to AWAF.

**Prepared By:** \_\_\_\_\_      **Dept Review:** \_\_\_\_\_

**City Manager Review:** \_\_\_\_\_

**City Attorney Review:** \_\_\_\_\_

## **DISCUSSION**

The Harbor Department will identify vessels in danger of abandonment and prioritize removal of them by working with willing owners. Projects will be put out to bid if necessary, as they arise, and the City will remove as many vessels as possible within the scope of the \$7,000 grant agreement.

## **CONCLUSION**

It is recommended that the City Council adopt Resolution #43-12, and authorize the Harbor Director to execute the 2012/2013 VTIP grant and to act as the City's authorized Agent for the purposes of the grant agreement.

**RESOLUTION NO. 43-12**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
AUTHORIZING THE CITY OF MORRO BAY TO ENTER  
INTO 2012/2013 VESSEL TURN-IN PROGRAM FUND  
CONTRACT WITH THE DEPARTMENT OF BOATING  
AND WATERWAYS**

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

**WHEREAS**, City of Morro Bay (City) applied for a grant from the California Department of Boating and Waterways (DBW) under the 2012/2013 Vessel Turn-In Program (VTIP); and

**WHEREAS**, DBW awarded a grant of \$7,000 under VTIP to the City for removal of surrendered vessels prior to abandonment; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Morro Bay, California, that the City of Morro Bay is hereby authorized to enter into VTIP Contract #12-214-525 for removal of surrendered vessels in the amount of \$7,000.

**BE IT FURTHER RESOLVED**, that Harbor Director Eric Endersby is hereby authorized to act as the City's agent in regards to all aspects of the grant agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of August, 2012 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
WILLIAM YATES, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE BOUCHER, City Clerk



AGENDA NO: A-4

MEETING DATE: 8/14/12

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 7, 2012

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Resolution No. 44-12 Authorizing the City of Morro Bay to Enter Into 2012/2013 Abandoned Watercraft Abatement Fund Contract with the Department of Boating and Waterways

## RECOMMENDATION

Staff recommends that the City Council adopt Resolution #44-12 authorizing the Harbor Director to execute the attached \$8,000 Abandoned Watercraft Abatement Fund (AWAF) contract agreement #12-214-508 with the Department of Boating and Waterways (DBW) for assistance with demolition of abandoned/derelict vessels and hazards to navigation.

## FISCAL IMPACT

Approval of this \$8,000 grant agreement will provide funding for demolition of several abandoned vessels. City is required to provide a 10% funding match, or \$800, which will come from existing budgeted funds.

## BACKGROUND

AWAF was established in 1997 and provides funds to public agencies to remove, store, and dispose of abandoned, wrecked, or derelict vessels or other submerged objects from navigable waterways which pose a hazard to navigation or the environment. To date, the Harbor Department has received and expended over \$45,000 in three separate AWAf fund grants.

## DISCUSSION

Staff will prioritize vessels in need of abatement and contract-out the work accordingly. Projects will be put out to bid if necessary, as they arise, and the City will remove as many vessels as possible within the scope of the \$8,000 grant agreement.

## CONCLUSION

It is recommended that the City Council adopt Resolution #44-12, and authorize the Harbor Director to execute the 2012/2013 AWAf grant and to act as the City's authorized Agent for the purposes of the grant agreement.

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

**RESOLUTION NO. 44-12**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
AUTHORIZING THE CITY OF MORRO BAY TO ENTER  
INTO 2012/2013 ABANDONED WATERCRAFT ABATEMENT FUND  
CONTRACT WITH THE DEPARTMENT OF BOATING  
AND WATERWAYS**

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

**WHEREAS**, City of Morro Bay (City) applied for a grant from the Department of Boating and Waterways (DBW) under the Abandoned Watercraft Abatement Fund (AWAF) program; and

**WHEREAS**, DBW awarded a grant of \$8,000 under AWAF to the City for removal of derelict/abandoned vessels and hazards to navigation; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that the City of Morro Bay is hereby authorized to enter into AWAF Contract #12-214-508 in the amount of \$8,000 for removal of derelict/abandoned vessels and hazards to navigation.

**BE IT FURTHER RESOLVED**, that Harbor Director Eric Endersby is hereby authorized to act as the City's agent in regards to all aspects of the grant contract agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of August, 2012 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
WILLIAM YATES, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE BOUCHER, City Clerk



AGENDA NO: A-5

MEETING DATE: August 14, 2012

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** August 6, 2012

**FROM:** Rob Livick, PE/PLS - Public Services Director/City Engineer  
Barry Rands, PE – Associate Engineer

**SUBJECT:** Adoption of Ordinance No. 579 Repealing, Amending and Reenacting Chapter 14.72 of the City of Morro Bay Municipal Code, Entitled Flood Damage Prevention

## RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 579, repealing, amending and reenacting Chapter 14.72 of the Morro Bay Municipal Code entitled Flood Damage Prevention.

## FISCAL IMPACT

There are no known direct costs to the City associated with the ordinance, and no additional staff time will be needed to administer and enforce the ordinance, since tasks have been performed under prior versions of this ordinance.

## SUMMARY/BACKGROUND

Ordinance No. 579 was brought before the City Council for introduction and first reading on July 10, 2012. Councilmember Borchard moved the City Council approve Ordinance No. 579 for first reading. The motion was seconded by Councilmember Smukler. The motion carried 5-0. The revised Flood Damage Prevention Ordinance will incorporate all current federal and state requirements, as well as construction requirements from the City's Local Coastal Plan, which require new construction to build the finish floor two feet above the 100-year flood.

## CONCLUSION

Staff recommends the City Council adopt Ordinance 579 entitled Flood Damage Prevention.

## ATTACHMENTS

Ordinance 579 – Flood Damage Prevention

Prepared By: BR

Dept Review: RL

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

**ORDINANCE NO. 579**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORRO BAY, CALIFORNIA;  
REPEALING, AMENDING, AND REENACTING CHAPTER 14.72  
OF THE MORRO BAY MUNICIPAL CODE  
(FLOOD DAMAGE PREVENTION)**

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

**WHEREAS**, the City Council adopted Ordinance No. 564, the City's current flood damage prevention regulations on November 8, 2010; and

**WHEREAS**, in order for the City to continue participation in the National Flood Insurance Program, the State of California Department of Water Resources has required the City to periodically revise its flood damage prevention ordinance to comply with current Federal Emergency Management Agency (FEMA) regulations;

**WHEREAS**, the ordinance has been reviewed by FEMA staff and revised to comply with current regulations;

**NOW, THEREFORE**, the City Council of the City of Morro Bay does ordain Section 14.72 of the Morro Bay Municipal Code as follows:

**Sections:**

14.72.010 - Statutory authorization, findings of fact, purpose and methods.

14.72.020 - Definitions.

14.72.030 - General provisions.

14.72.040 - Administration.

14.72.050 - Provisions for flood hazard reduction.

14.72.060 - Variance procedure.

**14.72.010 - Statutory authorization, findings of fact, purpose and methods.**

A. Statutory Authorization. The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local government the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the city of Morro Bay does hereby adopt the following floodplain management regulations.

B. Findings of Fact.

1. The flood hazard areas of the city of Morro Bay are subject to periodic inundation

which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contributes to flood losses.

C. Statement of Purpose. It is the purpose of this chapter promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone, mudslide [i.e. mudflow] or flood related erosion areas. These regulations are designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
7. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
8. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter includes regulations to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels and natural protective barriers which help accommodate or channel floodwaters;
4. Control filling, grading, dredging, and other development which may increase flood

damage;

5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

#### **14.72.020 - Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"A zone" - see "Special flood hazard area".

"Accessory structure" means a structure that is either:

1. Solely for the parking of no more than 2 cars; or
2. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

"Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

"Alluvial fan" means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

"Apex" means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this chapter.

"Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. See "Special flood hazard area."

"Base flood" means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "one-hundred-year flood"). Base flood is the term used throughout this chapter.

"Base flood elevation" (BFE) means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade - i.e., below ground level - on all sides.

"Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part

of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by floodwaters. A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
2. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

Building. See "Structure."

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE, or V.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before November 13, 1979.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood, flooding, or flood water" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
2. The condition resulting from flood-related erosion.

"Flood Boundary and Floodway Map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

"Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source - see "Flooding."

"Floodplain Administrator" is the community official designated by title to administer and enforce the floodplain management regulations.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain management regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."

"Floodway fringe" is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

"Fraud and victimization" as related to Section 14.72.060 of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship

building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

"Governing body" is the local governing unit that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry. In the City of Morro Bay, this governing unit is the City Council.

"Hardship" as related to Section 14.72.060, of this title means the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states with approved programs.

"Levee" means a constructed facility, usually an earthen embankment, designed and installed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

"Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement (see "Basement" definition).

1. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation

design requirements, including, but not limited to:

- a. The flood openings standard in Section 14.72.050(A)(3)(C);
- b. The anchoring standards in Section 14.72.050(A)(1);
- c. The construction materials and methods standards in Section 14.72.050(A)(2);
- d. The standards for utilities in Section 14.72.050 B.

2. For residential structures in special flood hazard areas, all subgrade enclosed areas are prohibited as they are considered to be basements (see "basement" definition). This prohibition includes below-grade garages and storage areas.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Market value" is defined in the City of Morro Bay substantial damage/improvement procedures. See Chapter 14.72.040 (C.2.a).

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"New construction," for floodplain management purposes, means structures for which the "start of construction" commenced on or after November 13, 1979, and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after November 13, 1979.

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-Hundred-Year Flood or 100-Year Flood. See "Base flood."

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach

and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively mild slope.

“Program deficiency” means a defect in a community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

"Public safety and nuisance" as related to Section 14.72.060 of this chapter means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance codified in this chapter or otherwise deterring future similar violations, or reducing State or federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Sheet flow area" - see "Area of shallow flooding."

"Special flood hazard area (SFHA)" means an area the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one

hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations or State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

V Zone. See "Coastal high hazard area."

"Variance" means a grant of relief from the requirements of this title which permits construction in a manner that would otherwise be prohibited by this chapter.

"Violation" means the failure of a structure or other development to be fully compliant with this title. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

#### **14.72.030 - General provisions.**

A. Lands to Which this Chapter Applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Morro Bay.

B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for San Luis Obispo County, California, and Incorporated Areas dated August 28, 2008, and accompanying Flood Insurance Rate Map (FIRM), dated August 28, 2008, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping is the minimum area of applicability of this title and may be supplemented by studies for other areas which allow implementation of this title and which are recommended to the City Council by the floodplain administrator. The study and FIRM are on file at the department of Public Services, 955 Shasta Avenue, Morro Bay.

C. Compliance. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this title and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

D. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Interpretation. In the interpretation and application of this title, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

F. Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This title shall not create liability on the part of City Council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this title or any administrative decision lawfully made hereunder.

G. Severability. This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

H. Standards of Construction. Structure freeboard requirements have increased from one to

two feet above the base flood elevation in the 2012 revision of this ordinance. New construction and substantial improvements to existing structures with start of construction after the adoption of this ordinance must comply with these new requirements.

#### **14.72.040 - Administration.**

A. Establishment of Development Permit. A development permit shall be obtained before any construction or other development begins within any area of special flood hazard established in Section 14.72.030(B). Application for a development permit shall be made on forms furnished by the floodplain administrator and shall include the following minimum information:

1. Plans in duplicate drawn to scale showing:
  - a. The nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing;
  - b. Proposed locations of water supply, sanitary sewer, and other utilities;
  - c. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
  - d. Location of the regulatory floodway when applicable;
  - e. Base flood elevation information as specified in Section 14.72.030(B) or Section 14.72.040(C.2);
  - f. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and
  - g. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 14.72.050(A.3.b) of this ordinance and detailed in FEMA Technical Bulletin TB 3-93.
2. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 14.72.050(A.3.b).
3. For a crawl-space foundation, location and total net area of foundation openings as required in Section 14.72.050(A.3.c) of this ordinance and detailed in FEMA Technical Bulletins 1-93 and 7-93.
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
5. All appropriate certifications listed in Section 14.72.040(C.4) of this ordinance.

B. Designation of the Floodplain Administrator. The City Engineer is hereby appointed to administer, implement, and enforce this title by granting or denying development permits in accord with its provisions.

C. Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the floodplain administrator shall include, but not be limited to the following:

1. Permit Review. Review all development permits to determine that:

- a. Permit requirements of this title have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
- b. All other required state and federal permits have been obtained;
- c. The site is reasonably safe from flooding, and
- d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this title, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point within the City of Morro Bay;
- e. All Letters of Map Revision (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition

2. Development of Substantial Improvement and Substantial Damage Procedures.

- a. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "Market Value."
- b. Assure procedures are coordinated with other departments/divisions and implemented by community staff.

3. Review, Use and Development of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 14.72.030(B), the floodplain administrator may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or State agency, or other source, in order to administer Section 14.72.050. Any such information shall be submitted to the City Council for adoption

NOTE: A base flood elevation shall be obtained using one of the simplified or detailed methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations" dated July 1995;

4. Notification of Other Agencies:

- a. In alteration or relocation of a watercourse
  - i. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation,
  - ii. Submit evidence of such notification to the Federal Emergency Management Agency, and

iii. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained;

b. Base Flood Elevation changes due to physical alterations:

i. Within 6 months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

ii. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

c. Changes in corporate boundaries:

Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

5. Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:

a. Certification required by Section 14.72.050(A)(3)(a) (lowest floor elevations),

b. Certification required by Section 14.72.050(A)(3)(b) (elevation or floodproofing of nonresidential structures),

c. Certification required by Sections 14.72.050(A)(3)(c) (wet floodproofing standard),

d. Certification of elevation required by Section 14.72.050(C)(2) (subdivision and other proposed development standards),

e. Certification required by Section 14.72.050(F)(1) (floodway encroachments),

f. Information required by Section 14.72.050(G)(6) (coastal construction standards);

g. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency

6. Map Determinations. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the

location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 14.72.060

7. Remedial Action. Take action to remedy violations of this title as specified in Section 14.72.030(C).

8. Biennial Report. Complete and submit Biennial Report to FEMA.

9. Planning. Assure community's General Plan is consistent with floodplain management objectives herein.

D. Appeals. The City Council of the City of Morro Bay shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.

#### **14.72.050 - Provisions for flood hazard reduction.**

A. Standards of Construction. In all areas of special flood hazards the following standards are required:

1. Anchoring.

a. All new construction and substantial improvements, including manufactured home, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

b. All manufactured homes shall meet the anchoring standards of Section 14.72.050(D).

2. Construction materials and methods. All new construction and substantial improvement shall be constructed.

a. With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;

b. Using methods and practices that minimize flood damage;

c. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

d. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

3. Elevation and Floodproofing. (See Section 14.72.020, definitions for "basement," "lowest floor," "new construction," "substantial damage" and "substantial improvement.")

a. Residential construction, new or substantial improvement, shall have the lowest floor, including basement,

i. In AE, AH, A1-30 Zones, elevated two feet above the base flood elevation.

- ii. In an AO zone, elevated above the highest adjacent grade to a height two feet above the depth number specified in feet on the FIRM, or elevated at least four feet above the highest adjacent grade if no depth number is specified.
  - iii. In an A zone, without BFE's specified on the FIRM [unnumbered A zone], elevated two feet above the base flood elevation; as determined under subsection 14.72.040 (C)(3) .Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor retained by the applicant, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.
- b. Nonresidential construction, new or substantial improvement, shall either be elevated to conform with Section 14.72.050(A)(3)(a) or together with attendant utility and sanitary facilities.
  - i. Be floodproofed below the elevation recommended under Section 14.72.050(A)(3)(a) so that the structure is watertight with walls substantially impermeable to the passage of water;
  - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - iii. Be certified by a registered professional engineer or architect retained by the applicant that the standards of this Section 14.72.050(A)(3)(a) are satisfied. Such certification shall be provided to the floodplain administrator.
- c. Flood Openings. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must exceed the following minimum criteria:
  - i. Be certified by a registered professional engineer or architect, or
  - ii. Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter.
- d. Manufactured homes shall also meet the standards in Section 14.72.050(D).
- e. Attached Garages.
  - i. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of floodwaters. See Section 14.72.050(A.3.c). Areas of the garage below the BFE

must be constructed with flood resistant materials. See Section 14.72.050(A.2).

ii. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

f. Detached garages and low-cost accessory structures. “Accessory structures” used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 14.72.020, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:

- i. Use of the accessory structure must be limited to parking or limited storage;
- ii. The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
- iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;
- v. The accessory structure must comply with floodplain encroachment provisions in Section 14.72.050 (F); and
- vi. The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with Section 14.72.050(A.3.c).

Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 14.72.050(A).

#### B. Standards for Utilities.

1. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
  - a. Infiltration of floodwaters into the systems; and
  - b. Discharge from the systems into floodwaters.
2. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

#### C. Standards for Subdivisions and Other Proposed Development.

1. All preliminary subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, shall identify the special flood hazard area (SFHA) and the elevation of the base flood (BFE).
2. All subdivision plans will provide the elevation of proposed structure(s) and pad(s). If

the site is filled above the base flood elevation, the lowest floor, pad and lowest adjacent grade elevations shall be certified by a registered civil engineer or licensed land surveyor retained by the applicant and provided to the floodplain administrator as part of an application for a Letter of Map Revision based on Fill (LOMR-F).

3. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

4. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

5. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

D. Standards for Manufactured Homes.

1. All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:

a. Within Zones A1 30, AH, and AE on the community's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least two feet above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b. Within Zones V1 30, V, and VE on the community's Flood Insurance Rate Map, meet the requirements of Section 14.72.050(D)(1) and Section 14.72.050(G).

2. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1 30, AH, AE, V1 30, V, and VE on the community's Flood Insurance Rate Map that are not subject to the provisions of Section 14.72.050(D)(1) will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

a. Lowest floor of the manufactured home is at least two feet above the base flood elevation;

b. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade.

E. Standards for Recreational Vehicles.

1. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:

a. Be on the site for fewer than 180 consecutive days; or

b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by

quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 14.72.040 of this chapter and the elevation and anchoring requirements for manufactured homes in Section 14.72.050(D)(1).

2. Recreation vehicles placed on sites within zones V1-30, V, and VE on the flood insurance rate map will meet the requirements of Section 14.72.050(E)(1) and Section 14.72.050(G).

F. Floodways. Since floodways are an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the City of Morro Bay..

2. Within an adopted regulatory floodway, the City of Morro Bay shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge

3. If Section 14.72.050(F)(1) is satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Section 14.72.050

G. Coastal High Hazard Areas. Within coastal high hazard areas as established under Section 14.72.030(B), the following standards shall apply:

1. All new construction and substantial improvement shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

2. All new construction and other development shall be located on the landward side of the reach of mean high tide.

3. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Section 14.72.020. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.

4. Fill shall not be used for structural support of buildings.
5. Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
6. The floodplain administrator shall obtain and maintain the following records:
  - a. Certification by a registered engineer or architect that a proposed structure complies with Section 14.72.050(G)(1).
  - b. The elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement.

#### **14.72.060 - Variance procedure.**

A. Nature of Variances. The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of the chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this title would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

B. Appeal Board.

1. In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:
  - a. Danger that materials may be swept onto other lands to the injury of others;
  - b. Danger of life and property due to flooding or erosion damage;
  - c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
  - d. Importance of the services provided by the proposed facility to the community;

- e. Necessity to the facility of a waterfront location, where applicable;
- f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. Compatibility of the proposed use with existing and anticipated development;
- h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. Safety of access to the property in time of flood for ordinary and emergency vehicles;
- j. Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and
- k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.

2. Variances shall only be issued upon a:

- a. Showing of good and sufficient cause;
- b. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 14.72.020) to the applicant; and
- c. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 14.72.020, "Public safety and nuisance"), cause fraud or victimization (as defined in Section 14.72.020) of the public, or conflict with existing local laws or ordinances.

6. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections (C)(1) through (C)(5) of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

7. Upon consideration of the factors of Section 14.72.060(B)(1) and the purposes of this title, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

C. Conditions for Variances.

1. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 14.72.040 and 14.72.050 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 14.72.020) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this title. For example, in the case of variances to an elevation requirement, this means the City Council will not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.
5. Any applicant to whom a variance is granted shall be given written notice over the signature of the floodplain administrator that:
  - a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage; and
  - b. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the floodplain administrator in the office of the San Luis Obispo county recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
6. The floodplain administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Insurance Administration, Federal Emergency Management Agency.

This Ordinance shall take effect and be in full force and effect thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after its passage, shall be published once in a newspaper of general circulation printed and published in the City of Morro Bay, or in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance. Any publication of the Ordinance or summary or posting of the Ordinance shall include the names of the members of the City Council voting for and against the same.

**INTRODUCED** at a regular meeting the of the City Council of Morro Bay, held on the 10<sup>th</sup> of July, 2012 by motion of Councilmember Borchard, seconded by Councilmember Smukler.

**PASSED AND ADOPTED** on the \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
WILLIAM YATES, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE BOUCHER, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT SCHULTZ, City Attorney

**AGENDA NO: A-6**

**MEETING DATE: 8/14/12**

**RESOLUTION NO. 45-12**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE  
FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL**

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

**WHEREAS**, the City Council on an annual basis funds a variety of large and small capital projects; and

**WHEREAS**, the desire of the City Council is to see City projects move forward in a timely manner; and

**WHEREAS**, the community expects the City to move swiftly in implementing capital projects; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that an estimated date for project commencement will be included on the Schedule for Capital Projects page in the Annual Budget document indicating when the City will begin work on the capital project; and

**BE IT FURTHER RESOLVED** that included in the staff report with the award of bid for each capital project, staff will include a timeline for project completion.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> of August 2012, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
WILLIAM YATES, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE BOUCHER, City Clerk



**AGENDA NO.: A-7**  
**Meeting Date: 8/14/12**

**THIS ITEM HAS**

**BEEN PULLED FROM**

**THE AGENDA**

**(RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MORRO BAY, CALIFORNIA, DECLARING HOW  
MEASURE Q FUNDS ARE ALLOCATED AND SPENT)**



AGENDA NO: B-1

MEETING DATE: August 14, 2012

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** August 7, 2012

**FROM:** Rob Livick, PE/PLS – Public Services Director/City Engineer

**SUBJECT:** Appeal of Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the Conversion of 820 Square Feet of Commercial Space to a Residential Unit and a Parking Exception to Waive the Requirement of Two Covered and Enclosed Parking Spaces and Providing Two Open and Uncovered Parking Spaces

## RECOMMENDATION

Staff recommends that the City Council overturn the Planning Commission's denial and approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered spaces; subject to the Findings included as Attachment "1" and the Conditions of Approval as included as Attachment "2" and the site development plans dated May 3, 2012.

## FISCAL IMPACT

The appeal was filed on a Coastal Development Permit outside the appeals jurisdiction and as such there is a \$250.00 fee associated with this appeal. Should the appellant/applicant prevail the appeal fee will be refunded, therefore fees associated with the appeal will be absorbed by the City. The costs associated with processing this appeal are the noticing fees and staff's time writing the report, preparing notices, and attending the City Council meeting.

## SUMMARY

At their June 6, 2012 meeting the Planning Commission denied a Minor Use Permit and Coastal Development Permit for the conversion of an existing commercial space into a residential unit in an existing building consisting of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

An appeal was filed on June 14, 2012 by Pina Naran. Ms. Naran's appeal requests that the City Council overturn the Planning Commission denial and approve the project per staff's recommendations.

Prepared by: RL Dept. Review: RL

City Manager Review: \_\_\_\_\_

City Attorney's Review: \_\_\_\_\_

## **BACKGROUND**

The applicant has requested that an existing commercial space be converted into a residential unit. The existing building consists of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

The applicant has also requested a parking exception to waive the requirement for two covered parking spaces. The existing property has 3 covered and enclosed parking spaces for the existing residential uses and 4 open and uncovered parking spaces. The parking for the proposed unit will be accommodated by the existing open and uncovered parking spaces.

## **DISCUSSION**

The following section states each of the appellant's grounds for the appeal. The appellants comments are in plain text and staff responses are italicized.

### **Appellant Pina Naran bases an appeal of the project on the following grounds:**

The applicant and agent did not receive notice of the hearing and did not have an opportunity to represent the project at the hearing.

*Notifications were sent to the applicant's address as listed on the application but was returned to the City, No Such Number – Unable to Forward. The application contained the wrong street address and has been corrected.*

Staff has prepared the necessary findings for approval including that the project is consistent with the City's General Plan, Local Coastal Plan and the Municipal Code.

## **CONCLUSION:**

The project as proposed is consistent with the General Plan, Local Coastal Plan, and Municipal Code for development standards. Pursuant to the regulations in Mixed Use Area "F" - the mixture of all uses shall be evaluated on a parcel-by-parcel basis for an appropriate mix of uses in the zone district. The Planning Commission shall make the determination if the proposed use is an appropriate mix of uses to maintain the mixed commercial residential zone district.

Staff recommends that the City Council overturn the Planning Commission's denial and approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered.

## **ATTACHMENTS**

Attachment 1: Findings for approval

Attachment 2: Conditions of approval for Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043.

Attachment 3: Appeal

Attachment 4: Planning Commission staff report, findings and conditions of approval

Attachment 5: Planning Commission minutes from June 6, 2012.

## FINDINGS

### SITE: 2176 MAIN STREET

**PROJECT DESCRIPTION:** Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

- A. Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15301, Class 1 for existing facilities. The exemption provided for interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.

### COASTAL DEVELOPMENT PERMIT FINDINGS

- A. The project as proposed is consistent with the applicable provisions of the certified Local Coastal Plan. The Local Coastal Plan is consistent with the General Plan and the project meets minimum density requirements and therefore meets the LCP.
- B. For every development between the nearest public road and the sea or the shoreline of any body of water, the Planning Commission shall make a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. *The property is not located between the nearest public road and the sea, therefore the property does not need to provide access pursuant to Chapter 3 of the California Coastal Act.*

### CONDITIONAL USE PERMIT FINDINGS

- A. The establishment, maintenance, or operation of the use applied for will, under the circumstances of the particular case, will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use. *The proposed project is a residential use in an existing mixed use building therefore the use will not be detrimental to the surrounding uses.*
- B. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. *The proposed use will not be injurious or detrimental to the property and improvements in the neighborhood or general welfare, as the project meets the General Plan and Municipal Code.*

## **PARKING EXCEPTION FINDINGS**

- A. Special Circumstances. The exception will not constitute a grant of a special privilege inconsistent with the driveway or parking limitations upon other properties in the vicinity and the reduced parking or alternative to the parking design standards of this chapter will be adequate to accommodate on the site all parking needs generated by the use. *The existing parking accommodated on the site is three covered and enclosed parking spaces for the existing residential uses and 4 uncovered parking spaces for the fabrication and retail uses. The existing parking configuration accommodates a greater number of parking spaces for the uses on site than a configuration with 5 covered and enclosed parking spaces. The existing configuration provides the required number of parking spaces and accessible parking spaces; therefore it is not a grant privilege.*
- B. Health, Safety or General Welfare. The exception will not adversely affect the health, safety or general welfare of persons working or residing in the vicinity and that no traffic safety problems will result from the proposed modification or parking standards. *The project site will provide the required number of parking spaces to service all uses on site therefore the parking will not adversely affect the surround uses.*
- C. Applicant's Full Enjoyment. The exception is reasonably necessary for the applicant's full enjoyment of uses similar to those upon the adjoining real property. *The parking exception would allow for the conversion of the retail space to a residential unit. The applicant has been unable to utilize or rent the fabrication area and the conversion would create an economically viable use.*

**CONDITIONS OF APPROVAL**

**SITE: 2176 MAIN STREET**

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**STANDARD CONDITIONS**

1. This permit is granted for the land described in the staff report dated June 6, 2012, for the project depicted on plans dated May 3, 2012 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:  
  
Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. Applicant understands and acknowledges that City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
7. Compliance with Morro Bay Standards: This projects shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.
8. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

### **PLANNING CONDITIONS**

1. Deed Restriction: The areas proposed to remain office space and fabrication shall be deed restricted to remain as such uses until such time the required residential parking is provided onsite.

### **BUILDING CONDITIONS**

1. One Hour Construction: Walls and ceiling between the new residential unit and the commercial areas and residential units above need to be one hour construction with sound transmission control rating of 50.
2. Smoke detectors, GFI and AFCI: Smoke detectors, GFI and AFCI will have to be installed where required by code.

3. Fire Sprinklers: The fire sprinklers will have to altered to comply with the requirements of the Fire Code.
4. Laundry Facilities: Laundry facilities will be required for the new residence.

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1. Emergency Access: Project shall provide a Knox Box at the main entrance, wall mounted no higher than 7 feet, and appropriate keys for emergency Fire Department access.
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3. Occupancy Separations: Project shall provide the required occupancy separations (F-2 to R-3)
4. Fire Department Access to Equipment: Fire equipment shall be identified in approved manner. Rooms containing controls for fire detection, Alarm Panel (FACP), electrical equipment shall be indentified for fire department use. Provide approved signage for all control equipment (CFC Section 510).

### **PUBLIC WORKS CONDITIONS**

1. Video Inspection: Conduct a video inspection of the conditions of existing sewer lateral. Submit a DVD to City Public Services Department. DVD shall be submitted prior to building permit issuance. Repair or replace as required to prohibit inflow/infiltration.
2. Driveway: The driveway approach on Main Street shall be upgraded to meet ADA requirements; a four foot path of travel with 2% max cross slope is required behind the driveway approach.



CITY OF MORRO BAY  
 PUBLIC SERVICES DEPARTMENT  
 APPEAL FORM

RECEIVED  
 ATTACHMENT 3  
 JUN 14 2012

City of Morro Bay

Public Services Department

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

Planning Commission

APPEAL OF SPECIFIC DECISION OR ACTION:

Denied request for existing

commercial unit to residential

PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):

DATE DECISION OR ACTION RENDERED:

June 6, 2012

APPELLANT (PLEASE PRINT):

Pina Naran

SIGNATURE:

Pina Naran

ADDRESS:

670 Main St MB.

TELEPHONE NUMBER:

805 550 6960

GROUND FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):

Applicant : agent did not receive notice of hearing and did not have opportunity to represent project at hearing

REQUESTED RELIEF OR ACTION:

overturn Planning Commission denial : approve project per staff recommendation

FOR OFFICE USE ONLY

DATE APPEAL FILED:

June 14, 2012

ACCEPTED BY:

Staff

APPEAL BODY:

CC

DATE OF APPEAL HEARING:

August 14, 2012



AGENDA NO: B-1

MEETING DATE: June 6, 2012

## Staff Report

TO: Planning Commissioners

DATE: May 30, 2012

FROM: Sierra Davis, Assistant Planner

**SUBJECT: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the Conversion of 820 Square Feet of Commercial Space to a Residential Unit and a Parking Exception to Waive the Requirement of Two Covered and Enclosed Parking Spaces and Providing Two Open and Uncovered Parking Spaces.**

**RECOMMENDATION:**

*CONDITIONALLY APPROVE THE PROJECT* by adopting a motion including the following action(s):

- A. Adopt the Findings included as Exhibit "A";
- B. Approve the Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Conditions included as Exhibit "B" and the site development plans dated May 3, 2012.

**APPLICANT/AGENT:** Pina Naran / John MacDonald, Architect

**LEGAL DESCRIPTION/APN:** 068-281-003

**PROJECT DESCRIPTION:** The applicant has requested that an existing commercial space be converted into a residential unit. The existing building consists of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

The applicant has also requested a parking exception to waive the requirement for two covered parking spaces. The existing property has 3 covered and enclosed parking spaces for the existing residential uses and 4 open and uncovered parking spaces. The parking for the proposed unit will

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

be accommodated by the existing open and uncovered parking spaces.

**PROJECT SETTING:**

<b><u>Adjacent Zoning/Land Use</u></b>			
North:	Mixed Commercial Residential/High Density Residential/North Main Street Specific Plan (MCR/R-4/SP) Commercial Service Use	South:	Mixed Commercial Residential/High Density Residential/North Main Street Specific Plan (MCR/R-4/SP) Commercial Service Use
East:	Duplex Residential (R-2) Residential Use	West:	Highway 1

<b><u>Site Characteristics</u></b>	
Site Area	6,000 square feet
Existing Use	Commercial and Residential
Terrain	Flat/Graded
Vegetation/Wildlife	Landscaping
Archaeological Resources	Property not within 300 feet of archeological resource.
Access	Main Street

<b><u>General Plan, Zoning Ordinance &amp; Local Coastal Plan Designations</u></b>	
General Plan/Coastal Plan Land Use Designation	Mixed Area Use 'F'
Base Zone District	Mixed Commercial Residential
Zoning Overlay District	High Density Residential
Special Treatment Area	N/A
Combining District	N/A
Specific Plan Area	North Main Street Specific Plan
Coastal Zone	Located in Coastal Zone, but in the original or appeals jurisdiction.

**PROJECT ANALYSIS:**

*Background*

The existing building received entitlements from Planning Commission on July 17, 2000 for a Coastal Development Permit, Conditional Use Permit and Variance. The existing building is approximately 4,795 square feet with 1,645 square feet for retail, office and fabrication uses, 742 square feet for covered and enclosed parking for the residential uses and 2,484 square feet for two residential units on the second floor.

The original project also included an application for variance for the reduction in the southern side yard setback from 10 feet to 3 feet. The variance was granted and the existing building

was constructed 3 feet from the southern property line.

*Environmental Determination*

Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15301, Class 1 for existing facilities. The exemption provided for interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.

*Project Specifics*

The existing building was developed as a mixed use building of commercial space and residential uses. The first floor was developed with retail and office space, and two fabrication rooms. The first floor was also developed with a two car garage and a one car garage for the two residential units on the second floor.

The existing fabrication use on the first floor is divided into two rooms. The first room is 448 square feet (20'10"x21'6") and the second rooms is 754 square feet (15'6"X48'8") for 1202 square feet of fabrication use. The existing first floor also has 285 square feet (19'x15') for retail and office space. The fabrication uses are parked at a 1 parking space to 500 square feet of floor area and requires 2 (2.4) parking spaces for this use. The retail and office space is parked at a ratio of 1 parking space to 300 square feet of floor area and the use would require 1 (0.95) parking space.

The second floor consists of a two bedroom residential unit and a one bedroom residential unit. The original project provided three covered and enclosed parking spaces for the residential units

The total parking required for the existing uses on site is 3 covered and enclosed parking spaces of the residential uses and 3 parking spaces for the fabrication and office/retail uses. The site can accommodate the parking required for all existing uses. The existing parking lot also has one accessible parking space.

The larger 754 square foot fabrication room is proposed for conversion to a two bedroom residential unit. The smaller 448 square foot fabrication room and office/retail rooms will remain the same. The proposed residential unit approximately 802 square foot conversion and is larger than the existing 754 square foot room as a new exterior entrance and entrance area will be constructed.

The parking required for the uses on site will remain the same for the retail/ office space, fabrication room, and second floor residential uses as they are not proposed for conversion or alteration. The proposed two bedroom residential unit on the first floor requires two covered parking spaces, however the applicant has applied for a parking exception to waive the requirement. The parking would be accommodated as two open and uncovered parking spaces on site.

### *General Plan*

The General Plan has designated this area of the city as Mixed Use Area F. Mixed Use Area F states: “A mixture of all uses as appropriate shall be encouraged. An evaluation of appropriate uses on a parcel-by-parcel basis will be conducted during the implementation phase.”

The existing property has a mixture of uses that include the first floor uses for commercial and fabrication uses with residential uses on the second story. The mixture of uses will be predominately residential with ancillary retail and fabrication uses. Pursuant to the General Plan Mixed Use Area F, the evaluation of the appropriate mixture of residential and commercial uses shall be made on a case by case basis. The floor area for the retail and fabrication uses currently are less than the residential and residential parking uses. In this case the residential uses will become the predominate use of the site.

### *Zoning Ordinance*

The zoning on the property is Mixed Commercial Residential and Multiple-Residential (R-4) which is a district where a combination of commercial uses is mixed with high density residential. The existing property meets lot coverage, height, parking and setbacks pursuant to a variance for a reduced interior side yard setback from the southern property line.

The proposed project does not propose any changes to the exterior of the building; therefore it meets all titles of the Zoning Ordinance. However the parking will be affected because the proposed conversion of the commercial space to residential required two covered parking spaces. The applicant has applied for a parking exception for open and uncovered parking spaces to meet the parking requirements.

### *North Main Street Specific Plan Overlay*

The North Main Street Specific Plan overlay requires that development meet the zoning regulations and standards for the zoning district and also adhere to the special requirements of the specific plan.

The specific plan has development standards that the Planning Commission must find that the project has met before approving a use permit for any use in the North Main Street Specific plan. The project must adhere to the following:

1. Mature trees preservation. *The project is not requesting to remove or disturb any mature trees on site.*
2. Roofline Variation, maximum height is generally two stories and gives the guidelines for 1/3 of west facing elevation shall not exceed 25 feet however it is intended as a guideline and Planning Commission may vary from this guideline. *The proposed project is requested for interior alteration that will not affect the exterior of the building.*

Off-Site Improvements: In approving any conditional use permit the following will be required as conditions or approval.

1. Curb, Gutter, Sidewalk and Street Trees

2. Intersection Improvement Fees
3. Landscaping Improvement Fees
4. Other Improvements
5. Deferments

*The proposed project is on an existing developed property and all off-site improvements were addressed with the Conditional Use Permit in 2000 for the development of the vacant site with the development existing on the site today.*

**PUBLIC NOTICE:** Notice of this item was published in the San Luis Obispo Tribune newspaper on May 25, 2012 and all property owners of record within 300 feet and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

The public notice specified that the parking exception was for one covered and enclosed parking space and one open and uncovered parking space. The requested parking exception is to waive the requirement for two covered and enclosed parking. The proposed project required two covered and enclosed parking spaces because the unit has two bedrooms.

**CONCLUSION:** The project as proposed is consistent with the General Plan, Local Coastal Plan, and Municipal Code for development standards. Pursuant to the regulations in Mixed use Area F the mixture of all uses shall be evaluated on a parcel-by-parcel basis for an appropriate mix of uses in the zone district. The Planning Commission shall make the determination if the proposed use is an appropriate mix of uses to maintain the mixed commercial residential zone district.

The Staff recommends that the Planning Commission approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered.

**Exhibits:**

Exhibit A – Findings

Exhibit B – Conditions of Approval

Exhibit C – Graphics/Plan Reductions

**EXHIBIT A****FINDINGS****SITE: 2176 MAIN STREET**

**PROJECT DESCRIPTION:** Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

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**EXHIBIT B****CONDITIONS OF APPROVAL****SITE: 2176 MAIN STREET**

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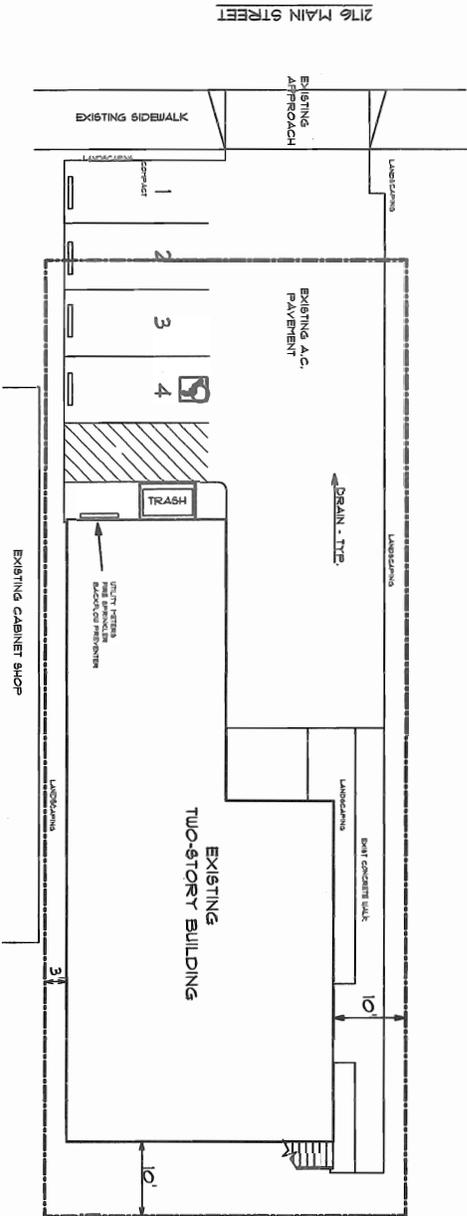
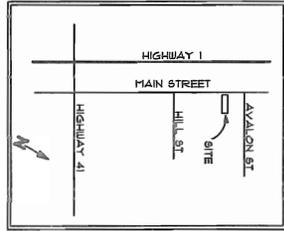
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**PROJECT SUMMARY:**  
 CONVERT APPROXIMATELY 800 S.F. OF COMMERCIAL SPACE INTO A TWO BEDROOM RESIDENTIAL SPACE OF 800 S.F.

**OWNER:**  
 PINA NARANJO  
 160 MAIN STREET  
 MORRO BAY, CA 93442  
 805.772.7140

**PROJECT ADDRESS:**  
 2176 N. MAIN STREET  
 MORRO BAY, CA 93442

**LEGAL DESCRIPTION:**  
 LOT - 3 066-981-0003  
 CITY OF MORRO BAY

**PARKING:**  
 4 - UNCOVERED SPACES  
 3 - COVERED SPACES

**SHEET INDEX**

A-1	SITE PLAN
A-2	EXISTING LOWER FLOOR PLAN
A-3	EXISTING UPPER FLOOR PLAN
A-4	RETIRED LOWER FLOOR PLAN

RECEIVED

MAY 03 2012

1/8" = 1'-0"

City of Morro Bay  
 Public Services Department

John MacDonald, Architect  
 2813 Santa Barbara Avenue  
 Carpinteria, CA 93430  
 Office 805.959.1399  
 FAX 805.959.1544

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 2813 Santa Barbara Avenue  
 Carpinteria, CA 93430  
 Office 805.959.1399  
 FAX 805.959.1544

STRUCTURAL ENGINEER:

ENERGY ANALYSIS:

SOILS ENGINEER:

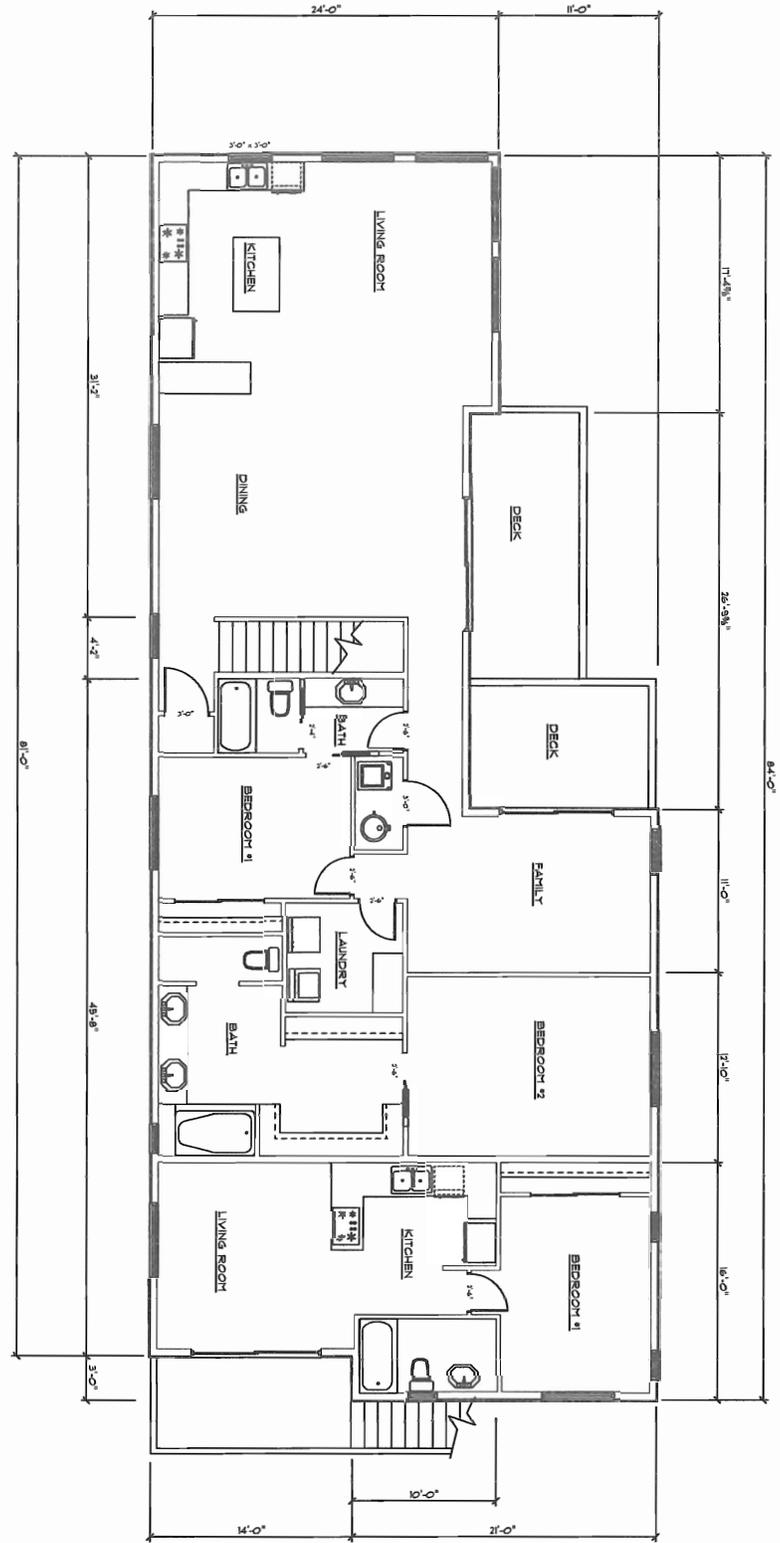
RESIDENTIAL CONVERSION  
 2176 MAIN STREET  
 MORRO BAY, CA

SITE PLAN

SHEET  
**A-1**  
 OF 4 SHEETS



EXISTING UPPER FLOOR PLAN



1/8" = 1'-0"

John MacDonald, Architect  
 2815 Santa Barbara Avenue  
 CAgueno, CA 92430  
 Office 805.995.1998  
 FAX 805.995.1544

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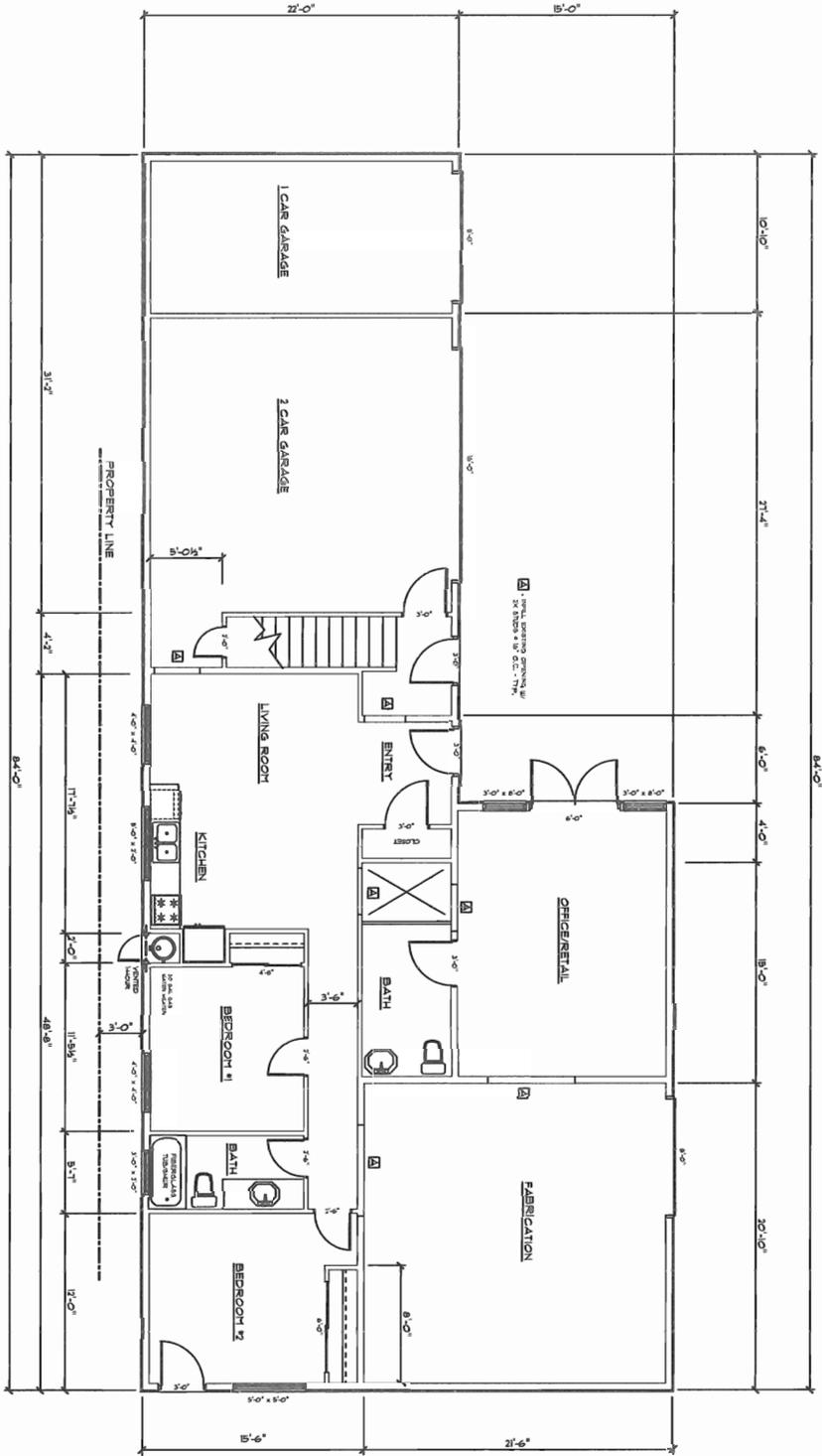
STRUCTURAL ENGINEER:  
 ENERGY ANALYSIS:

SOILS ENGINEER:

RESIDENTIAL CONVERSION  
 2176 MAIN STREET  
 TORO BAY, CA

EXISTING UPPER  
 FLOOR PLAN

DATE	BY
JAN 2004	ESZ
REVISIONS	DATE



REVISED LOWER FLOOR PLAN

1/8" = 1'-0"

John MacDonald, Architect  
 2815 Santa Barbara Avenue  
 Cajon, CA 92430  
 Office 805.995.1398  
 FAX 805.995.1544

ALL DIMENSIONS SHOWN ARE TO FACE UNLESS NOTED OTHERWISE.  
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 ALL DIMENSIONS SHOWN ARE TO FACE UNLESS NOTED OTHERWISE.

Method of construction, materials, and finishes shall be as shown on the drawings and shall conform to the applicable building codes and standards.  
 The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the project.

STRUCTURAL ENGINEER

ENERGY ANALYSIS

SOILS ENGINEER

RESIDENTIAL CONVERSION  
 216 MAIN STREET  
 MORRO BAY, CA

REVISED LOWER FLOOR PLAN

NO.	DATE	BY	DATE
1			
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AGENDA ITEM: A- 1DATE: June 20, 2012ACTION: APPROVED

SYNOPSIS MINUTES - MORRO BAY PLANNING COMMISSION  
 REGULAR MEETING – JUNE 6, 2012  
 VETERANS MEMORIAL HALL – 6:00 P.M.

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

PRESENT:	Rick Grantham	Chairperson
	Paul Nagy	Commissioner
	Jessica Napier	Commissioner
	John Fennacy	Commissioner

ABSENT:	John Solu	Vice-Chairperson
---------	-----------	------------------

STAFF:	Kathleen Wold	Planning and Building Manager
	Sierra Davis	Assistant Planner

ESTABLISH QUORUM AND CALL TO ORDER  
 MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE  
 PLANNING COMMISSIONER ANNOUNCEMENTS

Commissioner Napier announced the findings from the Subdivision Ordinance Subcommittee which was formed to find ways to streamline the permit process. The subcommittee worked with staff to find inconsistencies in the ordinance. She noted in their findings, they discovered there is a disconnect between staff and applicants and stated that streamlining the process will most likely come from staff and applicants understanding each other better. Their recommendation is that 1 Commissioner and 1 Councilmember from the Subcommittee should walk through the planning process on a non-Commission permit application and then identify and record reasons for delays. Secondly, materials should be given to applicants to more fully explain permit requirements and process.

Chairperson Grantham announced he attended the grand opening of Albertsons today and second, congratulated the persons who prevailed in the election. Third, the second annual K9 Walk-a-Thon is this Saturday, June 9, 2012 from 10am to 2pm which is a fundraiser to help with the on-going costs of having a police dog.

PUBLIC COMMENT

Chairperson Grantham opened Public Comment period.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING – JUNE 6, 2012

Nicole Foster, booth renter at Catch a Wave salon addressed the issue of signs and her business' struggle to attract customers and spoke in favor of sandwich board signs. She stated when she was required to remove her sandwich board sign, her business and other booth renters' business dropped dramatically. She stated she has plenty of space in front of her business to place this type of sign that would not block or clutter the sidewalk.

Joe Yukich, business owner in Morro Bay, addressed the elections results and stated the incumbents lost because they alienated the business community over the sign ordinance. He stated he hopes the new Council will be more understanding and supportive of local businesses.

Amber Badertscher, owner of Nibble Nook, addressed the issue of signage and stated her business has low visibility in its location and therefore she needs to be able to have better signage. Her location has space that could be used for signs that would not be in the public right of way. She referenced receiving a threatening letter from the City to take her signs down before the Memorial Day weekend. She stated she feels targeted as a small business owner because the big businesses such as McDonalds and Taco Bell were not sent a sign letter.

Joanna and Ricky, owners of Metro PCS and new residents of Morro Bay, addressed the issue of signage. When they first moved into town, they had signage which resulted in great walk-in traffic. Once they were forced to take down their teardrop signs, they had a dramatic reduction in customers. Their location on Quintana due to being up on a hill is very hard to see without the right signage. Where they had placed their teardrop sign did not block the right of way nor block pedestrians and they hope they can put the sign back up to attract customers. Ricky stated they have 30-50 signatures from small business owners in support of their position. They know the signs work and questioned what the point of having a business in Morro Bay is without signs.

Chairperson Grantham closed Public Comment period.

PRESENTATIONS – None.

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

A. CONSENT CALENDAR

- A-1 Approval of minutes from Planning Commission meeting of May 16, 2012  
**Staff Recommendation:** Approve minutes as submitted.

MOTION: Chairperson Grantham moved to approve A-1 from the Consent Calendar. Commissioner Nagy seconded and the motion passed unanimously. (4-0).

B. PUBLIC HEARINGS

- B-1 **Case No.:** Conditional Use Permit #UP0-240, Parking Exception #AD0-043 and Coastal Development Permit #CP0-294.  
**Site Location:** 2176 Main Street

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING – JUNE 6, 2012

**Proposal:** The applicant is seeking to convert 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered and enclosed parking spaces allowing one covered and one open space.

**CEQA Determination:** Categorically Exempt 15301, Class 1

**Staff Recommendation:** Conditionally approve with conditions.

**Staff Contact:** Sierra Davis, Assistant Planner, (805) 772-6270

Davis presented the staff report.

Chairperson Grantham opened Public Comment period and hearing none closed Public Comment period.

Commissioner Napier stated changing one of the commercial spaces into a residential space does not change this from a mixed use to residential, since one unit will still be commercial.

Commissioner Nagy referenced Chapter 17.4 of the City's Zoning Ordinance which states that in combining a mixed use overlay zone, the commercial use should be the primary use and that it states that 50% of the gross floor area shall be devoted to office or commercial uses. Nagy stated from his viewpoint this project exceeds the 50% requirement.

Wold clarified that past Council direction has been to take it on a case by case basis, therefore applicants have not been held to the strict interpretation of 50% as referenced by Commissioner Nagy.

Commissioner Fennacy stated support for the project and said parking may be an issue but he thinks it is sufficient.

Grantham stated he talked to neighboring business owners who expressed support to him and he also stated support for the project.

**MOTION:** Commissioner Fennacy moved to adopt the findings included in Exhibit "A" and approve the Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Conditions included as Exhibit "B" and the site development plans dated May 3, 2012.

The motion was seconded by Chairperson Grantham and failed 2-2 with Commissioners Nagy and Napier voting no.

Wold clarified that a 2-2 vote means a denial of the project.

#### UNFINISHED BUSINESS

C-1 Current and Advanced Planning Processing List

**Staff Recommendation:** Receive and file.

Wold reviewed the Work Program with Commissioners.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING – JUNE 6, 2012

NEW BUSINESS – None

DECLARATION OF FUTURE AGENDA ITEMS

ADJOURNMENT

The meeting adjourned at 6:40 pm to the next regularly scheduled Planning Commission meeting at the Veteran's Hall, 209 Surf Street, on Wednesday, June 20, 2012 at 6:00 pm.

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Rick Grantham, Chairperson

ATTEST:

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Rob Livick, Secretary



AGENDA NO: D-1

MEETING DATE: 8/14/12

## Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** August 7, 2012

**FROM:** Andrea K. Lueker, City Manager

**SUBJECT:** Request for a Plan Check and Affordable Housing In-Lieu Fee Reduction for 1885 Ironwood

### **RECOMMENDATION**

Staff recommends the City Council review the request for a fee reduction of plan check and affordable housing in-lieu fees for the project located at 1885 Ironwood and determine whether to grant the requested reduction.

### **BACKGROUND**

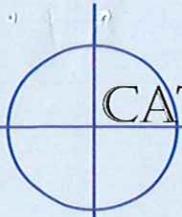
Consultant Cathy Novak has provided the Mayor and City Council with the attached written request for a fee reduction for plan check and affordable housing in-lieu fees for a project located at 1885 Ironwood. Attached to the request is staff's response to Ms. Novak as well as the memorandum from Ms. Novak that began this process.

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_



CATHY • NOVAK

consulting

July 30, 2012

Mayor Bill Yates  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

RE: 1885 Ironwood building permit fees

Dear Bill,

This letter is in regards to a plan check fee and affordable housing in lieu fee request submitted to Staff by Mr. Sturgill for his project at 1885 Ironwood. Staff has followed up with a letter denying his request therefore; he is without a remedy absent Council action.

Specifically I started working with City Staff in early April for an estimate of the building permit fees for the Ironwood project. The estimate included a line item for the building permit plan check that was based on the total valuation of the project. I recognize that the City fees are based on recovering the staff time necessary to review or "check" the plans for code consistency. However in this case since there are 7 identical units out of the 14 total, it seems excessive to charge each of the duplicate units the same fee for the plan review.

Typically in other cities and the County when a project has several homes that are identical, a standard model plan is submitted that is plan checked and approved. The base model is charged the standard plan check fee but when subsequent models are submitted, the plan check only requires a minor review for consistency. Therefore a reduced plan check fee is charged for those units.

I discussed with Staff the mechanism, if any, for a reduction of the plan check fees for the duplicate units. Staff requested that I submit a letter along with documentation from other local municipalities as to their fee schedules and any allowances for duplicative plan checks.

At the end of April I submitted a letter to Staff with the research that I had done. This showed that the Arroyo Grande, San Luis Obispo and the County have an approximate 50% to 58% duplicate plan check fee built into their Master Fee

GOVERNMENTAL & COMMUNITY RELATIONS • PLANNING

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POST OFFICE BOX 296 • MORRO BAY, CA 93443

NOVAKCONSULTING@CHARTER.NET

Schedules. Additionally, Pismo Beach offers a 50% reduction however it is not listed in the Master Fee Schedule.

On June 18 I received a reply from Rob Livick that the City is not able to grant the request for a plan check fee reduction for two reasons. First since the City does not have a line item in the Master Fee Schedule, Staff does not have the authority for any fee reductions. Second, the response stated that fee reductions for economies of scale with other Cities are applied to subdivisions with "production housing" (a large number of the same house(s) are placed on many lots).

While it is certainly feasible for San Luis and the County to have "production housing", I do not agree that this analogy would necessarily apply to Grover Beach and Arroyo Grande. Nonetheless the point is that other cities understand that there is an economy of scale with duplicate plan check and the staff time is reduced when reviewing identical units.

In conclusion to this item I am asking, on behalf of the applicant, that the Council review this request and determine that the base model unit pay the standard plan check fee and grant a reduction for the duplicate units. Additionally this would only apply to the plan check fee portion of the building permits.

My second item is in regards to the Affordable Housing In-lieu fee. As with the plan check fee request, I discussed with Staff what appears to be a double payment of this in-lieu fee.

By way of background information, Government Code requires that all new housing developments constructed shall, where feasible, provide affordable housing units. The City implements this by collecting a Housing In-lieu payment as part of the building permit fee (\$.31 per square foot) and also through the adopted Housing Element.

In the response letter, Staff indicates that Zoning Ordinance section 17.50.020 requires that a developer provide ten percent of the total number of units to affordable housing which is also consistent with the Housing Element. However, I must respectfully disagree that the affordable housing requirement in the City's Master Fee schedule is separate and distinct from either providing housing to meet the requirement of the Zoning Ordinance or payment of an in-lieu fee.

For example if a builder were to construct a single family home, the City would charge the per square foot in-lieu fee at the time of the building permits to satisfy the Government Code regulation for affordable housing since it is not feasible to construct such a unit.

Under another scenario if there was a project that had over eight lots side-by-side, a builder could construct these multiple units with individual permits and only be charged the standard in-lieu fee with a building permit as with the single family house.

In the case of the Ironwood project, there are 14 townhouses in one project which triggers a higher level of affordable housing requirements per the Housing Element Policy H-6. Under this policy, projects with eight or more units must either provide the affordable housing units or pay an in-lieu fee for mitigation of the Government Code. This policy additionally requires incremental increases of the in-lieu fee based upon the project size. For example an eight unit project is 10% while an 18 unit project would be 100%.

In the case where a project builds the affordable units, there would a standard payment to the affordable housing in-lieu assessed on each unit at the time of the building permit as if it were a single family house. The affordable units are exempt from paying the fee since they are affordable. However in this instance since there are no affordable housing units being constructed, the builder must pay into the in-lieu fund per the Housing Element Policy at the rate of 60%.

This affordable housing in-lieu payment should mitigate for the construction of each new home within the project as required by law however, Staff has determined that this payment is a different requirement than the fee assessed with a building permit.

Based upon the above information I find it difficult to see how one could come to the same conclusion as Staff. To put it simply, if you build a project with the affordable units then you only pay the minimum fee per the Master Fee Schedule however if you don't build the affordable units then you pay a higher percentage of the fee plus you pay once again when you get a building permit. I do not see a nexus for the City being able to collect a fee twice from the same project.

Another example and one that I believe is analogous to this issue is regarding the Park Development Impact fee and the Quimby Act fees. The City charges a Park Development Impact as a part of the building permit fees for new

construction. In the case of a subdivision project there is a requirement to either provide park land within the project or to pay a Park In-lieu fee. The City has determined that the development impact fee and the Quimby fees are one in the same so projects are required to pay either or however, not both.

The applicant feels that City Staff has unfairly denied the request regarding the affordable housing fees and is requesting that the Council make a determination whether the project has mitigated all the requirements under State law.

In conclusion, this project has been issued a grading and foundation only permit and will be ready soon for the building permit. A protest letter was submitted with the payment of the fees to date in order to provide time to try and work through these issues with Staff. We are now at a point whereby we have exhausted all of our avenues and would respectfully request that you place this on a City Council agenda for discussion. The applicant would also appreciate it if you can put this on the August 14 meeting.

Please let me know if you have any further questions. Thank you for your time and consideration in this matter.

Sincerely,



Cathy Novak  
Project representative

Cc: Mr. Bud Sturgill



# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

www.morro-bay.ca.us

June 18, 2012

Cathy Novak  
Cathy Novak Consulting  
PO Box 296  
Morro Bay, CA 93422

RE: 1885 Ironwood Building Permit and Affordable Housing Fees

Dear Ms. Novak:

I have reviewed your request for a reduction in your building permit fees that is based on the presumption that there will be an economy of scale in reviewing multiple structures of the same design. Chapter 14.02.010 of the Morro Bay Municipal Code (MBMC) modifies section 109.2 of the California Building Code by stating that permit fees shall be as presented in the Master Fee Schedule. The City's Master Fee Schedule does not contemplate a reduction in permit fees for economies of scale due to reviewing duplicate plans. City's that include in their fee schedules a reduction for reviewing duplicative plans are applied to subdivisions with "production housing", where a large number of the same house(s) are being placed on many lots. Even if the City of Morro Bay had provisions for a reduction in plancheck fees due to "economies of scale", staff does not see the applicability to the subject 15 lot, 14 unit, townhouse subdivision, with a multiple of product types.

In regards to your question regarding affordable housing and the in-lieu fee, staff is providing the following response. The project proposes to construct 14 townhouse units in a 15 lot subdivision with one common area lot. Chapter 17.50.020 MBMC and as the project was conditioned requires that the developer provide ten-percent of the total number of units as affordable units available to those with low and moderate income ranges. In lieu of providing the housing, if the City finds that it is not feasible or desirable to provide the units can require the developer to pay a fee instead of constructing the units. In addition to the affordable housing requirement, the City's fee schedule contains a building permit fee (per 14.02.010) of \$0.30 per square foot of construction that is charged on new construction that is not affordable housing. These are two

FINANCE  
595 Harbor Street  
  
HARBOR DEPT.  
1275 Embarcadero Road

ADMINISTRATION  
595 Harbor Street  
  
CITY ATTORNEY  
595 Harbor Street

FIRE DEPT.  
715 Harbor Street  
  
POLICE DEPT.  
870 Morro Bay Boulevard

PUBLIC SERVICES  
955 Shasta Avenue  
  
RECREATION & PARKS  
1001 Kennedy Way

June 19, 2012  
Page 2

distinct and different requirements; one being the requirement to provide affordable housing and the second is to pay the affordable housing building permit fee.

In conclusion I deny your request for a reduction in plancheck fees and affordable housing fees as since there are no provisions in the existing municipal code nor Council adopted fee schedule that allow said request.

Sincerely,

Rob

Livick

Rob Livick, PE/PLS

Public Services Director/City Engineer

cc: Andrea Lueker, Kathleen Wold, Rob Schultz

s:\planning\projects\ironwood\ironwood 1885\subdivision epo-349, upo-316 & s00-107\planning\affordable housing letter from applicant\ironwood 1885-response to request for fee reduction-rl.docx

# Cathy Novak Consulting

Governmental & Community Relations ♦ Planning

## Memorandum

To: Mr. Rob Livick

From: Cathy Novak

Date: April 27, 2012

Re: Duplicate plan check fees from other municipalities

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Hi Rob,

Hi have contact SLO County, SLO City, Arroyo Grande, Pismo Brach and Grover Beach to inquire whether they have a "duplicate" plan review fee for units that are the same base model.

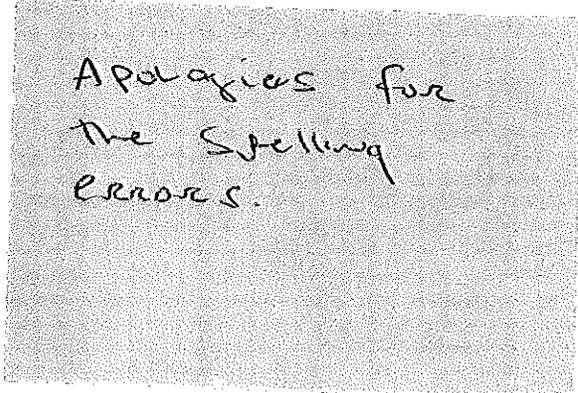
Each of these municipalities has this "duplicate" built into their fee schedules. I have attached copies of the fees schedules from all with the exception of Pismo Beach which told me via phone that their plan check reduction is 50%.

I believe that this all the information you requested that I research for determine of the Ironwood project. Please let me know if you have any questions.

Thanks,

*Cathy Novak*

Cathy Novak



Apologies for  
the Spelling  
Errors.

PO Box 296

Morro Bay, CA 93443

Phone/Fax: (805) 772-9499

Email: [NovakConsulting@charter.net](mailto:NovakConsulting@charter.net)

**City of Arroyo Grande  
 MASTER FEE SCHEDULE  
 Fiscal Year 2011-12  
 "BUILDING PLAN CHECK"  
 Recovery Rate 100% of Cost**

<b>PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION</b>						
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Base Fee FY 11-12	Base Cost FY 11-12	Each Additions 1SF
			500	\$ 760	\$ 760	\$ 0.158
			2,000	\$ 984	\$ 984	\$ 0.194
41	H	Hazardous H- Complete	5,000	\$ 1,588	\$ 1,587	\$ 0.212
			10,000	\$ 2,624	\$ 2,624	\$ 0.198
			25,000	\$ 4,684	\$ 4,684	\$ 0.187
			500	\$ 1,083	\$ 1,084	\$ 0.222
			2,000	\$ 1,398	\$ 1,398	\$ 0.276
42	H	Hazardous H- Shell	5,000	\$ 2,222	\$ 2,222	\$ 0.300
			10,000	\$ 3,722	\$ 3,722	\$ 0.195
			25,000	\$ 6,844	\$ 6,845	\$ 0.268
			100	\$ 648	\$ 648	\$ 0.675
			400	\$ 847	\$ 847	\$ 0.835
43	H	Hazardous H- T I	1,000	\$ 1,348	\$ 1,348	\$ 0.910
			2,000	\$ 2,258	\$ 2,258	\$ 0.691
			5,000	\$ 4,030	\$ 4,030	\$ 0.808
			200	\$ 368	\$ 368	\$ 0.180
			800	\$ 480	\$ 481	\$ 0.237
44	-	Commercial Building - Foundation	2,000	\$ 785	\$ 785	\$ 0.258
			4,000	\$ 1,281	\$ 1,281	\$ 0.188
			10,000	\$ 2,287	\$ 2,287	\$ 0.229
			200	\$ 401	\$ 401	\$ 0.209
			800	\$ 528	\$ 528	\$ 0.280
45	-	Commercial Building - Addition	2,000	\$ 838	\$ 838	\$ 0.283
			4,000	\$ 1,403	\$ 1,404	\$ 0.183
			10,000	\$ 2,505	\$ 2,505	\$ 0.251
			1,000	\$ 1,587	\$ 1,587	\$ 0.165
			4,000	\$ 2,082	\$ 2,083	\$ 0.205
46	R-2	Apartment Building	10,000	\$ 3,315	\$ 3,315	\$ 0.224
			20,000	\$ 5,553	\$ 5,554	\$ 0.146
			50,000	\$ 9,913	\$ 9,913	\$ 0.198
47	IRC SFD	Single-Family (custom or modal)	1,000	\$ 1,129	\$ 1,129	\$ 0.084
48	-	"	2,000	\$ 1,223	\$ 1,224	\$ 0.474
49	-	"	3,000	\$ 1,697	\$ 1,697	\$ 0.254
			5,000	\$ 2,204	\$ 2,204	\$ 0.354
			7,500	\$ 3,090	\$ 3,090	\$ 0.412
			667	\$ 412	\$ 412	\$ 0.052
			1,333	\$ 448	\$ 448	\$ 0.280
52	IRC SFD	Single-Family - Production / Repeat	2,000	\$ 819	\$ 818	\$ 0.139
			3,333	\$ 804	\$ 804	\$ 0.194
			5,000	\$ 1,127	\$ 1,127	\$ 0.228
			333	\$ 383	\$ 383	\$ 0.091
			667	\$ 394	\$ 394	\$ 0.468
53	-	Moved Building - Residential	1,000	\$ 548	\$ 548	\$ 0.245
			1,667	\$ 709	\$ 709	\$ 0.342
			2,500	\$ 885	\$ 885	\$ 0.398

CITY OF SAN LUIS OBISPO  
 BUILDING DIVISION USER & REGULATORY FEES  
 New Construction Fee Schedule - Plan Check Fees  
 Effective 3/19/12

Occupancy Type and Class	Fee Unit	Fire Rating Type I, II		Fire Rating Type III, IIII		Fire Rating Type V, VI, VII	
		Base Cost	Cost Per S.F. Between Thresholds	Base Cost	Cost Per S.F. Between Thresholds	Base Cost	Cost Per S.F. Between Thresholds
<b>Commercial Uses - Structural</b> (All newly constructed, added, or structurally remodeled space for non-residential occupancies classified as CBC Group A, B, E, F, H, I, M, or other commercial occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
500	per project	\$ 2,441	\$ 1.63	\$ 2,035	\$ 1.36	\$ 1,628	\$ 1.09
5,000	per project	\$ 9,766	\$ 0.49	\$ 8,136	\$ 0.41	\$ 6,510	\$ 0.33
10,000	per project	\$ 12,207	\$ 0.18	\$ 10,173	\$ 0.16	\$ 8,138	\$ 0.12
50,000	per project	\$ 19,531	\$ 0.10	\$ 16,276	\$ 0.08	\$ 13,021	\$ 0.07
100,000	per project	\$ 24,414	\$ 0.24	\$ 20,345	\$ 0.20	\$ 16,276	\$ 0.16
<b>Commercial Residential and Multifamily Residential Uses</b> - (All newly constructed, added, or structurally remodeled space for residential occupancies classified as CBC Group R (except R-3), or other residential occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
500	per project	\$ 2,686	\$ 1.79	\$ 2,238	\$ 1.49	\$ 1,790	\$ 1.19
5,000	per project	\$ 10,742	\$ 0.54	\$ 8,952	\$ 0.45	\$ 7,161	\$ 0.36
10,000	per project	\$ 13,426	\$ 0.20	\$ 11,180	\$ 0.17	\$ 8,952	\$ 0.13
50,000	per project	\$ 21,464	\$ 0.11	\$ 17,904	\$ 0.09	\$ 14,323	\$ 0.07
100,000	per project	\$ 26,856	\$ 0.27	\$ 22,380	\$ 0.22	\$ 17,904	\$ 0.18
<b>Duplicate Floor Plan Review - Commercial Residential and Multifamily Residential Uses</b>							
Square Footage:							
500	per project	\$ 1,772	\$ 0.59	\$ 1,477	\$ 0.33	\$ 1,162	\$ 0.26
5,000	per project	\$ 3,545	\$ 0.14	\$ 2,954	\$ 0.12	\$ 2,363	\$ 0.09
10,000	per project	\$ 4,254	\$ 0.03	\$ 3,545	\$ 0.02	\$ 2,836	\$ 0.02
50,000	per project	\$ 5,317	\$ 0.04	\$ 4,431	\$ 0.03	\$ 3,545	\$ 0.02
100,000	per project	\$ 7,090	\$ 0.07	\$ 5,906	\$ 0.06	\$ 4,727	\$ 0.05
<b>Low and Moderate Hazard Storage</b> - (All newly constructed, added, or structurally remodeled space for storage occupancies classified as CBC Group S, or other storage occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
500	per project	\$ 2,441	\$ 1.63	\$ 2,035	\$ 1.36	\$ 1,628	\$ 1.09
5,000	per project	\$ 9,766	\$ 0.49	\$ 8,136	\$ 0.41	\$ 6,510	\$ 0.33
10,000	per project	\$ 12,207	\$ 0.18	\$ 10,173	\$ 0.15	\$ 8,138	\$ 0.12
50,000	per project	\$ 19,531	\$ 0.10	\$ 16,276	\$ 0.08	\$ 13,021	\$ 0.07
100,000	per project	\$ 24,414	\$ 0.24	\$ 20,345	\$ 0.20	\$ 16,276	\$ 0.16
<b>Attached Accessory and Utility Uses</b> - (All newly constructed, added, or structurally remodeled space for utility and accessory occupancies classified as CBC Group U, or other utility and accessory occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
200	per project	\$ 622	\$ 1.41	\$ 519	\$ 1.18	\$ 415	\$ 0.94
400	per project	\$ 905	\$ 1.32	\$ 754	\$ 1.10	\$ 603	\$ 0.88
600	per project	\$ 1,168	\$ 0.29	\$ 973	\$ 0.24	\$ 779	\$ 0.19
1,000	per project	\$ 1,285	\$ 0.23	\$ 1,071	\$ 0.19	\$ 857	\$ 0.16
3,000	per project	\$ 1,752	\$ 0.58	\$ 1,460	\$ 0.49	\$ 1,166	\$ 0.39
<b>Detached Accessory and Utility Uses</b> - (All newly constructed, added, or structurally remodeled space for utility and accessory occupancies classified as CBC Group U, or other utility and accessory occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
200	per project	\$ 622	\$ 1.41	\$ 519	\$ 1.18	\$ 415	\$ 0.94
400	per project	\$ 905	\$ 1.32	\$ 754	\$ 1.10	\$ 603	\$ 0.88
600	per project	\$ 1,168	\$ 0.29	\$ 973	\$ 0.24	\$ 779	\$ 0.19
1,000	per project	\$ 1,285	\$ 0.23	\$ 1,071	\$ 0.19	\$ 857	\$ 0.16
3,000	per project	\$ 1,752	\$ 0.58	\$ 1,460	\$ 0.49	\$ 1,166	\$ 0.39
<b>Shed Buildings for all Commercial Uses</b> - (The enclosure for all newly constructed, added, or structurally remodeled space for non-residential occupancies classified as CBC Group A, B, E, F, H, I, M, or other commercial occupancies not specifically addressed elsewhere in this Fee Schedule where the interior is not completed or occupiable)							
Square Footage:							
500	per project	\$ 1,465	\$ 0.98	\$ 1,221	\$ 0.81	\$ 977	\$ 0.65
5,000	per project	\$ 5,859	\$ 0.29	\$ 4,883	\$ 0.24	\$ 3,906	\$ 0.20
10,000	per project	\$ 7,324	\$ 0.11	\$ 6,104	\$ 0.09	\$ 4,883	\$ 0.07
50,000	per project	\$ 11,719	\$ 0.06	\$ 9,766	\$ 0.05	\$ 7,813	\$ 0.04
100,000	per project	\$ 14,648	\$ 0.15	\$ 12,207	\$ 0.12	\$ 9,766	\$ 0.10
<b>Commercial Tenant Improvement - Non Structural</b> - (Non-structurally remodeled space for non-residential occupancies classified as CBC Group A, B, E, F, H, I, M, or other commercial occupancies not specifically addressed elsewhere in this Fee Schedule where the structure is not altered)							
Square Footage:							
500	per project	\$ 1,221	\$ 0.81	\$ 1,017	\$ 0.69	\$ 814	\$ 0.54
5,000	per project	\$ 4,883	\$ 0.24	\$ 4,069	\$ 0.20	\$ 3,255	\$ 0.16
10,000	per project	\$ 6,104	\$ 0.09	\$ 5,086	\$ 0.08	\$ 4,069	\$ 0.06
50,000	per project	\$ 9,766	\$ 0.05	\$ 8,138	\$ 0.04	\$ 6,510	\$ 0.03
100,000	per project	\$ 12,207	\$ 0.12	\$ 10,173	\$ 0.10	\$ 8,138	\$ 0.08
<b>Commercial Residential and Multifamily Residential Remodels - Non Structural</b> - (Non-Structurally remodeled space for residential occupancies classified as CBC Group R (except R-3), or other residential occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
500	per project	\$ 1,271	\$ 0.65	\$ 1,059	\$ 0.71	\$ 847	\$ 0.56
5,000	per project	\$ 5,083	\$ 0.25	\$ 4,236	\$ 0.21	\$ 3,389	\$ 0.17
10,000	per project	\$ 6,354	\$ 0.10	\$ 5,285	\$ 0.08	\$ 4,236	\$ 0.06
50,000	per project	\$ 10,166	\$ 0.05	\$ 8,471	\$ 0.04	\$ 6,777	\$ 0.03
100,000	per project	\$ 12,707	\$ 0.13	\$ 10,589	\$ 0.11	\$ 8,471	\$ 0.08
<b>Single Family Dwellings and Duplexes</b> - (All newly constructed space for residential occupancies classified as CBC Group R-3, including custom builds and model homes for tract master plans, or other similar residential occupancies not specifically addressed elsewhere in this Fee Schedule)							
Square Footage:							
1,000	per project	\$ 2,911	\$ 1.94	\$ 2,425	\$ 1.62	\$ 1,940	\$ 1.29

CITY OF SAN LUIS OBISPO  
 BUILDING DIVISION USER & REGULATORY FEES  
 New Construction Fee Schedule - Plan Check Fees  
 Effective 3/19/12

Occupancy Type and Class	Fee Unit	Fire Rating Type I, II		Fire Rating Type IIIA, III		Fire Rating Type IIIB, IV, VB	
		Base Cost	Cost Per S.F. Between Thresholds	Base Cost	Cost Per S.F. Between Thresholds	Base Cost	Cost Per S.F. Between Thresholds
2,500	per project	\$ 5,821	\$ 0.39	\$ 4,851	\$ 0.32	\$ 3,881	\$ 0.26
4,000	per project	\$ 6,403	\$ 0.44	\$ 5,336	\$ 0.36	\$ 4,269	\$ 0.29
6,000	per project	\$ 7,276	\$ 0.73	\$ 6,064	\$ 0.61	\$ 4,851	\$ 0.49
8,000	per project	\$ 8,732	\$ 1.09	\$ 7,276	\$ 0.91	\$ 5,821	\$ 0.73
<b>Duplicate Floor Plan Review - Single Family Dwellings and Duplexes</b>							
Square Footage:							
1,000	per project	\$ 941	\$ 0.63	\$ 784	\$ 0.52	\$ 627	\$ 0.42
2,500	per project	\$ 1,881	\$ 0.13	\$ 1,568	\$ 0.10	\$ 1,254	\$ 0.08
4,000	per project	\$ 2,069	\$ 0.14	\$ 1,724	\$ 0.12	\$ 1,379	\$ 0.09
6,000	per project	\$ 2,351	\$ 0.24	\$ 1,960	\$ 0.20	\$ 1,568	\$ 0.16
8,000	per project	\$ 2,822	\$ 0.35	\$ 2,351	\$ 0.29	\$ 1,881	\$ 0.24
<b>Duplicate Floor Plan Review - Attached or Detached Accessory and Utility Uses</b>							
Square Footage:							
200	per project	\$ 167	\$ 0.42	\$ 156	\$ 0.35	\$ 124	\$ 0.28
400	per project	\$ 271	\$ 0.39	\$ 228	\$ 0.33	\$ 181	\$ 0.26
600	per project	\$ 350	\$ 0.09	\$ 292	\$ 0.07	\$ 234	\$ 0.06
1,000	per project	\$ 385	\$ 0.07	\$ 321	\$ 0.06	\$ 257	\$ 0.05
3,000	per project	\$ 526	\$ 0.18	\$ 438	\$ 0.16	\$ 350	\$ 0.12
<b>Structural Residential Remodels and Additions - (All newly constructed additions to or structurally remodeled areas of residential occupancies classified as CBC Group R-3, or other similar residential occupancies not specifically addressed elsewhere in this Fee Schedule)</b>							
Square Footage:							
100	per project	\$ 601	\$ 1.93	\$ 667	\$ 1.61	\$ 634	\$ 1.28
500	per project	\$ 1,571	\$ 3.14	\$ 1,310	\$ 2.62	\$ 1,048	\$ 2.10
1,000	per project	\$ 3,143	\$ 0.63	\$ 2,619	\$ 0.62	\$ 2,095	\$ 0.42
1,500	per project	\$ 3,457	\$ 0.65	\$ 2,881	\$ 0.62	\$ 2,305	\$ 0.42
2,000	per project	\$ 3,771	\$ 1.89	\$ 3,143	\$ 1.57	\$ 2,514	\$ 1.26
<b>Non-Structural Residential Remodels and Additions - (All newly constructed additions to, or non-structurally remodeled areas of, residential occupancies classified as CBC Group R-3, or other similar residential occupancies not specifically addressed elsewhere in this Fee Schedule)</b>							
Square Footage:							
100	per project	\$ 574	\$ 0.41	\$ 479	\$ 0.34	\$ 383	\$ 0.27
500	per project	\$ 737	\$ 1.28	\$ 614	\$ 1.07	\$ 491	\$ 0.86
1,000	per project	\$ 1,379	\$ 0.28	\$ 1,149	\$ 0.23	\$ 919	\$ 0.18
1,500	per project	\$ 1,617	\$ 0.28	\$ 1,284	\$ 0.23	\$ 1,011	\$ 0.18
2,000	per project	\$ 1,854	\$ 0.83	\$ 1,379	\$ 0.69	\$ 1,103	\$ 0.55
<b>Site Improvements - This includes substantial development of private parking lots which are processed separate of the structure and include any combination of the following: Underground utilities, parking lot lighting, accessible path of travel analysis, grading, drainage and compliance with the City's parking and driveway standards.</b>							
Square Footage:							
500	per project	\$ 873	\$ 0.55	\$ 666	\$ 0.46	\$ 649	\$ 0.37
5,000	per project	\$ 3,294	\$ 0.16	\$ 2,745	\$ 0.14	\$ 2,196	\$ 0.11
10,000	per project	\$ 4,117	\$ 0.06	\$ 3,431	\$ 0.05	\$ 2,745	\$ 0.04
50,000	per project	\$ 6,587	\$ 0.03	\$ 5,489	\$ 0.03	\$ 4,391	\$ 0.02
100,000	per project	\$ 8,234	\$ 0.08	\$ 6,661	\$ 0.07	\$ 5,489	\$ 0.05

## New Construction Permit Fees - PLAN CHECK ONLY (All Construction Types)

See Footnotes 1, 3, 4, 5, 18, 20

IBC Class	IBC Occupancy Type	Project Size Threshold	Construction Types - Fire-Rated		Construction Types - Non-Fired/Rated	
			Base Cost @ Threshold Size	Cost for Each Additional 100 sq. ft.	Base Cost @ Threshold Size	Cost for Each Additional 100 sq. ft.
A-3, A-4, A-5	Assembly Building - Large (Church)	2,000	\$5,907	\$10.61	\$3,938	\$7.07
		10,000	\$6,756	\$16.97	\$4,503	\$11.31
		20,000	\$8,452	\$17.51	\$5,635	\$11.67
		40,000	\$11,955	\$5.71	\$7,969	\$3.81
		100,000	\$15,382	\$7.64	\$10,254	\$5.09
		200,000	\$23,024	\$11.51	\$15,349	\$7.67
A-3	Assembly Building - Small	300	\$1,811	\$21.69	\$1,208	\$14.46
		1,500	\$2,072	\$34.70	\$1,380	\$23.13
		3,000	\$2,591	\$35.79	\$1,728	\$23.86
		6,000	\$3,666	\$11.68	\$2,444	\$7.78
		15,000	\$4,717	\$15.61	\$3,145	\$10.41
		30,000	\$7,057	\$23.52	\$4,705	\$15.68
A-1	Auditorium/ Wine Cave/ Theater	2,000	\$5,879	\$10.56	\$3,920	\$7.04
		10,000	\$6,723	\$16.90	\$4,482	\$11.27
		20,000	\$8,413	\$17.43	\$5,609	\$11.62
		40,000	\$11,899	\$5.69	\$7,932	\$3.79
		100,000	\$15,312	\$7.60	\$10,208	\$5.07
		200,000	\$22,912	\$11.46	\$15,275	\$7.64
E	Daycare	200	\$2,240	\$40.25	\$1,494	\$26.83
		1,000	\$2,562	\$64.40	\$1,709	\$42.93
		2,000	\$3,206	\$66.40	\$2,138	\$44.27
		4,000	\$4,534	\$21.69	\$3,023	\$14.46
		10,000	\$5,836	\$28.99	\$3,891	\$19.33
		20,000	\$8,735	\$43.67	\$5,823	\$29.12
R-3	Dwellings - Custom, Models, First Master Plan	1,200	n.a.	n.a.	\$1,163	\$14.77
		3,000	n.a.	n.a.	\$1,429	\$13.29
		6,000	n.a.	n.a.	\$2,674	\$49.82
		10,000	n.a.	n.a.	\$3,342	\$33.43
R-3	Dwellings - Duplicate	1,200	n.a.	n.a.	\$587	\$0.00
		3,000	n.a.	n.a.	\$587	\$4.42
		6,000	n.a.	n.a.	\$719	\$0.02
		10,000	n.a.	n.a.	\$720	\$7.20



AGENDA NO: D-2

MEETING DATE: 8/14/2012

# Staff Report

**TO:** Honorable Mayor and City Council   **DATE:** August 8, 2012  
**FROM:** Joe Woods, Recreation and Parks Director  
**SUBJECT:** Recommendation to Move Forward in Master Planning the Northern Embarcadero Areas including Coleman Park, Target Rock and the Morro Rock Parking Lot

## **RECOMMENDATION**

Staff recommends the City Council review the Advisory Board recommendations and direct staff to enter into a contractual agreement to master plan the Northern Embarcadero areas to include Coleman Park, Target Rock and the Parking Lot at the base of Morro Rock.

## **FISCAL IMPACT**

The proposed action of master planning related to this report warrants significant staff time and expertise and is best outsourced to a professional firm for execution. Elements of park master planning include community meetings/workshops, preliminary master plans, public study sessions, and final master plan presentations. This process is estimated at \$60,000 to \$75,000. Staff has identified one potential funding source in the Park-in-Lieu Fund. This Fund's current balance is \$20,573, with anticipated deposits to occur within the next fiscal year. Other funding sources would be one time monies as determined by Council, and undetermined alternative funding from either State or Federal programs.

## **SUMMARY**

The Northern Waterfront Implementation Plan (NWIP) (Concept C) was adopted by City Council in 2008, and depicts areas to be developed either as recreational or as boating facilities. The plan includes Coleman Park, Target Rock and Morro Rock Parking Lot. The NWIP has been approved by City Council, and is in position for detailed planning according to the adopted Park Master Planning procedures. The City has a preliminary start in this process with the conceptual projects received from the Landscaping Architectural Department of Cal Poly and the park design drawings from the Woodys; which have been and will continue to be instrumental in our public workshop discussions.

**Prepared By:** JMW

**Dept Review:** JMW

**City Manager Review:** \_\_\_\_\_

**City Attorney Review:** \_\_\_\_\_

## **BACKGROUND**

**1997-98** - The City completed a community based planning effort (called the Boating Access Facility Committee/Plan) that determined that the best location for a new boat repair and boat dry storage facility was the land north of the Morro Bay Power Plant intake structure and on the east side of Embarcadero extension up to Morro Creek.

**2007** – While the Harbor Walk project was completing construction, Harbor staff was beginning to work on the boat repair and dry storage project again while the Recreation and Parks Department was considering embarking on a future parks facility planning process for the North Embarcadero area.

**Fall 2007** - The City Council authorized a joint planning effort with Harbor and Recreation and Parks looking at the North Embarcadero area future uses, after the Harbor Walk project was in place. Harbor Walk design team RRM was hired to investigate property boundaries, land use/zoning and conceptual uses for the area.

**December 2007** - A joint meeting of the Recreation and Parks Commission (RPC) and the Harbor Advisory Board (HAB) reviewed a presentation by RRM on these issues. At that meeting it was determined that RRM and City staff should solicit additional public input and develop alternative plans for further analysis.

**Jan 2008** - A site walk was held to discuss the proposed concepts. The HAB held public hearings in February and the RPC held public hearings in March 2008. At the conclusion of those hearings, both the RPC and HAB recommended City Council move forward with the Concept C Plan. In May 2008 City Council passes the following motion:

***MOTION:** Councilmember Grantham moved the City Council initiate a park master planning effort for the area based on Concept C; and, continue work on development of a boat repair/dry storage facility based on Concept C. The motion was seconded by Councilmember Peirce.*

*Councilmember Winholtz stated going forward with this plan is premature without the resources to follow through and it should wait until the Council does its 5-10 year planning and see what the priority is for this plan.*

*Councilmember DeMeritt stated this should wait until the goal setting workshop and discover the priority for this plan. She said Coleman Park could be a community project.*

*Mayor Peters stated there are no General Funds being used for this plan and it should move forward.*

***VOTE:** The motion carried with Councilmember DeMeritt and Councilmember Winholtz voting no. (3-2)*

**March – May 2009** - Initial staff level review of Preliminary Boating Access Facility Plan

Completed. Staff recommended initiation of Conditional Use Permit (CUP) process following completion of CEQA Analysis.

**June – July 2009** - CEQA analysis performed. The initial study led to a Mitigated Negative Declaration (MND).

**July – September 2009** - Draft MND circulated for public review and comment. Few comments were received within the comment period. Additional comments were received after close of comment period from Coastal Commission and State Parks staff.

**August 2009** – The RPC reviews the NWIP and decides to form an Ad Hoc Committee to begin work on the park master planning process. This committee was challenged in meeting and failed to provide any initial work toward the process. Staff turned to RRM for a proposal to complete the NWIP master plan.

**April - May 2010** - RRM provides staff with a scope of services for completing the NWIP Concept Plan and navigating the City through a comprehensive public input process to develop a site specific plan. The available resources at that time were insufficient to execute a contract.

**August - October 2011** - City Council requested that the subject of an improved beach access facility from the Rock parking lot mid-lot area down to the beach sand be agendaized and brought back for Council's discussion. In October, Council unanimously agreed to send the item to the City's advisory boards for review and recommendations. Council then began the discussion of the Rock parking lot as it pertains to the Northern Waterfront Implementation Plan.

**October 2011** - A presentation by Bill and Toni Woody outlined the Morro Rock parking lot and illustrated detailed development to that area. The Woody's proposed detail plan for the Morro Rock parking lot shows a new boardwalk with fencing, picnic and play areas, asphalt road, volleyball courts and new planters with seats. Improvements to the parking lot could range from the very passive approach to a more active approach as outlined in the Woody's plan. Council agreed that additional workshops with stakeholders, general public and other Advisory Boards would provide the needed community consensus.

**March 2012** – RPC reviews NWIP Concept plan and the Woody's plan for the Rock parking lot and made the following recommendation to Council.

***MOTION:** Commissioner Sidaris moved the Commission adopt the Parking Lot Plan and incorporate it into Concept C. The motion was seconded by Commissioner Romero and carried. (4-0)*

*Commissioner Sidaris recommended we need a bit of greenbelt and not sure of the road working out with the roundabout. He would like to see the parking lot better graded and kept somewhat natural and the volleyball courts not in the shade. Commissioner Bates concurred as did Commissioner Romero and Chair Croley.*

**MOTION:** *Commissioner Bates moved the Commission recommend their approval of the Morro Rock development plan in its entirety with the exception of the volleyball courts and the proposed road and parking area configuration. Commissioner Sidaris amended the motion to include greenbelt space. Commissioner Bates accepted the amendment to the motion. The motion was seconded by Commissioner Sidaris and carried. (4-0)*

**March 2012** – Council reviewed staff’s recommendation on a beach access ramp at Morro Rock. Council made the following decision:

**MOTION:** *Councilmember Smukler moved the City Council support the beach access concept and direct staff to return within six (6) months with an update. The motion was seconded by Councilmember Borchard and carried unanimously 5-0.*

**June 2012** – HAB reviews NWIP Concept Plan and the Woody’s plan for the Rock parking lot and made the following recommendations to Council.

**MOTION:** *Mr. Eckles moved to incorporate the conceptual plan designed by the Woody’s into the larger Morro Bay Northern Waterfront Implementation Plan, Concept C. The Motion was seconded by Mr. Luffee.*

*After further discussion by the Board, the Motion was amended to include the final words, “subject to modification.”*

**AMENDED MOTION:** *Mr. Eckles moved to incorporate the conceptual plan designed by the Woody’s into the larger Morro Bay Northern Waterfront Implementation Plan, Concept C, subject to modification. The Amended Motion was seconded by Mr. Luffee, and carried by a vote of 5 to 1, with Ms. Meissen opposed.*

**June 2012** – PWAB reviews the NWIP Concept Plan and the Woody’s plan for the Rock parking lot and made the following recommendations to Council.

**MOTION:** *Shively moved to accept the proposal and pass on with the concerns brought up by the individual PWAB board members to City Council. Minutes attached for review.*

## **DISCUSSION**

After public review at the City Advisory Board level, the consensus is to include the Morro Rock parking area into the Northern Embarcadero Implementation Plan with modifications. This plan is in concept form and needs to be further developed using the Park Master planning process which was established in 1989 by RPC Resolution No. 04-89 (Draft B). Beginning in 2007, the City contracted with RRM to provide public workshops and conceptual drawings for Coleman Park and the Target Rock areas and that effort resulted in the NWIP Concept C. RRM has provided a second master plan proposal for the NWIP, which is attached for review.

Currently, all areas within the NWIP are identified in the Waterfront Master Plan (WMP), and staff continues to work within those guidelines, with the understanding that elements are scheduled to change as directed by Council. Staff has some detailed plans for the Target

Rock area which were developed by the Landscape Architect Department at Cal Poly. As well as the planned development of the Fisherman's Family Sculpture. Furthermore, staff has received a detailed plan for the Morro Rock parking lot which was developed by the Woodys. All of these plans have merit and will be used in the master planning process.

### **CONCLUSION**

The Morro Bay Northern Waterfront Implementation Plan Concept C has been adopted by City Council and includes areas from Morro Creek along the Embarcadero dirt extended as well as Coleman Park and the Target Rock areas. The inclusion of the Morro Rock parking lot in the Northern Waterfront Implementation Plan would provide consistency within the area. The process of park master planning involves a particular amount of public input and would take the existing concept plans and develop them into site specific plans. The RRM master planning proposal would address all the related areas, include all stakeholders and meet the City's adopted master planning procedures.

SYNOPSIS MINUTES - MORRO BAY PUBLIC WORKS ADVISORY BOARD  
REGULAR MEETING –JUNE 21, 2012  
VETERAN’S HALL – 6:00 P.M.

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

- PRESENT: Matt Makowetski Chairperson  
Bill Olson Board Member  
Richard Rutherford Board Member  
Stephen Shively Board Member  
ABSENT: Ron Burkhart Vice-Chairperson  
STAFF: Rob Livick Public Services Director  
Janeen Burlingame Management Analyst

<Excerpt from draft minutes>

NEW BUSINESS

C-1 Review of the Morro Bay Northern Waterfront Implementation Plan to Include Morro Rock Parking Lot - Recommendation: Review and discuss proposal and provide recommendation(s) to City Council.

Board member Olson stated his comments regarding the proposal which include he feels this is an important tourist area and more needs to be done to emphasize drawing in tourists versus locals, since tourist more typically frequent this area. Boulders are too large and obstruct view. The BBQ and picnic spots on the east end are in very windy area. He does not support a fence as that will also obstruct the view. Concrete benches are not comfortable and need to be kept clean. Volleyball courts take up a lot of space and questioned whether they would get adequately used similar to basketball courts. He stated these would likely get more use from locals which therefore could be located someplace else as this area should focus on tourists.

Chairperson Makowetski stated that although he agrees with Olson mostly, he differs on the issue of basketball courts as he is found them to be highly used each time he has been there.

Board member Shively stated that he agrees with Olson regarding the railing on the boardwalk as that could hinder view. Shively also stated the BBQ pit needs to be looked at as maybe vendor could be moved elsewhere. The boardwalk although a nice features really goes nowhere. He stated the asphalt of the parking lot could become a cost and maintenance issue. Shively also stated this is a nice plan and agreed with Olson on the points of that it should be geared towards tourist who more typically frequent these areas and the wind factor. Shively stated an asphalt parking lot would be a nice addition as well as handicap access. Shively also stated that trash maintenance could be handled by the street sweeping services.

Board member Rutherford agreed that the boulders do cut off the view.

Chairperson Makowetski stated this plan would go well with the ramp stairs project and the Harborwalk project but expressed concern about funding. Makowetski stated it is important to be a waterfront friendly town and supports having a bridge right across the creek in order to tie in North Morro Bay with the Embarcadero area. He stated it is important to involve the entire city into this and agrees with the issues regarding parking and wind. He stated the volleyball courts are a good idea. He is concerned about potential for increased trash and vehicular runoff and the need to mitigate those issues.

Olson expressed concern if the Rock parking lot is paved and the potential for closing the parking area during bad weather as State Parks does with the Coleman Drive parking lot.

Chairperson Makowetski opened Public Comment period.

Bill Woody, resident of Morro Bay spoke regarding the Rock Parking Lot Plan he and his wife, Toni Woody, designed. He emphasized that their goal with this plan was, since the Rock is a unique coastal feature, to make it a more family friendly place, increase tourists and hopefully help the economy of this area. He is open to suggestions for revision and stated he is doing this for free.

Linda Merrill, resident of Morro Bay, spoke ...  
Public Works Advisory Board Minutes 3 June 21, 2012

Chairperson Makowetski closed Public Comment period.

MOTION: Shively moved to accept the proposal and pass on with the concerns brought up by the individual PWAB Board members to City Council.  
The motion was seconded by Rutherford and carried unanimously. (4-0).

DRAFT B

RESOLUTION NO. 04-89

A RESOLUTION OF THE  
RECREATION AND PARKS COMMISSION  
OUTLINING A FOUR (4) STEP  
MASTER PLANNING PROCESS FOR  
PARK SITES AND/OR RECREATION FACILITIES

WHEREAS, the logical planning of park and recreation improvements benefits all members of the community, meets current and future leisure needs of the community and generally assists in obtaining grant funding; and,

WHEREAS, recreation and park areas in the City have been successfully master planned in the past using an informal process; and,

WHEREAS, the need has been identified to formalize and outline the most successful processes used in the past as a model process to use in the future; and,

WHEREAS, the quality of life in Morro Bay is dependent upon continued development of quality park and recreation areas that are master planned with vision and foresight.

NOW, THEREFORE, BE IT RESOLVED that a four (4) step Master Planning Process for recreation facilities and/or park sites is established as follows:

Step 1: Recreation and Parks Commission (RPC) or other Citizen Advisory Committee (CAC) establish design criteria, use areas and needs; develop and approve a master plan and design report.

Step 2: The approved master plan and design report shall be forwarded to appropriate advisory boards as determined by the RPC or CAC, for review and comment.

Step 3: The RPC or CAC shall review comments of those advisory boards reviewing the master plan and design report determining if modification to the master plan design report is required. The RPC or CAC shall then adopt the master plan and design report.

Step 4: The master plan and design report shall be forwarded to the City Council, along with those advisory board comments made in Step 2, for adoption.

RESOLUTION NO. 04-89  
FOUR-STEP MASTER PLANNING PROCESS  
PAGE 2

**BE IT FURTHER RESOLVED** that this master plan process be used only in new developments or renovations where function, intended use and/or the relationship of functions at existing park or recreation areas is modified.

**PASSED AND ADOPTED** this 17th day of August, 1989 by the following roll call vote:

**AYES:**

**NOES:**

**ABSENT:**

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**CHUCK C. CLARKE**  
**VICE-CHAIR**

**ATTEST:**

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**STEPHEN A. WOLTER**  
**DIRECTOR**  
**RECREATION AND PARKS**

### **Task A: Master Plan Development**

RRM will quickly begin master plan development activities, engaging community members to discover the project's most promising design opportunities. This master plan development phase will generally include the following scope of services:

#### **Subtask A.01: Community Meeting #1 – Idea Generation Workshop**

To get the project rolling, RRM will conduct an interactive mobile workshop. This meeting will be a full-day event attended by key design team members, City staff, and community members. The principle goal is to explore design concepts for the Coleman Park, Target Rock and Morro Rock parking lot areas, collectively, Northern Embarcadero Improvement Plan (NEIP). Tentatively, the workshop will be arranged around the following agenda:

- 9:00- 9:30** Assemble at the Community Center, sign in all workshop participants, present the day's agenda, and then board the Trolley for a quick ride down to Tidelands Park.
- 9:45 - 10:45** Walking tour of Tidelands Park to discuss its major elements and how they are used by the community, and to help participants begin to visualize design possibilities for the NEIP. Discussion will be lead by Recreation and Parks staff and the design team. Then, we'll ride the Trolley to the Harborwalk Trailhead parking lot.
- 11:00 - 12:30** Interactive walk through the project area to discuss potential design opportunities and ideas. This walk will allow all participants to experience the Coleman Park, Target Rock and Morro Rock parking lot areas, the specific characteristics of each site and their relation to the bay and Harborwalk. Then, we'll head back to the Community Center for lunch.
- 12:30 - 1:15** Lunch Break.
- 1:15 - 3:30** Design session to develop initial design concepts. The session will begin with a slideshow of interesting and imaginative parks and waterfronts to get everyone's creative juices flowing. Then we'll break into small groups (6 to 8 people) to develop design concepts for the NEIP. Each group will then present their design concepts.
- 3:30 - 4:00** Discussion with City staff to summarize and confirm design direction developed throughout the course of the day's meetings and review the project schedule's milestone target dates.

#### *Deliverables:*

- *Prepare for and conduct idea generation workshop*

#### **Subtask A.02: Conceptual Design Alternatives**

Building on the results of the idea generation workshop, RRM will develop two (2) conceptual design alternatives for the park. The plans will reflect ideas generated by the community and reflect the unique identity of Morro Bay. The conceptual plans will locate and illustrate major park elements such as overlook and seating areas, creative play areas, water access elements, buildings, and circulation into and through the site. Each park concept will be communicated through plan graphics along with two (2) loose character sketches for

each park option to help communicate the “feel” of the park. The vantage points of each of the perspective sketches will be selected by RRM to best represent the work being proposed and the setting it will occupy.

As we work through the alternative design options, RRM will submit progress plans, as necessary, to City staff to ensure that collaboration among the City/RRM team is maintained, and to make sure we are on the “same page” prior to bringing the conceptual design alternatives back to the community.

*Deliverables:*

- Two (2) conceptual design plan alternatives
- Four (4) loose character sketches

**Subtask A.03: Community Meeting #2 – Alternatives Evaluation Workshop**

RRM will facilitate this second community meeting to evaluate the design options with community members and City staff. The conceptual design alternatives will be presented and evaluated through an interactive process with the goal of arriving at consensus for preferred design scheme. This will be accomplished by providing workshop participants with plan reductions and breaking into smaller groups for discussion. The workshop program is envisioned as follows:

- Open house session (informal discussion with participants and exhibit viewing)
- Presentation of conceptual design plan options
- Small group concept evaluation session
- Interactive design consensus exercise

RRM staff will guide all participants during this workshop and will help each breakout group as they work together toward consensus.

*Deliverables:*

- Prepare for and conduct alternatives evaluation workshop.

**Subtask A.04: Preliminary Master Plan**

With refinement ideas in hand from the alternatives evaluation workshop, and design direction from City staff, RRM will prepare the preliminary master plan in preparation for presentation to community members at the upcoming Recreation and Parks Commission study session. The preliminary master plan will “polish” the rough concepts and ideas developed in the conceptual plans, adding greater dimension to park’s design aspects and incorporating the community’s latest design improvement ideas to illustrate all project elements.

The preliminary master plan will be communicated through plan graphics and (3) rough perspective character sketches to illustrate the parks’ design from a park-goers point of view. The vantage points of each of the perspective sketches will be selected by RRM to best represent the work being proposed and the setting it will occupy.

As we work through design refinement, RRM will submit progress plans, as necessary, to City staff to ensure that collaboration among the City/RRM team is maintained, and to make sure we have a “tight” design package for presentation to the Recreation and Parks Commission.

*Deliverables:*

- *One (1) preliminary master plan*
- *Three (3) perspective sketches*

**Subtask A.05: Recreation and Parks Commission Study Session**

RRM will work with City staff to prepare for and facilitate a Recreation and Parks Commission study session to present the preliminary master plan for review and feedback. This meeting will serve a dual purpose, serving as a third community meeting while facilitating “hand’s-on” interaction with Recreation and Parks Commissioners. Input gained from the Commissioners and public will play a crucial role in informing the design team as the final master plan is prepared.

*Deliverables:*

- *Prepare for and facilitate Recreation and Parks Commission study session.*

**Subtask A.06: Final Master Plan**

With refinement ideas in hand after the Recreation and Parks Commission study session, and with design direction from City staff, RRM will prepare the final master plan. This plan will lock in the park’s design aspects to fix and illustrate all project elements. The final master plan will be communicated through plan graphics. The three (3) rough perspective character sketches developed in Subtask A.04 will be finalized to fully communicate the look and feel of the park.

As part of this effort, RRM will prepare a construction cost projection based on the final master plan. The cost opinion will break out each general element on a line item spreadsheet with item descriptions and unit costs.

*Deliverables:*

- *One (1) final master plan*
- *Three (3) perspective sketches*
- *Construction Cost Projection*

**Subtask A.07: Recreation and Parks Commission Presentation**

RRM will work with City staff to prepare for and present the final master plan to the Recreation and Parks Commission. RRM will develop a power point and/or other presentation support media/graphics as determined appropriate by the City/RRM team.

*Deliverables:*

- *Prepare for and present the final master plan to the Recreation and Parks Commission.*
- *Support media/graphics.*

**Task B: Project Coordination**

Managing the design team while keeping the project running smoothly is paramount its success. RRM will coordinate and manage all project aspects for the City, and this phase will generally include the following scope of services:

**Subtask B.01: Project Coordination and Management**

RRM's project manager will coordinate with City and design staff, resource agencies, stakeholders and other agencies as necessary on an on-going basis throughout all phases of the project. This task also includes meetings, project schedule creation and maintenance, internal QA/QC, agency requirements review, document retrieval, day-to-day project coordination efforts including general correspondence, telephone conferencing and Web meetings likely to be required in supporting City staff as the project evolves.

*Deliverables:*

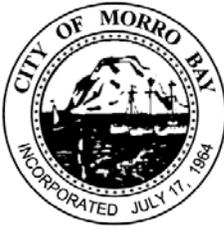
- *Memos, meeting minutes, and general correspondence for document control, compiled in a three-ring binder located in our office and available for access by City staff.*

**Subtask B.02: Supplemental Field Survey**

RRM will facilitate a limited topographic survey that will supplement and update the topographic map previously prepared by RRM as part of the Harborwalk project. The supplemental survey area includes the Target Rock area that was not part of the Harborwalk project, and will include contours at one-foot intervals, rip-rap extent, pavement edges, State Park's gate, and surface evidence of utilities. This information is necessary for creation of a complete topographic base file on which to base the master plan design work.

*Deliverables:*

- *Supplemental Digital Topographic Map file in AutoCAD format*



AGENDA NO: D-3

MEETING DATE: August 14, 2012

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** August 8, 2012  
**FROM:** Rob Livick, PE/PLS – Public Services Director/City Engineer  
**SUBJECT:** Discussion on Parking Options on the Embarcadero between Beach and Pacific Streets

## RECOMMENDATION

Staff recommends Council review past action regarding parking, including the adopted Parking Management Plan (PMP) and provide direction to staff.

## FISCAL IMPACT

There is no fiscal impact as a result of this report other than the staff time used in the preparation.

## BACKGROUND/DISCUSSION

This item was presented as a future agenda item by Councilperson Leage at the July 10, 2012 City Council meeting and there was a majority of Councilmembers that wanted to discuss issues related to parking on the Embarcadero, between Pacific and Beach Streets.

Prior to the most recent parking studies, in 1993 The California State Coastal Conservancy – Urban Waterfronts Program prepared a report titled: Draft Feasibility of Parking Facilities in the Morro Bay Embarcadero Waterfront (summary Attached). That study recommends the construction of a 144 space parking structure in central Embarcadero (Pacific – Beach). The cost in 2013 dollars is estimated to range between \$7.5 and \$11 million as a very rough estimate. Assuming 20 years of debt service on the structure and a 50% occupancy rate; the parking rate would need to be between \$20 – \$35/day for debt service payment and operations and maintenance.

In 2007, the City of Morro Bay contracted with TPG Consulting, Inc. for a comprehensive evaluation of the downtown and Embarcadero area parking needs, supply and demand assessment, and alternative management strategies for a more efficient and effective use of both public and private parking resources. The findings for the 2007 report are as follows.

The downtown and Embarcadero areas were surveyed during the peak and off-peak tourist season to determine the availability of parking supply and quantify demand. The major conclusion reached in the PMP is that there is not a parking problem in Morro Bay. There are certain isolated times during special events and during the 3-month tourist season in peak lunch time hours where

Prepared By: RL

Dept Review: RL

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

it is more difficult to find a convenient parking space, but there is an ample parking supply within generally a short 2-block walking distance. See the attached exhibits showing the weekend peak hour demand and the parking turnover rate. This conclusion did not justify the construction of a several million dollar parking structure in the central Embarcadero.

The underlying presumption in the PMP is that it is much more cost effective and efficient in terms of the use of prime coastal land to identify more effective strategies for maximizing the efficient use of the parking resources, as opposed to building parking lots and structures. A number of effective implementation strategies or “tools” have been identified that are imbedded in the policy framework of this plan that can be brought in to use at any time when parking conditions become more problematic. However, at this time the near term or “quick fixes” for next year include strengthening the public parking information program, installing directional signage, and adding a new trolley and route along the Embarcadero that runs from the Rock to Tidelands Park with 10 minute headways.

The final review of the PMP was conducted on September 17, 2007 at a joint study session with the Planning Commission and City Council. The City’s Advisory Boards (Harbor Advisory Board, Public Works Advisory Board, Planning Commission and several civic organizations) were presented the recommendations of the plan and also provided comments and suggestions. Relatively minor clarifications and corrections were noted during the study session, which have since been incorporated into the Final PMP dated October 2007.

At the Joint City Council/Planning Commission Meeting (Study Session) the Council and Commission discussed and established consensus on the following items:

- Signage for parking and directional as soon as possible – all in favor
- Public information – all in favor
- Shared Parking – all in favor
- Employee Parking – all in favor
- Expanded Trolley Service/Electric Trolley – all in favor
- Delivery Truck Parking – all in favor of implementing
- Angled Parking – ½ and ½ - Mayor Peters would suggest looking at it on Market
- Pedestrian Enhancements – all in favor
- Alteration of time limits – all in favor of keeping it at 3 hours – potentially expanding it to the City lot
- In Lieu Fees – Most in favor of keeping them – Mayor Peters not in favor
- Green Parking – Some in favor but without losing spaces or making spaces too small
- Grandfathered Parking – did not appear to be a consensus one way or the other

At the study session, the Council directed that the final PMP come back on the Consent Calendar for the adoption of the resolution approving the PMP. The Executive Summary from the Approved PMP is attached to this report with the full PMP available for review either on the City’s website or at the Public Services office.

In September 2007, City Council authorized the purchase of the directional signage that has since

been installed. Additionally, Council directed staff to add the Embarcadero trolley route to better make use of available parking and to reduce walking times. The web based parking map was started by the Community Promotions Committee but the work, to the best of staff's knowledge, was never completed. Parking lot information is now shown on the City's Trolley information maps that are available on the City's website.

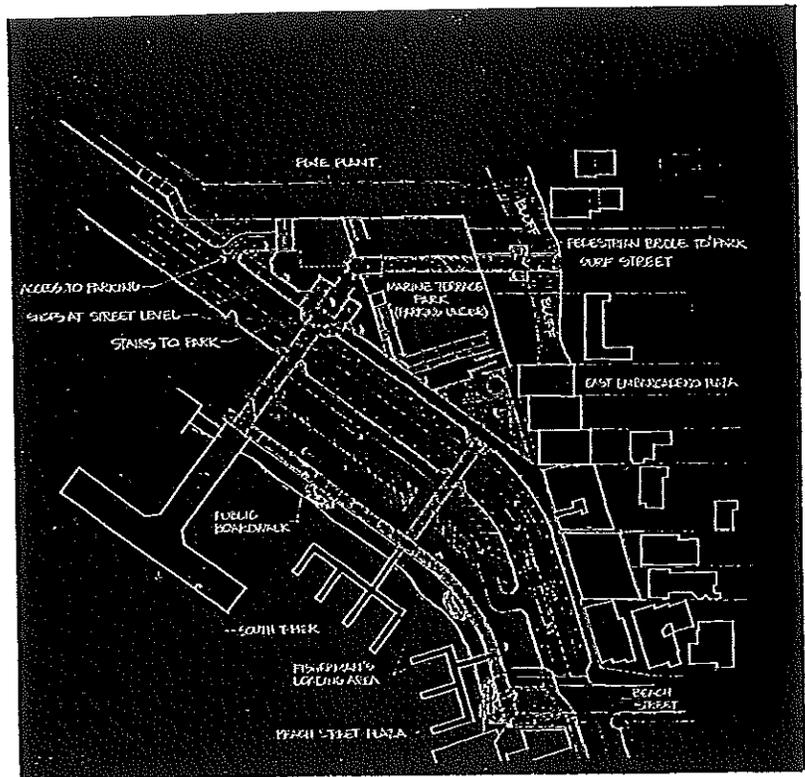
#### Options for Consideration

1. Resurvey the parking availability and report information back to City Council.  
Timeframe: Start prior to end of summer to include the last major holiday.
2. Implement additional time limited parking to encourage turnover in the most desired parking spaces.  
Timeframe: Once survey is complete, if needed.
3. Implement Paid Parking Program, to establish a fund for future improvements.  
Timeframe: Once survey is complete, if needed and directed by Council.
4. Start planning and preliminary design for a Parking Structure in the Central Embarcadero Area. Will require additional funding from parking in lieu or reserves.  
Timeframe: As directed by City Council

#### ATTACHMENTS

1. Draft Feasibility of Parking Facilities in the Morro Bay Embarcadero Waterfront - Summary
2. City of Morro Bay - Parking Management Plan Executive Summary
3. PMP Figure 9 – Parking Demand, Weekend Peak Hour
4. PMP Figure 11 – Weekend Parking Duration
5. City Council Resolution 48-07
6. Excerpt of City Council Minutes from September 24, 2007

Draft  
Feasibility of Parking  
Facilities in the Morro Bay  
Embarcadero Waterfront



Prepared for the  
City of Morro Bay  
by the  
California State Coastal Conservancy  
Urban Waterfronts Program

November 1993

## Summary

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The city of Morro Bay recently completed a study of the issues it faces in providing parking in its Embarcadero waterfront. The California State Coastal Conservancy, with its long history of involvement with the city, has offered to assist it in understanding some of the design implications and the feasibility of providing that parking. This report presents the State Coastal Conservancy's findings.

The goal of this study is to offer development concepts that satisfy the city's waterfront parking needs in a way that is sensitive to and supportive of both visitors and residents and to the special character of the Morro Bay waterfront.

The State Coastal Conservancy believes that, like other coastal communities, the city of Morro Bay needs to address the comprehensive management of its waterfront parking resources as well as its pedestrian and vehicle circulation systems. Such comprehensive management should include improved pedestrian access to and along the waterfront, and an overall parking management program that includes on-street parking management during peak visitor times, structured parking in one or more places along the Embarcadero waterfront, small surface lots throughout the waterfront, a system of remote parking in lots outside of the Embarcadero waterfront, and a transit system of trolleys and perhaps water taxis to tie them all together.

With this in mind, the State Coastal Conservancy evaluated the feasibility of developing structured parking on two sites within the Embarcadero waterfront: one in the northern Embarcadero waterfront east of the South T-Pier and one in the central Embarcadero waterfront adjacent to Centennial Park. In addition to preparing concepts for the development of structured parking on each site, the

State Coastal Conservancy evaluated project development feasibility.

The State Coastal Conservancy also outlined the elements of a comprehensive parking management program and estimated the magnitude of its possible benefits to the city. The State Coastal Conservancy believes that potential revenues generated by such a program would help off-set the city's costs of providing parking to those who visit the waterfront.

**Northern Embarcadero Waterfront Site.** For a site east of the city's South T-Pier, the State Coastal Conservancy developed concepts for a three-story parking structure capped by public open space on top of the parking structure. The State Coastal Conservancy estimates that the northern Embarcadero waterfront site could accommodate an approximately 200-space parking structure, about 6000 square feet of commercial space fronting the Embarcadero roadway, public open space (named Marine Terrace Park in this report) that would occupy about six-tenth of an acre on top of the parking structure, and other public pedestrian spaces.

The State Coastal Conservancy estimates that the on-site development—that is, the parking structure, commercial space, public plaza and Marine Terrace Park—would cost about \$5.0 million. Nearly \$1.0 million of these costs could be financed through debt supported by revenues generated by the parking and commercial components of the project, leaving a funding gap of about \$4.0 million that would have to come from the city or from other public agencies.

The State Coastal Conservancy estimates that related off-site improvements proposed as part of the project and illustrated on the concept plan—that is, the realignment of the Embarcadero roadway, the reconfiguring of the parking area between the realigned Embarcadero roadway and the waterfront, the possible provision of a fisherman's waterfront loading area north of the end of Beach Street, the construction of a public waterfront boardwalk running between Beach Street and the South T-Pier, and public open space to terminate Beach Street—would cost an additional \$1.4 million.

Altogether, the on-site costs and the costs of the related improvements would total about \$6.3 million. The debt supported by project revenues would reduce the cost of the project to \$5.4 million overall. Any funding gap would need to be made up through non-project sources from the city or from other public agencies.

The State Coastal Conservancy also provided concepts for the interim use of the northern Embarcadero waterfront site for parking and public open space pending its full development with structured parking.

**Central Embarcadero Waterfront Site.** For a site at the end of Morro Bay Boulevard adjacent to Centennial Park, the State Coastal Conservancy developed concepts for a two-story parking structure topped by public open space. The State Coastal Conservancy estimates that this site could accommodate an approximately 144-space parking structure, about three-quarters of an acre of public open space on top of the structure, a small public plaza adjacent to Centennial Park, and other pedestrian amenities. Unlike the northern site, this site could not accommodate shops along the Embarcadero streetfront without greatly reducing the structure's capacity to provide parking (about 40 spaces would be lost). Reluctantly, therefore, the State Coastal Conservancy has not included commercial development in this project.

The State Coastal Conservancy estimates that this project would cost about \$5.3 million. The project would not generate any revenues beyond operation and maintenance costs that would be available to support debt, leaving the total \$5.3 million development costs that would need to be made up through non-project sources from the city or from other public agencies.

## **Funding Opportunities**

There are a number of opportunities for reducing the funding gap for either project. These include the following:

### **Possible Local Funding Sources**

Possible local funding sources include:

- **City Parking Fund.** The city of Morro Bay requires that development in the Embarcadero wa-

terfront that does not or that cannot provide on-site parking pay in-lieu fees to the city's parking fund. These funds could be used to directly pay a portion of project development costs and could thereby reduce the project funding gap by an equal amount.

- **In-Lieu parking fees.** As would any development in the Embarcadero waterfront that does not or cannot provide on-site parking, the commercial portion of the northern Embarcadero waterfront project would be required to pay in-lieu fees for the parking it is required to provide but does not. These in-lieu parking fees either could be waived by the city and thereby used to directly reduce the project development costs (in-lieu fees are included as a cost in the cost estimates), or they could be paid to the city by the project but dedicated by the city to directly pay a portion of the project development costs. Either way, these funds would directly reduce the funding gap by an amount equal to the in-lieu fees owed by the project.
- **Parking management program.** The city could implement the parking management program outlined in this report. Funds generated by such a program could be used to support debt on either project, thereby reducing the funds needed from other public sources. The benefits of this program to the city are described later in this report.

#### **Potential Funding from Other Public Sources**

The potential funding from other public sources includes:

- **Economic Development Administration grant.** The city could request an Economic Development Administration (EDA) public works grant as a partial match to city funding, thereby reducing local public funding.
- **Transportation Enhancement Fund grant.** The city could request a Transportation Enhancement Fund grant funded through the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) as a partial match to City funding, thereby reducing local public funding.

## Recommendations

The following are recommendations from the State Coastal Conservancy's evaluation.

### Northern Embarcadero Waterfront Project

- Consider further refinement and analysis of the northern Embarcadero waterfront project. The development concept proposed for the site satisfies much of the parking need identified in the draft *Parking Management Plan* (200 of the 270 needed spaces), appears to be within the city's resources and has the potential to become a positive element of the Embarcadero waterfront.
- The State Coastal Conservancy believes that the northern Embarcadero waterfront project would go far in helping the city solve some of its parking needs in the Embarcadero waterfront and would do so in a positive, cost-effective manner.

### Central Embarcadero Waterfront Project

- The central Embarcadero waterfront project analyzed in this report cannot accommodate the amount of parking or the streetfront commercial development that the State Coastal Conservancy believes would be best for the central Embarcadero. The central Embarcadero waterfront site would accommodate about 144 of the estimated 270 spaces needed on the waterfront and could accommodate commercial development along the Embarcadero streetfront only through the loss of about 40 of these 144 spaces.

For these reasons and others, the central Embarcadero waterfront project does not appear to be as good a solution to satisfying the city's parking needs as is the northern Embarcadero waterfront project.

Still, the project may be fundable, would be a satisfactory if not ideal use of the site, and would be a benefit to the Embarcadero waterfront. The city might consider this site if the northern Embarcadero waterfront site is not available or feasible, if a better near-by site cannot be found, or if the city decides to develop the site with streetfront shops in spite of the reduction in parking the site could provide. The concepts outlined for the central Embarcadero waterfront site offer a good model for other sites in the cen-

tral Embarcadero waterfront, and the financial analysis provides a good idea of the financial obligations the city would face with similar nearby projects.

- The State Coastal Conservancy recommends that any project, even one in the more-constrained central Embarcadero waterfront, be part of a mixed-use development that presents a strong commercial presence along the Embarcadero streetfront.

#### **Parking Management Program**

- The State Coastal Conservancy believes that the potential revenues generated by a parking management program would help off-set the city's costs of providing parking to those who visit the waterfront.
- In managing the parking resources of the Embarcadero waterfront, the city of Morro Bay should consider the following in addition to the elements recommended in the city's draft *Parking Management Plan*:
  - Consider further refinement and analysis of the benefits of a parking management program as outlined in this report. If additional analysis shows the program to be beneficial, consider implementing it to help off-set the city's costs of providing parking to those who visit the waterfront.
  - Consider structured parking as the preferred means of satisfying parking needs on the Embarcadero waterfront over the long term.
  - Consider developing one or more parking structures throughout the Embarcadero waterfront.

#### **Funding**

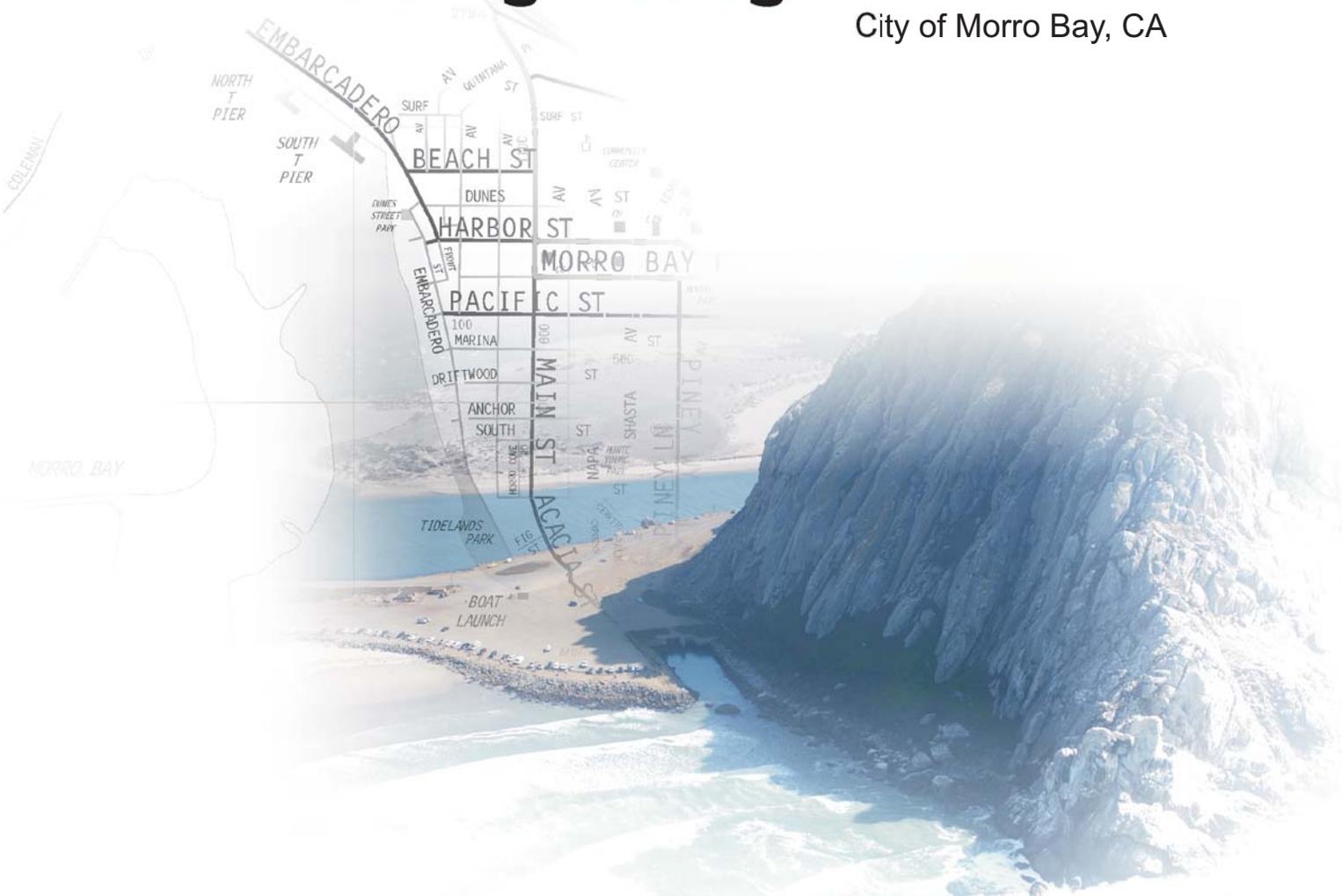
- In further analysis of either project, or for similar projects, consider the following ways of reducing the funding gap:
  - Use the net operating income generated by the project to finance debt to the maximum amount possible, in order to reduce the city's out-of-pocket costs for the project.

## ATTACHMENT 1

- Use the project's in-lieu parking fees and the city's parking fund moneys to reduce the project funding gap.
- Use the income generated by a parking management program to support debt to finance the project and thereby reduce the funding gap.
- If additional analysis is completed and the city decides that one or both of the projects presented in this report are feasible, consider applying for the grants described in this report, and perhaps other public funding grants as well, to cover all or part of the project development costs.

# Parking Management Plan

City of Morro Bay, CA



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The Plan concludes with a Financial Plan identifying 1.) Various local, state and federal funding sources, potentially available to implement the Action Plan, 2.) Order-of-magnitude cost estimates for the various components of the Action Plan (not precise design level costs) and 3.) A potential 6-year timeline for implementing the Action Plan.

## **PREFACE**

The preparation of this report was commissioned by the City of Morro Bay Public Services Department at the authorization of the City Council. As expressed in the Request for Proposal for this document, its intended purpose is to be multi-faceted:

- Determine whether there is a current or projected shortage of parking, and if so, to what extent;
- Formulate alternatives for addressing parking needs, supply and demand utilization strategies;
- Educate the community on the cost of parking; and
- Develop a parking management plan for efficiently and effectively utilizing parking resources in a small coastal community where land values are at a premium.

This plan has been prepared by TPG Consulting, Inc. on behalf of the City of Morro Bay Public Services Department. For additional information contact the City of Morro Bay Public Services Department at 955 Shasta Avenue, Morro Bay, CA, 93442, telephone (805) 772-6215.

## **Project Team**

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*Mary E. Beatie, Sr. Planner*  
*Jennie Miller, Planner*  
*Nabor Solorio, Graphics*  
*Julia Tucker, Graphics*  
*Ashley Tolbert, Technician*  
*Blanca Scott, Support Services*

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*Michael Prater, Planning Manager*  
*Rachel Grossman, Associate Planner*  
*Frank Cunningham, City Engineer*  
*William T. Boucher, Capital Projects Managers*  
*Janeen Burlingame, Management Analyst*

### Other Participants

*City Council*  
*Planning Commission*  
*Public Works Advisory Board*  
*Harbor Advisory Board*  
*Chamber of Commerce*  
*Merchants Association*

# **City of Morro Bay PARKING MANAGEMENT PLAN**

*Final: October 2007*

**Prepared for:**

**City of Morro Bay  
Public Services Department  
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Morro Bay, California 93442  
805.772.6261**

**Prepared by:**

**TPG Consulting, Inc.  
222 North Garden Street, Suite 100  
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559.739.8072**

## **CITY OF MORRO BAY**

### **CITY COUNCIL**

#### **CURRENT:**

Janice Peters ~ Mayor  
Melody De Meritt ~ Vice Mayor  
William Pierce  
Betty Winholtz  
Rick Grantham

#### **FORMER:**

Thad Baxley

### **CITY STAFF**

Bruce Ambo, Director, Public Services Department  
Mike Prater, Planning Manager  
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Frank Cunningham, City Engineer  
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**Appendix C** ..... Adopted In-Lieu Parking Fee District Map

**Appendix D** ..... Preliminary Order of Magnitude Probable Construction Costs

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## EXECUTIVE SUMMARY

The Morro Bay Parking Management Plan (“Plan”), prepared by TPG Consulting, Inc. covers a Study Area Boundary, as defined by the City, consisting of 42-blocks of the downtown (above the bluff) and Embarcadero (below the bluff) areas. The Plan was commissioned by the City of Morro Bay Public Services Department, for the purposes of:

- Determining whether there is a current or projected shortage of parking, and if so, to what extent;
- Formulating alternatives for addressing parking needs, supply and demand utilization strategies;
- Educating the community on the cost of parking;
- Developing a parking management plan for efficiently and effectively utilizing parking resources in a small coastal community where land values are at a premium.

The Plan begins with an inventory or examination of existing conditions, including: tabulation of the 2,453 available parking spaces within the Study Area by block supported by recent in-the field surveys of both on and off-street spaces, and public and private parking lots; existing parking regulations, existing land use, current posted parking time limitations, existing public transit, and existing signage.

Next, a Parking Demand Survey and a Duration Survey was conducted within a Demand Survey Boundary, as defined by the City, over two separate survey periods: *Weekday*, (a Tuesday preceding the Memorial Day weekend) and Weekend, (the Saturday of Memorial Day weekend--considered by the City to begin the “peak season” period.) The purpose of the demand and duration surveys was to gain understanding of weekday non-peak vs. weekend peak season parking utilization profiles and turn-over rates. The weekday and weekend demand and duration surveys were conducted over a 6-hour time period from Noon until 6:00 p.m. Demand within the Downtown and Embarcadero Areas is determined in the Plan by dividing the total “available” (empty) spaces by the total inventory of spaces in each one-hour interval during the 6-hour survey period. The resulting percentages are stratified by block and hour as follows:

75-85% Demand = Utilization acceptable. No parking supply shortage; 25% or more of spaces available in that block in that hour.

86-100% Demand = Utilization warning. Emerging “hot spot” of parking supply shortage; 15% or less or less of spaces were available or empty in that block in that hour.

100%+ Demand = Utilization unacceptable. Immediate supply shortage; no available spaces in that block in that hour; over 100% represents illegal parking in areas not designated for parking.

The Plan’s analysis of the Demand and Duration Surveys demonstrates that overall parking supplies are adequate within the Study Area, but that some blocks within downtown and Embarcadero are approaching or exceeding maximum utilization (86%-

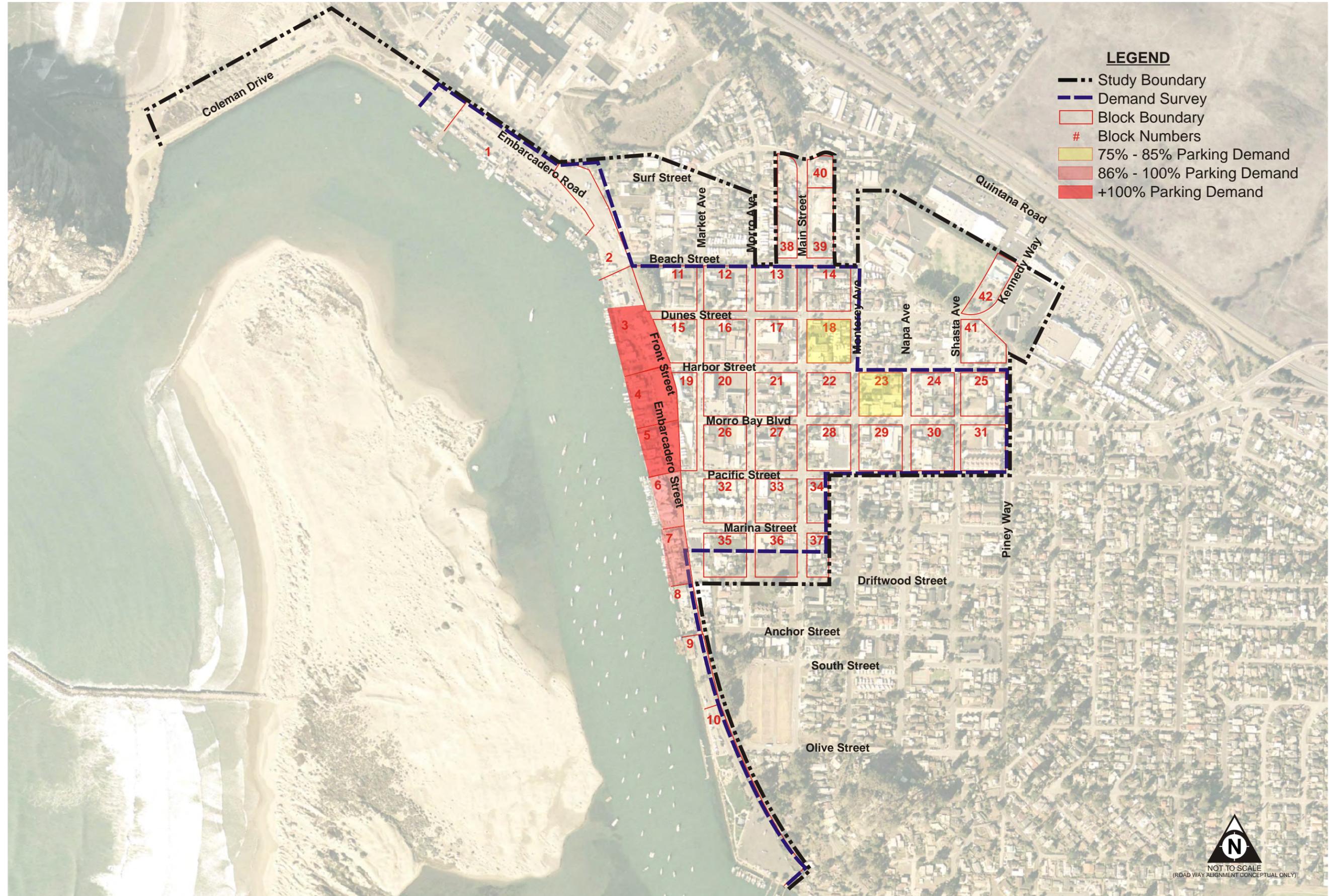
100%+.) However, the Plan shows that these instances of critical demand occur only in a very few, isolated blocks and only for very short duration time periods (for only about a 1 hour interval.) Said differently, critical demand is definitely not an area-wide concern covering large numbers of blocks, either for the downtown or for the Embarcadero, nor is there any critical demand experienced in any block that exceeds more than a 1 hour interval. Importantly the demand survey also shows that while there are these few isolated blocks experiencing critical demand for short time periods, there are also public parking spaces with less than and up to 85% utilization in areas that are only 1-4 blocks away from those blocks experiencing the short duration critical demand.

Based upon these conclusions, the Plan goes on to explore current parking standards and a range of observations that would possibly explain the demand and turn-over profiles, including such factors as: availability and extent of information (including signage, maps, print or electronic literature) about where the available parking is located, quality of pedestrian connections between parking and destinations, time-limited parking restrictions, and availability of regulatory incentives or flexibility to adjust parking requirements (or “standards”; i.e. the required number of spaces per some criteria.) The Plan also explores a variety of plans or ordinances that are either currently proposed or adopted in the City or that are being utilized effectively in similar beach or tourist oriented communities that bear on good parking management. Based upon the compilation of this information, the Plan then assesses a range of alternative courses of action that might be appropriate for the City to consider undertaking as a means to more effectively manage its current parking supplies.

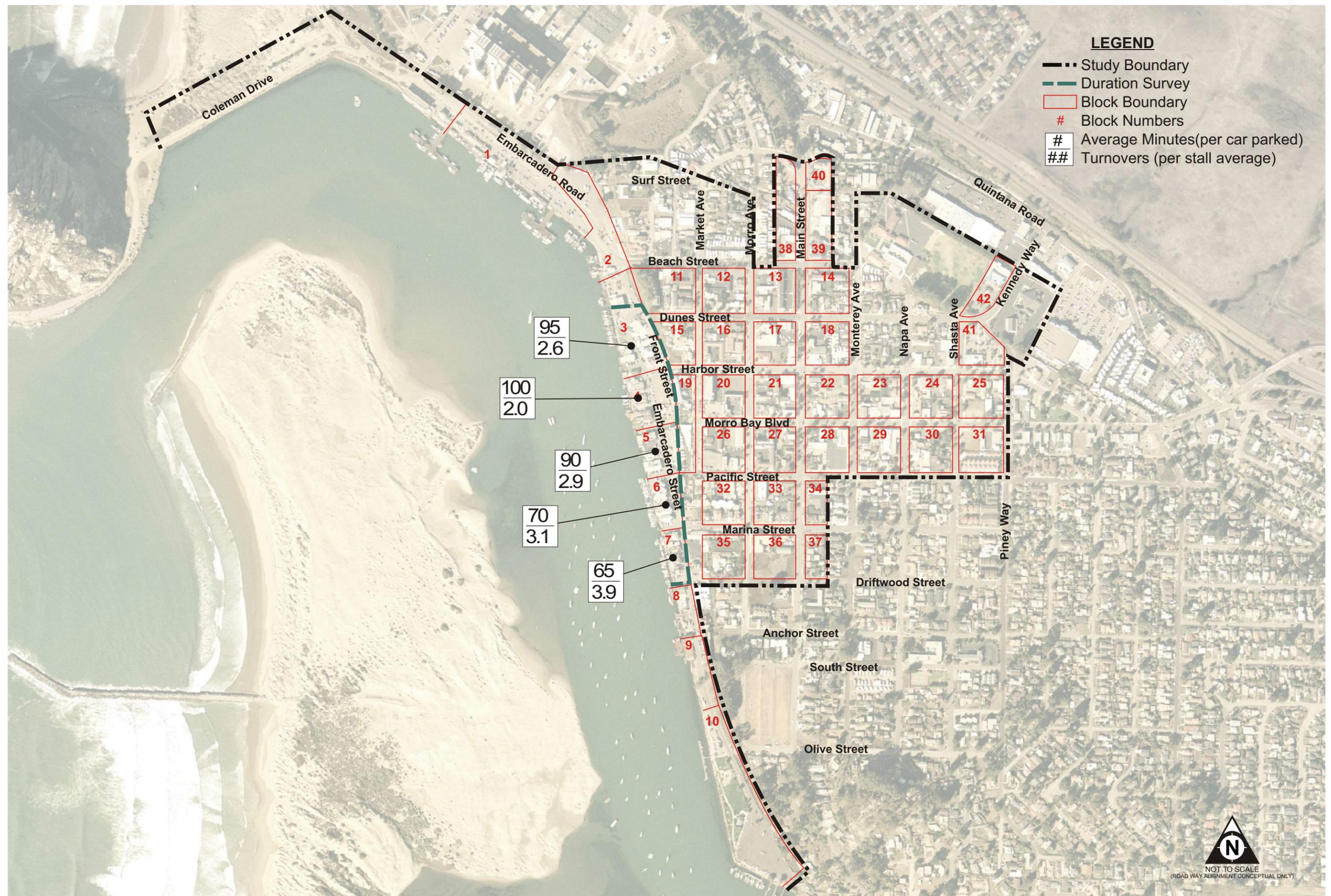
Following the identification of the range of alternatives, the City sought, through a public workshop held in November, 2006, community and staff input on a range of “Actions” (referred to as “tools in the tool-box”) the City could or should consider undertaking as needed to implement components of the recommended alternatives which were considered to be reasonable and feasible.

The Action Plan recommended in the Plan, and described more fully there, consists of the following components or “tools” available to the City to be undertaken individually or in combinations, at the direction of City Council and as financing will allow:

1. *Enhance Signage Program*
2. *Public Information*
3. *Shared Parking*
4. *Employee Parking*
5. *Expand/Enhance Trolley Service*
6. *Delivery Truck Parking*
7. *Angled Parking*
8. *Pedestrian Enhancements*
9. *Iteration of Time Limits*
10. *Public & Private-Public Partnership Parking*
11. *In-Lieu Fee Parking*
12. *Green Parking*



PARKING DEMAND- WEEKEND PEAK HOUR, 1-2 P.M.



WEEKEND PARKING DURATION

**RESOLUTION NO. 48-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY  
ADOPTING THE FINAL PARKING MANAGEMENT PLAN FOR THE CITY OF  
MORRO BAY, CALIFORNIA**

**WHEREAS**, the City Council decided that it was necessary and desirable to prepare a comprehensive Parking Management Plan for the downtown and Embarcadero areas; and

**WHEREAS**, the City contracted with TPG Consulting, Inc. for a comprehensive evaluation of the downtown and Embarcadero area parking needs, supply and demand assessment, and alternative management strategies for a more efficient and effective use of both public and private parking resources; and

**WHEREAS**, TPG prepared a report, entitled the *Final Parking Management Plan* for the City of Morro Bay, California, in October of 2007 (attached hereto as Exhibit A); and

**WHEREAS**, the *Parking Management Plan* for the City of Morro Bay, California, has been available for public review and comment; and

**WHEREAS**, following the issuance of the initial draft of the plan in April 2007 *Parking Management Plan* for the City of Morro Bay, California, the City held a numerous public hearings on the plan with the Harbor Commission, Public Works Advisory Board, Planning Commission and other civic groups and received additional information; and

**WHEREAS**, the *Final Parking Management Plan* establishes the policy framework for which to base subsequent decisions on Capital Improvement Projects that implement the recommendations of the plan; and

**WHEREAS**, the City Council desires to align all parking related polices in accordance with the recommendations and conclusions of the *Final Parking Management Plan*; and

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MORRO BAY  
DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1. Consistency with General Plan.**

The City Council finds that the parking conditions and management tools to effectively utilize parking resources in the downtown and Embarcadero areas are consistent with the City's General Plan and Local Coastal Plan.

**SECTION 2. CEQA Finding.**

The adoption of the *Final Parking Management Plan* is categorically exempt from environmental review pursuant to section 15061(b)(3) of the California Environmental Quality Act guidelines. The intent of the management plan is to manage parking resources and mitigate parking related impacts to the greatest practicable extent within the City's financial constraints.

**SECTION 3. Adoption of Final Parking Management Plan Report.**

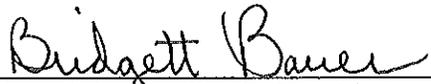
The *Final Parking Management Plan* prepared by TPG Consulting, Inc. for the City of Morro Bay, California, is hereby adopted.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay this 8th day of October 2007 by the following vote:

AYES: DeMeritt, Grantham, Peirce, Winholtz, Peters  
NOES: None  
ABSENT: None  
ABSTAIN: None

  
\_\_\_\_\_  
JANICE PETERS, Mayor

ATTEST:

  
\_\_\_\_\_  
BRIDGETT BAUER, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROBERT SCHULTZ, City Attorney

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING - SEPTEMBER 24, 2007

C-2 DIRECTIONAL SIGNAGE IMPLEMENTATION PROGRAM; (PUBLIC SERVICES)

Public Services Director Bruce Ambo stated the purpose of the directional signage program is to facilitate the movement of pedestrian, vehicular and bicycle traffic for unfamiliar visitors into, out and around the City to various points of interest, attractions or public facilities. The thrust of the directional signage program would be to get motorists off the freeway and into the community and divert traffic to underutilized parking areas to the north and south ends of the Embarcadero near the Front Street and Boat Launch/Tidelands Park parking areas. A new trolley would run the entire Embarcadero route from the Rock to Tidelands Park in 15-minute headways, making it more convenient and easier to wait for the trolley to come in to the central Embarcadero area or enjoy the scenic ride to the Rock. A public information campaign is underway in coordination with the City Promotions Committee for developing a web-based map of the parking areas in the Embarcadero and downtown areas for both the City and the Chamber of Commerce. This map would also include travel bus, recreational vehicle and boat trailer parking areas. Mr. Ambo recommended the City Council approve the directional signage implementation program and authorize staff to place the order for the signage.

**MOTION:** Councilmember Winholtz moved the City Council approve the directional signage implementation program, and authorize staff to place the order for the signage. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

D. NEW BUSINESS

D-1 REVIEW OF RESULTS FOR REQUEST FOR PROPOSALS ON LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO (OUTRIGGER) AND AUTHORIZATION FOR THE CALDWELL/REDICAN PARTNERSHIP TO APPLY FOR DEVELOPMENT PERMITS ON LEASE SITE 87-88/87W-88W; (HARBOR)

Harbor Director Rick Algert stated this summer, the City requested proposals from all interested parties to submit plans for redevelopment of City Lease Site 87-88/87W-88W, which is currently leased to Violet Leage until April 10, 2010. On September 4, 2007, a Selection Panel interviewed the proposers and scored the proposals. The proposals were evaluated based on maximization of public benefits in the proposed project, the proposing party's potential to bring the project to completion and successfully operate on the lease sites and financial capability/experience. Mr. Algert recommended the City Council adopt Resolution No. 46-07 authorizing Burt Caldwell and Doug Redican to apply for development permits on City Lease Site 87-88/87W-88W located at 833 Embarcadero.



AGENDA NO: D-4

MEETING DATE: 8/14/2012

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 7, 2012

**FROM:** Andrea K. Lueker, City Manager  
Nancy Johnson, City Councilmember

**SUBJECT:** Discussion on the Need for a Volunteer “Community Services Coordinator”

## **RECOMMENDATION**

Staff recommends the City Council review the staff report and provide direction on a volunteer “Community Services Coordinator”. Staff further recommends the City Council forward this issue to the Recreation and Parks Commission for review as the proposed volunteer position will likely work closely with the Senior Citizens Inc. organization.

## **BACKGROUND**

Councilmember Nancy Johnson raised the issue of an individual (volunteer) to coordinate and disseminate information regarding the available community services in the Morro Bay area. As Councilmember Johnson discussed and received support from fellow council members, there are a number of services available through the City of Morro Bay, County of San Luis Obispo, Senior Citizens Inc. and other non-profit groups, but there does not seem to be one location or individual who coordinates and has available, this information. These existing services include, but are not limited to help for the homeless, disadvantaged children, low income families, seniors and veterans as well as others.

As discussed, a concern regarding these services is that while they are available, often community members are not aware of the services nor do not know where to go for a comprehensive list of such services. This concept could serve as a clearing house for the entire community.

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_



AGENDA NO: D-5

MEETING DATE: 8/14/12

## Staff Report

**TO:** Mayor and City Council

**DATE:** August 9, 2012

**FROM:** Jamie Boucher, City Clerk

**SUBJECT:** Designation of Voting Delegate and Alternate Voting Delegate at League of California Cities 2012 Annual Conference Business Meeting

**RECOMMENDATION:**

In order to vote at the League of California Cities 2012 Annual Conference Business Meeting, the City Council must select a voting delegate. In the event that the designated voting delegate is unable to serve in that capacity, the City Council may appoint up to two alternate voting delegates.

**DISCUSSION:**

The League of California Cities 2012 Annual Conference is scheduled for September 5 - 7, 2012 in San Diego, California. An important part of the Conference is the Annual Business Meeting, which is scheduled on Friday, September 7<sup>th</sup> at Noon at the San Diego Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

This year, the League will consider five resolutions which are attached for your information.

Prepared By: J Boucher

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_



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[www.cacities.org](http://www.cacities.org)

July 12, 2012

TO: Mayors, City Managers and City Clerks  
League Board of Directors

RE: Annual Conference Resolutions Packet  
Notice of League Annual Meeting

Enclosed please find the 2012 Annual Conference Resolutions Packet.

**Annual Conference in San Diego.** This year's League Annual Conference will be held September 5 - 7 at the San Diego Convention Center in San Diego. The conference announcement has previously been sent to all cities and we hope that you and your colleagues will be able to join us. More information about the conference is available on the League's Web site at [www.cacities.org/ac](http://www.cacities.org/ac). We look forward to welcoming city officials to the conference.

**Annual Luncheon/Business Meeting - Friday, September 7, 12:00 p.m.** The League's Annual Business Meeting will be held at the San Diego Convention Center.

**Resolutions Packet.** At the Annual Conference, the League will consider the five resolutions introduced by the deadline, Saturday, July 7, 2012, midnight. These resolutions are included in this packet. We request that you distribute this packet to your city council.

We encourage each city council to consider the resolutions and to determine a city position so that your voting delegate can represent your city's position on each resolution. A copy of the resolutions packet is posted on the League's website for your convenience: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

The resolutions packet contains additional information related to consideration of the resolutions at the Annual Conference. This includes the date, time and location of the meetings at which resolutions will be considered.

**Voting Delegates.** Each city council is encouraged to designate a voting delegate and two alternates to represent their city at the Annual Business Meeting. A letter asking city councils to designate their voting delegate and two alternates has already been sent to each city. Copies of the letter, voting delegate form, and additional information are also available at: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

**Please Bring This Packet to the Annual Conference  
September 5 - 7 — San Diego**

## I. INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, five resolutions have been introduced for consideration by the Annual Conference and referred to the League policy committees.

**POLICY COMMITTEES:** Three policy committees will meet at the Annual Conference to consider and take action on resolutions referred to them. The committees are Environmental Quality, Public Safety, and Revenue & Taxation. These committees will meet on Wednesday, September 5, 2012, at the San Diego Marriott Marquis & Marina Hotel in San Diego. Please see page iii for the policy committee meeting schedule. The sponsors of the resolutions have been notified of the time and location of the meetings.

Two other policy committees may also be meeting: Administrative Services and Employee Relations. Administrative Services will meet pending League Board (July 19 & 20) action to determine whether the committee will review any November General election ballot initiatives. Employee Relations will meet if the Legislature acts on pension reform in August. If pension reform is passed, the committee will meet to discuss the details of the proposal. For now, please plan to attend the meeting at the Annual conference. If for some reason this changes, League staff will send an email notifying the committee.

Three policy committees will not be meeting at the annual conference. These committees are: Community Services; Housing, Community & Economic Development; and Transportation, Communication, & Public Works.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet at 1:00 p.m. on Thursday, September 6, at the San Diego Convention Center, to consider the reports of the three policy committees regarding the five resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

**ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY:** This meeting will be held at 12:00 p.m. on Friday, September 7, at the San Diego Convention Center.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Session of the General Assembly. This year, that deadline is 12:00 p.m., Thursday, September 6. If the petitioned resolution is substantially similar in substance to a resolution already under consideration, the petitioned resolution may be disqualified by the General Resolutions Committee.

Resolutions can be viewed on the League's Web site: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: [mdesmond@cacities.org](mailto:mdesmond@cacities.org) or (916) 658-8224.

## **II. GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities and the League is through the League's eight standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the Board of Directors.
  - (c) Consider important issues not adequately addressed by the policy committees and Board of Directors.
  - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

**III.**  
**LOCATION OF MEETINGS**

**Policy Committee Meetings**  
**Wednesday, September 5, 2012**  
**San Diego Marriott Marquis & Marina Hotel**  
**333 W. Harbor Drive, San Diego**

**POLICY COMMITTEES MEETING AT ANNUAL CONFERENCE TO**  
**DISCUSS AN ANNUAL CONFERENCE RESOLUTION**

<b>9:00 a.m. – 10:30 a.m.</b>	<b>Environmental Quality;</b>
	<b>Revenue and Taxation</b>
<b>10:30 a.m. – 12:00 p.m.</b>	<b>Public Safety</b>

**TENTATIVE POLICY COMMITTEE MEETINGS AT ANNUAL CONFERENCE**  
**TO DISCUSS OTHER ISSUES**

<b>9:00 a.m. – 10:30 a.m.</b>	<b>Administrative Services</b>
<b>10:30 a.m. – 12:00 p.m.</b>	<b>Employee Relations</b>

**Note:** These policy committees will **NOT** meet at the Annual Conference:  
Community Services  
Housing, Community & Economic Development  
Transportation, Communication & Public Works



**General Resolutions Committee**  
**Thursday, September 6, 2012, 1:00 p.m.**  
**San Diego Convention Center**



**Annual Business Meeting and General Assembly Luncheon**  
**Friday, September 7, 2012, 12:00 p.m.**  
**San Diego Convention Center**

**IV.  
KEY TO ACTIONS TAKEN ON RESOLUTIONS**

Resolutions have been grouped by policy committees to which they have been assigned. **Please note that one resolution has been assigned to more than one committee. This resolution is noted by this sign (♦).**

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee  
2 - General Resolutions Committee  
3 - General Assembly

**ENVIRONMENTAL QUALITY POLICY COMMITTEE**

		1	2	3
3	Desert Protection Act			
4	Global Warming			

**PUBLIC SAFETY POLICY COMMITTEE**

		1	2	3
♦1	Fines and Forfeitures			
2	Internet Crimes Against Children			
5	Emergency Management Mission for California Cities			

**REVENUE AND TAXATION POLICY COMMITTEE**

		1	2	3
♦1	Fine and Forfeitures			

**Please note:** These committees will ***NOT*** meet at the annual conference: Community Services; Housing, Community & Economic Development; and Transportation, Communication & Public Works

Information pertaining to the Annual Conference Resolutions will also be posted on each committee's page on the League website: [www.cacities.org](http://www.cacities.org). The entire Resolutions Packet will be posted at: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

## KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

### KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### KEY TO ACTIONS TAKEN

- A - Approve
- D - Disapprove
- N - No Action
- R - Refer to appropriate policy committee for study
- a - Amend
- Aa - Approve as amended
- Aaa - Approve with additional amendment(s)
- Ra - Amend and refer as amended to appropriate policy committee for study
- Raa - Additional amendments and refer
- Da - Amend (for clarity or brevity) and Disapprove
- Na - Amend (for clarity or brevity) and take No Action
- W - Withdrawn by Sponsor

### Action Footnotes

- \* Subject matter covered in another resolution
- \*\* Existing League policy
- \*\*\* Local authority presently exists

**Procedural Note:** Resolutions that are approved by the General Resolutions Committee, as well as all qualified petitioned resolutions, are reported to the floor of the General Assembly. In addition, League policy provides the following procedure for resolutions approved by League policy committees but *not* approved by the General Resolutions Committee:

Resolutions initially recommended for approval and adoption by all the League policy committees to which the resolution is assigned, but subsequently recommended for disapproval, referral or no action by the General Resolutions Committee, shall then be placed on a consent agenda for consideration by the General Assembly. The consent agenda shall include a brief description of the basis for the recommendations by both the policy committee(s) and General Resolutions Committee, as well as the recommended action by each. Any voting delegate may make a motion to pull a resolution from the consent agenda in order to request the opportunity to fully debate the resolution. If, upon a majority vote of the General Assembly, the request for debate is approved, the General Assembly shall have the opportunity to debate and subsequently vote on the resolution.

V.  
**2012 ANNUAL CONFERENCE RESOLUTIONS**

**RESOLUTIONS REFERRED TO ENVIRONMENTAL QUALITY POLICY COMMITTEE**

**3. RESOLUTION ENCOURAGING CALIFORNIA CITIES TO OPPOSE THE CALIFORNIA DESERT PROTECTION ACT OF 2011**

Source: City of Needles

Referred To: Environmental Quality Policy Committee

Recommendation to General Resolutions Committee:

**WHEREAS**, in 1993 Senator Diane Feinstein introduced the California Desert Protection Act of 1994 which became federal law and was passed by the United States Congress on October 8, 1994, and

**WHEREAS**, this act established the Death Valley and Joshua Tree National Parks and the Mojave National Preserve in the California desert; and

**WHEREAS**, this act designated 69 wilderness areas as additions to the National Wilderness Preservation System within the California Desert Conservation Area (CDCA), the Yuma District, the Bakersfield District, and the California Desert District of the Bureau of Land Management permits grazing in such areas; and

**WHEREAS**, the Act abolished Death Valley National Monument, established in 1933 and 1937, and incorporated its lands into a new Death Valley National Park administered as part of the National Park System. Grazing of domestic livestock was permitted to continue at no more than the then-current level. The Act also required the Secretary of the Interior to study the suitability of lands within and outside the boundaries of the park as a reservation for the Timbisha Shoshone Tribe; and

**WHEREAS**, the Act abolished Joshua Tree National Monument, established in 1936, and incorporated its lands into Joshua Tree National Park; and

**WHEREAS**, the Act established the Mojave National Preserve, consisting of approximately 1,419,800 acres (5,746 km<sup>2</sup>; 2,218.4 sq mi), and abolished the East Mojave National Scenic Area, which was designated in 1981. The preserve was to be administered in accordance with National Park System laws. Hunting, fishing and trapping were permitted as allowed by federal and state laws, with certain exceptions. Mining claims were governed by the National Park System laws, and grazing was permitted to continue at no more than the then-current level; and

**WHEREAS**, the Act required the Secretary of the Interior to ensure that American Indian people have access to the lands designated under the Act for traditional cultural and religious purposes, in recognition of their prior use of these lands for these purposes. Upon the request of an Indian tribe or religious community, the Secretary must temporarily close specific portions to the general public to protect the privacy of traditional cultural and religious activities; and

**WHEREAS**, flights by military aircraft over the lands designated by the Act were not restricted or precluded, including over flights that can be seen or heard from these lands; and

**WHEREAS**, Congress found that federally owned desert lands of southern California constitute a public wildland resource of extraordinary and inestimable value for current and future generations; these desert wildlands have unique scenic, historical, archeological, environmental, ecological, wildlife, cultural,

scientific, educational and recreational values; the California desert public land resources are threatened by adverse pressures which impair their public and natural values; the California desert is a cohesive unit posing difficult resource protection and management challenges; statutory land unit designations are necessary to protect these lands; and

**WHEREAS**, Senator Dianne Feinstein, author of the 1994 California Desert Protection Act has introduced legislation “California Desert Protection Act of 2011” that will set aside new land in the Mojave Desert for conservation, recreation and other purposes; and

**WHEREAS**, the proposed legislation will take AN ADDITIONAL 1.6 million acres of Bureau of Land Management land out of potential development, including mining exploration, by designating two new “National Monuments”, one adjacent to the Mojave National Preserve which will take 1.5 million acres out of BLM multiple use in addition to 800,000 acres out of private ownership and one adjacent to the Joshua Tree National Park; and

**WHEREAS**, this legislation will result in just about every square inch of the desert spoken for, either for military use, national parks, wilderness and special conservation areas, Indian reservations and other types of land management (half of the lands under BLM management are protected under wilderness or special conservation area restrictions); and

**WHEREAS**, projects, such as California mandated solar energy development, that would disturb or destroy habitat must make up for that loss by purchasing private habitat at ratios of at least three acres for every one acre disturbed; and

**WHEREAS**, at that rate, even in the nation’s largest county, San Bernardino, just three solar projects on federal land will require an amount of private land acquisition of 22,000 acres, or roughly 34 square miles, land will come off of the county’s tax rolls and we will literally run out of mitigation land after a handful of projects; and

**WHEREAS**, the Federal Energy Policy Act of 2005 requires that 10,000 megawatts of renewable energy be generated on public land in the west. To meet California’s mandate of having 33 percent of our energy come from renewable sources, it requires more that 20,000 megawatts of production and they are looking mainly at public lands. If we approve that much solar, the result would be a regulatory lockdown on the rest of the Desert by the Federal Fish and Wildlife Service and the State Department of Fish and Game; and

**WHEREAS**, the Desert Protection Act of 1994 encompassed 1.5 million acres or 2,218.4 square miles plus an additional 800,000 acres of private land or 1,250 square miles; Fort Irwin, 1,000 square miles; 29 Palms Marine Base, 931.7 square miles and they have also applied for an additional 420,000 acres in 2008, or 659.375 square miles totaling 6,059.48 square miles; and

**WHEREAS**, the California Desert Protection Act of 2011 will take OVER 2,300 square miles, not including the acreage of wilderness located outside any of the above mentioned areas (this total mileage would roughly encompass Rhode Island, Delaware, and Connecticut); and

**WHEREAS**, these public lands have long supported a range of beneficial uses and efforts have been made to protect the desert inhabitants. Let’s not destroy the desert or our ability to use and enjoy it.

**NOW, THEREFORE, BE IT RESOLVED**, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the

League encourages California cities to adopt resolutions in opposition to the California Desert Protection Act of 2011.

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**League of California Cities Staff Analysis**

Staff: Kyra Ross, Legislative Representative, (916) 658-8252  
Committee: Environmental Quality Policy Committee

**Summary:**

This resolution encourages California cities to oppose the California Desert Protection Act of 2011.

**Background:**

The California Desert Protection Act of 2011 (S. 138) is legislation proposed by Senator Dianne Feinstein which would provide for conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area. The Measure would:

- Create two new national monuments: the 941,000 acres Mojave Trails National Monument along Route 66 and the 134,000 acres Sand to Snow National Monument, which connects Joshua Tree National Park to the San Bernardino Mountains.
- Add adjacent lands to Joshua Tree National Park, Death Valley National Park and Mohave National Preserve;
- Protect nearly 76 miles of waterways;
- Designate five new wilderness areas;
- Designate approximately 250,000 acres of Bureau of Land Management wilderness areas near Fort Irwin;
- Enhance recreational opportunities; and,
- Designate four existing off-highway vehicle areas in the California Desert as permanent.

S. 138 is a re-introduction of S. 2921, the California Desert Protection Act of 2010 which is now dead. S. 138 was introduced in January 2011 and was referred to the Senate Committee on Energy and Natural Resources. The measure has not yet been set for hearing by the Committee.

**Fiscal Impact:**

Unknown. No direct fiscal impact to city general funds.

**Existing League Policy:**

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

Specific to this Resolution, existing policy offers no specific policy on this issue.

The League’s Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

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**4. RESOLUTION REQUESTING CONSIDERATION OF SUSPENSION OF IMPLEMENTATION OR REVISION OF THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32 of 2006)**

Source: City of Needles

Referred to: Environmental Quality Policy Committee

Recommendation to General Resolutions Committee:

**WHEREAS**, in 2006 the California Legislature adopted the California Global Warming Solutions Act, commonly referred to as AB 32 (Health & Safety Code §§38500 et seq.); and

**WHEREAS**, AB 32 aims to reduce California's greenhouse gas emissions (GHGs) to 1990 levels by 2020 (Health & Safety Code §38550) and to 80 percent below 1990 levels by 2050; and

**WHEREAS**, the California Air Resources Board (CARB) is the government agency charged with determining how the AB 32 goals will be reached (Health & Safety Code §38510); and

**WHEREAS**, CARB's implementation of AB32 aims to reduce California's GHG emissions by 169 million metric tons of carbon dioxide equivalent (MMT<sub>CO2E</sub>) through a variety of strategies, including sector-specific regulations, market mechanisms, voluntary measures, fees, incentives and other policies and programs; and

**WHEREAS**, there are portions of the state that have been designated as nonattainment for the national ambient air quality standards (NAAQS) for Ozone and PM, nonattainment for state ambient air quality standards (SAAQS) for Ozone, PM, Sulfates and Hydrogen Sulfide, and identified by CARB pursuant to as overwhelmingly impacted by transported air pollution from upwind air basins; and

**WHEREAS**, areas designated nonattainment are mandated under the provisions of the Federal Clean Air Act (FCAA) to require pursuant to New Source Review (NSR) rules, Best Available Control Technology (BACT) and offsetting emissions reductions (Offsets) on major new or modified stationary sources of those nonattainment air pollutants and their precursors (42 U.S.C. §§7502(c)(5), 7503) regardless of whether or not the area so designated has any control or not over the pollution causing the nonattainment finding; and

**WHEREAS**, the United States Environmental Protection Agency (USEPA) has requested that a program be developed to implement the Prevention of Significant Deterioration (PSD) which will require additional analysis for new or modified sources of attainment pollutants including but not limited to greenhouse gases, which will also necessitate emissions reductions and BACT in some cases for attainment pollutants; and

**WHEREAS**, due in part to the limited number of existing sources of air pollutants and the overwhelming impact of transport some or a majority of the cities have few if any available emissions reductions available to provide such offsets; and

**WHEREAS**, many technologies used to attain BACT levels of air pollution control are based upon the combustion of fossil fuels which also causes emissions of GHGs; and

**WHEREAS**, there are a variety of Federal regulations promulgated and proposed by the USEPA regarding greenhouse gasses that have the potential to conflict both directly and in their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

**WHEREAS**, there are a variety of other mandates and regulations at the State level (municipal waste diversion, renewable energy mandate etc.) which have the potential to conflict both directly and in due to their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

**WHEREAS**, such conflicts severely impede the cities or state as well as regulated industry efforts to comply with both the applicable Federal regulations and regulations implementing AB32; and

**WHEREAS**, the existing and proposed regulations on both the State and Federal level result in an overall regulatory structure that is inconsistent and confusing making it virtually impossible or incredibly slow to start any new large scale projects within the State at a time where California infrastructure and its economy are in most need of refurbishment; and

**WHEREAS**, the existing and proposed regulations and unclear guidelines will also make it more difficult for smaller, pollution transport impacted air districts like the MDAQMD, to properly implement and enforce the regulations;

**NOW, THEREFORE, BE IT RESOLVED**, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League encourages the existing 482 California cities to adopt resolutions requesting a suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32 of 2006) until such time as the legal and regulatory inconsistencies can be resolved; and

**BE IT FURTHER RESOLVED**, that California cities request the California Air Resources Board and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32 and for potential direct and indirect conflict with other existing regulations at both the State and Federal level including but not limited to the potential for gains in one area to jeopardize progress in another; and

**BE IT FURTHER RESOLVED**, that California cities request the California Air Resources Board and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity "flight" from California; and

**BE IT FURTHER RESOLVED**, that California cities request the State of California by and through its Governor, Legislature, and applicable state agencies should encourage the resolution of internal conflicts between and among existing Federal programs by supporting items including but not limited to: reopening the Federal Clean Air Act, New Source Review Reform, and efforts to regulate GHGs under a comprehensive Federal program.

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## League of California Cities Staff Analysis on Resolution No. 4

Staff: Kyra Ross, Legislative Representative, (916) 658-8252  
Committee: Environmental Quality Policy Committee

### **Summary:**

This resolution encourages California cities to:

- 1.) Adopt resolutions requesting the suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32) until such time as the legal and regulatory inconsistencies can be resolved;
- 2.) Asks cities to request the California Air Resources Board (CARB) and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32, and for potential conflict with other existing regulations at both the State and Federal level including, but not limited to, the potential for gains in one area to jeopardize progress in another; and,
- 3.) Asks cities to request the CARB and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity “flight” from California; and,
- 4.) Asks cities to request the State to encourage the resolution of internal conflicts between and among existing Federal programs by supporting items, including but not limited to:
  - a. Reopening the Federal Clean Air Act;
  - b. New Source Review Reform; and,
  - c. Efforts to regulate greenhouse gas emissions under a comprehensive federal program.

### **Background:**

AB 32 passed in 2006 and requires the State to reduce greenhouse gas emissions to 1990 levels by 2020. As the implementing agency, CARB developed and passed a Scoping Plan in 2008, outlining emission reduction measures to help the state meet its statutory reduction of greenhouse gas emissions. Since 2008, a number of measures outlined in the Scoping Plan have been implemented. Measures of interest to cities include: voluntary local government 15% reduction in greenhouse gas emissions; regional transportation-related greenhouse gas targets; landfill methane control; and green building codes.

At the same time, many of California’s 15 air basins are facing ongoing challenges to meeting federal air quality standards. It’s important to note that regulation of air quality in California is separated into two levels of regulation. CARB regulates air pollution from cars, trucks, buses and other sources, often referred to as “mobile sources”. Local air districts regulate businesses and industrial facilities. Local air districts are the bodies that regulate ozone, PM 2.5 and PM 10. Ground level ozone (ozone), more commonly referred to as smog, is a pollutant that forms on hot summer days (not to be confused with the ozone that forms in the upper atmosphere or stratosphere). Ozone is not directly emitted by one source but comes from a combination of volatile organic compounds and nitrogen oxides. In the presence of sunlight, especially on hot summer days, this mixture forms ozone. Particulate Matter (PM) is made up of fine solid or liquid such as dust, fly ash, soot, smoke, aerosols, fumes, mists, and condensing vapors. US EPA has set health based standards for particles smaller than 10 microns (PM 10) and particles smaller than 2.5 microns (PM 2.5). When these particles become airborne, they can be suspended in the air for long periods of time. Both PM 10 and PM 2.5 have been determined to cause serious adverse health effects.

According to an April 2012 report by the California Air Pollution Control Officer’s Association “California’s Progress Toward Clean Air”:

*Despite significant improvements, air quality remains a major source of public health concern in large metropolitan areas throughout California. The San Joaquin and South Coast Air Basin*

*continue to face significant challenges in meeting the federal health-based standards for ozone and fine particles, despite their regional and state-level controls on mobile and stationary sources that are the most stringent in the nation. In 2007, both regions sought extension for meeting the 1997 8-hour federal ambient air quality standard for ozone. A comparable challenge faces each region with respect to attainment of the 1997 PM<sub>2.5</sub> standard. Due to continued progress in health research, the federal EPA lowered the ambient concentration for the 8-hour ozone and 24-hour PM<sub>2.5</sub> standards in 2008 and 2006, respectively. The net effect of these stricter standards is to raise the performance bar for California air basins. This will extend the timeframe for attainment in highly polluted regions as well as increase the number of basins with non-attainment status. Challenges also exist for air districts across California who are in attainment with the federal standards, as they continue to strive for attainment of the State's health-based ozone and PM standards, which are more stringent than the standards adopted by the US EPA.*

According to the Sponsor, areas designated nonattainment are mandated under the provision of the federal Clean Air Act to require (pursuant to New Source Review Rules) Best Available Control Technology (BACT) and offsetting emissions reduction on major new or modified stationary sources of those nonattainment air pollutants and their precursors regardless of whether or not the area so designated has any control and not over the pollution causing the nonattainment finding.

The Sponsor also notes that there are a variety of other mandates and regulations at the state level that have the potential to conflict both directly and indirectly with the implementation of AB 32 measures being proposed and implemented by CARB. Two measures pointed out by the Sponsor are the existing mandate for local jurisdictions to divert 50% of solid waste from landfills (Public Resources Code 41780) and the state Renewable Portfolio Standard (RPS) that requires all retail sellers (Investor Owned Utilities, electric service providers, and community choice aggregators) and all publicly owned utilities to procure at least 33% of electricity delivered to their retail customers from renewable resources by 2020.

**Fiscal Impact:**

Unknown. No direct fiscal impact to city general funds.

**Existing League Policy:**

Specific to this Resolution, existing policy states:

**Air Quality**

- The League believes cities should have the authority to establish local air quality standards and programs that are stricter than state and federal standards. The League opposes efforts to restrict such authority.
- The League opposes legislation redirecting the funds authorized by Health and Safety Code Section 44223, which are currently used by local governments for locally based air quality programs.
- The League opposes air quality legislation that restricts the land use authority of cities.

**Climate Change**

- The League recognizes that climate change is both immediate and long term, with the potential for profound environmental, social and economic impacts to the planet and to California.
- Through the Global Warming Solutions Act of 2006 (AB 32 (Nuñez) Chapter 488, Statutes of 2006) California has embarked on a plan that requires the reduction of greenhouse gas emissions to 1990 levels by 2020. Although uncertainty remains about the pace, distribution and magnitude of the effects of climate change, the League recognizes the need for immediate actions to mitigate the sources of greenhouse gas emissions and has adopted the following principles:
  1. Action Plans for Mitigating Greenhouse Gas Emissions. Encourage local governments to complete

an inventory of greenhouse gas emissions, set appropriate reduction targets, and create greenhouse gas emission reduction action plans.

2. Smart Growth. Consistent with the League's Smart Growth policies, encourage the adoption of land use policies designed to reduce sprawl, preserve open space, and create healthy, vibrant, and sustainable communities.
3. Green Technology Investment Assistance. Support tax credits, grants, loans and other incentives to assist the public, businesses, and local agencies that invest in energy efficient equipment and technology, and fuel efficient, low emission vehicles.
4. Energy and Water Conservation and Efficiency. Encourage energy efficiency, water efficiency, and sustainable building practices in new and existing public, residential and commercial buildings and facilities. This may include using the U.S. Green Building Council's LEED program or similar systems.
5. Increase the Use of Clean Alternative Energy. Promote the use and purchase of clean alternative energy through the development of renewable energy resources, recovery of landfill methane for energy production and waste-to-energy technologies.
6. Reduction of Vehicle Emissions in Public Agency Fleets. Support the reduction of vehicle emissions through increased fuel efficiency, use of appropriate alternative fueled vehicles, and/or low emission vehicles in public agency fleets. Encourage the use of appropriate alternative fueled vehicles, and/or low emission vehicles in private fleets.
7. Climate Change Impacts. Encourage all levels of government to share information to prepare for climate change impacts.
8. Coordinated Planning. State policy should encourage and provide incentive for cities to coordinate and share planning information with neighboring cities, counties, and other governmental entities so that there are agreed upon regional blueprints and strategies for dealing with greenhouse gas emissions.
9. Water Supply for New Development. Encourage exchange of water supply information between state and local agencies, including information on the impacts of climate change on state and local water supplies.
10. Recycles Content and Green Purchasing Policies. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.

Additionally, the League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

Finally, the League's Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

### **RESOLUTIONS REFERRED TO PUBLIC SAFETY POLICY COMMITTEE**

**◆1 A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Source: City of Glendora  
Referred to: Revenue & Taxation Policy Committee  
Recommendation to General Resolutions Committee:

**WHEREAS,** the primary purpose of criminal and traffic laws is to improve safety for the public, where the cost involved to implement enforcement falls primarily upon local law enforcement agencies throughout the State; and

**WHEREAS,** if State laws are to be effectively enforced then local cities must have a fair revenue structure to pay the cost of making arrests and issuing citations for criminal and traffic violators; and

**WHEREAS,** the significant inequity in the amount cities receive in relation to the full cost of a citation and/or arrest results in an unfair distribution of revenue to cities that are generated by court fines, fees, surcharges, penalties and assessments levied on offenders; and

**WHEREAS,** the current inefficiencies in the system makes it practically impossible for cities to insure transparency and effectively audit, administer and manage public funds that are generated by cities and distributed by the State and County; and

**WHEREAS,** to adequately protect and serve the public during this time of declining revenue and deteriorating services the inequities in the system needs to be changed; and

**WHEREAS,** court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements; and

**WHEREAS,** once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed by the court has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections; and

**WHEREAS,** the current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected; and

**WHEREAS**, Counties and the State have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed; and

**WHEREAS**, in December 2011 at the request of the Glendora Police Department the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the City of Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit were sent to collection or warrants. Based on those results, the city received an average of \$21, while the State and County received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the State and County's share of 86.75%; and

**WHEREAS**, issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the time of a records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation currently is between \$82 and \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery; and

**WHEREAS**, officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the State issuing citations due to the complexity and "Priority of Distribution" they must follow from the State of California. "Priority Distribution" is triggered when a court reduces a fine for a citation. This process prohibits Judges from reducing penalty assessments and thus the only discretion Judges have in reducing fines, fees and costs is to reduce the base fine, or city portion, of the total fine. This process has a significant impact on the amount of money cities issuing the citation will receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priorities on the distribution list and often find themselves receiving significantly less share-or no share after deducting State and County fees and surcharges; and now there let it be

**RESOLVED** by the General Assembly of the League of California Cities, assembled in San Diego on September 7, 2012, that the League of California Cities calls upon the State Legislature and Governor to:

1. Create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations;
2. Enact legislation that changes the "Priority Distribution" mandate so cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations; and
3. That any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed, not just from the city base fine.

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**Background Information on Resolution No. 1**

**Source:** City of Glendora

**Background:**

Court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected.

Once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts, depending on the fine, fee, surcharge or penalty assessment imposed by the court and California has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different government code.

County and state have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed.

At the request of the City of Glendora, in December 2011, the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit had been sent to collection or warrants. Based on those results, the city received an average of \$21, while the state and county received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the state and county's share of 86.75.%

Issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation that is currently between \$82 about \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery.

Officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the state because when a court reduces a fine it triggers a process called "Priority Distribution." This process prohibits Judges from reducing penalty assessments imposed by the county and state and thus the only discretion that Judges have in reducing fines is to reduce the Base Fine (City Portion) of the total fine. This mandate has a significant impact on the amount of money cities issuing the citation receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priority on the distribution so often they find themselves receiving significantly less share-or no share after deducting state and county fees and surcharges.

The primary cost to implement enforcement falls upon local law enforcement agencies throughout the state. This Resolution calls upon the State Legislature and Governor to create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations. In addition, legislation should be developed and passed that changes the "Priority Distribution" mandate so the cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations and that any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed.

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## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214  
Committee: Public Safety Policy Committee

Staff: Dan Carrigg, Legislative Representative, (916) 658-8222  
Committee: Revenue and Taxation Policy Committee

### **Summary:**

This Resolution urges the League of California Cities, through legislative or administrative means, to clarify the authority for cities to audit the distribution of court imposed fines, fees, penalty assessments and administrative costs for criminal and traffic violations.

It also urges the League to seek legislative changes to the “Priority Distribution” statutory formula so that cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations. The current statutory formula allows reductions to the base fine but maintains the same level of penalty assessments, based upon the full penalty charge.

Finally, any reductions that may occur in fines, fees, assessments or costs determinations should be equally distributed from the total fine imposed, not just from the city base fine.

This Resolution raises several policy questions:

- 1) Should cities have the authority to request audits and receive reports from a county or the state on the local share of revenue resulting from criminal and traffic violation penalties?
- 2) Should cost-recovery be a driving factor in setting monetary penalties for criminal or traffic violations?
- 3) Should reductions (as ordered by a judge) to the fines owed by violators be taken just out of the base fine, or should the base fine and related penalty assessments be reduced proportionately?

### **Background:**

In California, criminal offenders may have additional penalty assessments made to their base fines. These penalty assessments are based on the concept of an “abusers fee,” in which those who break certain laws will help finance programs related to decreasing those violations. For example, drug and alcohol offenses and domestic violence offenses are enhanced by special assessments on fines that directly fund county programs designed to prevent the violations. All other criminal offenses and traffic violations are subject to penalty assessments that are used to fund specific state programs.

According to the Resolution sponsor, the City of Glendora, the court-ordered collection of penalty fines and additional assessments, as well as the subsequent revenue distribution, is a complex system where few audits are conducted to determine if cities are receiving their share of collections. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities.

The League recently held in-depth policy discussions related to audit authority in light of the misconduct charges against the City of Bell in 2011. The League convened a technical working group to review audit legislation and administrative efforts by the State Controller’s Office. Following the work of this group, the League Board adopted principles supporting transparent, accurate financial and performance information. (See “Existing Policy” section below.) However, these principles did not address expanding cities’ audit authority over the state, counties, or other public agencies.

The sponsors state that there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed, there are more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections.

Generally, the base fines for criminal and traffic citations are significantly lower than the additional penalty assessments levied by the state and counties. In some instances, the penalty assessment for state and local programs can be three or four times the amount collected by the city or county agency that issued the citation through their local enforcement authority. The amount each program account receives is based on a statutory formula. For example, if a driving under the influence (DUI) fine is \$1000, specific dollar amounts proportionate to the base fine are added under six different code sections for a total price tag of \$3,320 for the offense.

Some examples of program accounts receiving penalty assessment revenues include Peace Officer Standards and Training (POST), victim witness protection and services, court security, court construction, forensic laboratories for DNA identification, and automated fingerprint identification. The impact of programs largely funded, if not solely funded, by penalty assessment revenue casts a wide net of stakeholders including counties, sheriffs, district attorneys, public defenders, fish and game wardens, victim advocates, and access to the judicial system advocates. Cities are also partial benefactors of penalty assessment funded programs related to law enforcement.

For the last three decades, this policy area has been under great scrutiny and study but with little reform taking place. The recommendations from past studies and reports to consolidate penalty assessment accounts or their collections efforts, which would require legislative action, have likely not gained traction because of the inevitable loss of revenue for the specific programs and the affected interest groups.

In 1986, the Legislature enacted Senate Concurrent Resolution 53, requiring the Legislative Analyst Office (LAO) to study the statutory penalty assessments that are levied by the courts on offenders and the state programs that the funds support. The completed 1988 study found a complicated system of collection and distribution of penalty funds. The LAO was unable to fully identify the source offenses that generated penalty revenues because of limitations in most county collection systems.

In 2005, the California Research Bureau issued a report for the Assembly Public Safety Committee on county penalty assessments that drew similar conclusions. They stated the complexity of the system means poor revenue collection, disproportionate justice for debtors, and undermines the usefulness of fines as a punishment or deterrent. They recommended efforts to streamline and consolidate collections, funding, and appropriations.

After some delay, the state created the Administrative Office of the Court's Court-Ordered Debt Task Force, which is charged with evaluating and exploring means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees. This Task Force has been asked to present preliminary recommendations to the Legislature regarding the priority in which court-ordered debt should be satisfied and the use of comprehensive collection programs. Currently, the League of California Cities has two appointments to the Task Force. However, the Task Force has been put on hiatus and has not met for approximately 12 months due to significant state cuts to the court budget in recent years.

Currently, legislation was introduced this year to address the issue of cities not recouping the costs of issuing citations. The response has been to increase the base fine and not change penalty assessments. Assembly Bill 2366 (Eng) would increase the base fine of "fix-it" tickets from \$10 to \$25 dollars. This has largely been successful in the legislative fiscal committees because with every increase to the base fine for the issuing agency, so increases the state and county share of penalty assessments proportionately.

Lastly, in most instances when the legislature takes into consideration a fine increase, be it for manufacturer product responsibility or criminal acts, the legislature focuses on how the increased fine will alter behavior, not on recovering the costs of enforcing that violation.

**Fiscal Impact:**

Unknown. Potential additional revenue received by cities, if any, would vary based on total citations issued and collected.

**Existing League Policy:**

Related to this Resolution, existing policy offers:

- Cities and the League should continue to emphasize efficiency and effectiveness, encouraging and assisting cities to achieve the best possible use of city resources.
- The League supports efforts to preserve local authority and accountability for cities, state policies must ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fee, etc.

*Audit Principles Adopted by the League Board*

- Given the State already has substantial authority to examine local government financial practices, and recognizes the significant resources required by auditors and local governments to complete audits, additional authority should only be granted to a State agency when there are documented insufficiencies in its existing authority.
- Governmental financial audits and performance audits ensure financial integrity and promote efficient, effective and accountable local government.
- Transparent, accurate financial and performance information is necessary for citizens to have confidence that their interests are being served, and for decision makers to be accountable for ensuring that public funds are spent appropriately and effectively.
- Public trust is inspired when auditors perform their work with independence, objectivity and integrity, remaining free from personal, external and organizational impairments to that independence, both in fact and in appearance.
- Public confidence in government is maintained and strengthened when financial and performance information is collected, managed and reported in accordance with nationally recognized professional accounting and auditing standards.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

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**2. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES RAISING PUBLIC AWARENESS AND SUPPORTING TOUGHER LAWS RELATED TO INTERNET CRIMES AGAINST CHILDREN**

Source: San Diego County Division  
Referred To: Public Safety Policy Committee  
Recommendation to General Resolutions Committee:

**WHEREAS**, technology has brought significant changes to our society over the past two decades, many of which have had a positive effect on our quality of life while some have threatened the safety and well-being of our young children; and

**WHEREAS**, the internet has made victimization of children easier than ever before; and

**WHEREAS**, the internet has also significantly increased the availability of child pornography, with more than 6.5 million images being shared via the internet, compared to only a few hundred photos less than a generation ago; and

**WHEREAS**, some see viewing child pornography as a “victimless crime,” however these images are never completely eradicated from the internet and the victims continue to have their horrific photos viewed over and over again by pedophiles for sexual gratification; and

**WHEREAS**, in 2007 the National Center for Missing and Exploited Children reported it had identified 9.6 million images and videos of child pornography and believed there were millions more not identified; and

**WHEREAS**, in the 2006 Butner Redux Study, 98 percent of convicted child pornographers had molested children before their capture; and

**WHEREAS**, the United States is the number one producer and consumer of child pornography in the world, with more than 624,000 child pornography users identified nationwide.

**NOW THEREFORE BE IT RESOLVED** by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League of California Cities:

1. Desires to increase public awareness and educate others about the critical issue of internet crimes against children statewide.
2. Requests the League advocate for the State Legislature to adopt tougher laws for child pornographers.

3. Requests the League advocate for additional and more permanent funding for Internet Crimes Against Children Task Forces (ICAC) statewide.

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### **Background Information on Resolution No. 2**

**Source:** San Diego County Division

**Background:**

Technology has brought significant changes to our society over the past two decades. While most have had a positive effect on our quality of life, many have threatened the safety and well-being of our young children.

The internet has made victimization of children much easier than ever before. Today, pedophiles can network with one another online, encourage one another to commit crimes against children, and share tips on evading law enforcement. Worse yet, they often use the internet – social media sites, in particular – to find and prey on young children. Many times, these innocent children are lured away from their homes by these perpetrators and never seen again.

The internet has also significantly increased the availability of child pornography. More than 6.5 million child abuse images are being shared via the internet today. Before this technology was in place, the number of photos available numbered in the few hundreds.

While some see viewing child pornography as a “victimless crime,” nothing could be further from the truth. One study showed that 98 percent of convicted child pornographers had molested children before being captured (Butner Redux Study, 2006).

Additionally, these images can never be completely eradicated from the internet once they are placed online. Therefore, victims continue to suffer the irrevocable damage of knowing their horrific photos are being viewed over and over again for sexual gratification by pedophiles.

Many believe these horrendous crimes happen mostly in other countries. Sadly, the United States is the number one producer and consumer of child pornography in the world, and American children are the primary victims. More than 624,000 child pornography users have been identified nationwide and thousands of these reside in San Diego County.

While the internet is exploited by these predators to harm children, it ironically is the same tool used by law enforcement to track down and arrest these criminals.

Your help is urgently needed to secure resources for this effort, increase public awareness, work to support tougher laws and educate others on this critical issue. While San Diego has one of the nation’s 61 ICAC task forces, its six trained investigators are overwhelmed with cases due to funding shortfalls.

With your help, these predators can be taken off the street and our children will be safer. Here is what needs to be done:

**Change state law.** The current "wobbler" (misdemeanor and felony) wording should be eliminated. All child pornography charges should be made a straight felony.

**Strengthen sentencing.** State sentencing on child pornography cases needs to be more in line with

federal sentencing.

**Toughen discovery statutes.** State discovery statutes should be amended to comply with the Adam Walsh Act. Child pornography is contraband that is easily reproduced and should be treated as such.

**Change pornography evidence rules.** Stop the practice of giving copies of child pornography evidence to the defense. Instead, provide the defense a secure area where they can view the evidence but not take possession of it.

**Strike current law about possession/distribution of child pornography.** Currently, state law allows for a defendant's conviction for possession and distribution of child pornography to be set aside if he/she has complied with all probation conditions, pursuant to Penal Code Section 1203.4.

**Strengthen disclosure laws.** If applying for any job other than public office, licensure by any state or local agency, or for contracting with the state lottery, a convicted possessor of child pornography does not need to disclose their prior conviction. That allows people who have been convicted of possessing or dealing in photos of child exploitation to get closer to children. PC 1203.4 already has exceptions for convictions of PC 286(c), 288, 288a(c), 2813.5, 289m, felony 261.5(d) and 42001(b) of the Vehicle Code. These convictions may not be set aside per PC 1203.4 and must always be disclosed. PC 311.1, 311.2, 311.3, 311.4, 311.10 and 311.11 should be added to the list of charges to which this type of relief does not apply.

**Update reporting laws.** The existing mandatory reporting law should be updated to include librarians and computer technicians.

**Provide permanent funding for ICAC.** Significantly more permanent funding is needed for Internet Crimes Against Children Task Forces (ICAC's). They are tasked with investigating crimes against children involving electronic devices. The crimes include child pornography, child molestation and peer-to-peer bullying. ICAC task force's are severely undersized and underfunded to keep up with the magnitude of the growing problem.

**Increase public awareness.** Public awareness of the issue needs be heightened particularly to parents and children as well as all public officials and the community in order to protect our children against these unspeakable crimes.

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## **League of California Cities Staff Analysis on Resolution No. 2**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214

Committee: Public Safety Policy Committee

### **Summary:**

This Resolution seeks to increase public awareness of the prevalence of internet crimes against children. To help promote this goal, the Resolution requests the League of California Cities advocate for legislation that creates tougher laws for child pornographers and provides additional, more permanent funding for Internet Crimes Against Children (ICAC) Task Forces.

### **Background:**

According to the Resolution sponsors, the U.S. Census Bureau (2005) estimates that there are over 24.5 million internet users in the United States between the ages of 10 and 17. They cite that the rapid growth of internet accessibility has brought forth helpful tools for our children and youth. Unfortunately, it has also brought with it the increased potential for online victimization including unwanted exposure to sexual material, unwanted sexual solicitations, and online harassment.

The Internet Crimes Against Children (ICAC) Program was created to help federal, state and local law enforcement agencies enhance their investigative responses to offenders who use the internet, online communication systems, or computer technology to sexually exploit children. The program is funded by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The program is a national network of 61 coordinated task forces representing over 3,000 federal, state, and local law enforcement and prosecutorial agencies. These agencies are engaged in proactive investigations, forensic investigations, and criminal prosecutions.

In FY 2009, ICAC Program received \$25 million under the Omnibus Appropriation Act to support ICAC task forces, training, and technical assistance. The ICAC Program received an additional \$50 million through the **American Reinvestment and Recovery Act** to support ICAC task forces, training, technical assistance, and research. In each of the past two fiscal years, the program received \$30 million nationally.

Existing California law addresses the policy area extensively in the areas of solicitation, pornography, and harassment with additional penalties often levied when the victim is a minor less than 14 years of age. Internet-based crimes against minors have been a popular topic in recent legislative proposals especially as new web-based technology is brought into the market. Legislation has included both increased penalties and greater protections or remedies for victims.

**Fiscal Impact:**

Unknown. No direct fiscal impact to city general funds.

**Existing League Policy:**

Related to this Resolution, existing policy offers:

The League believes that the children of California must be recognized as our state’s most valuable resource. Their development, education, and well-being are key to our state’s future. Further, it is essential that each child have the support needed to become a productive citizen in the world of the 21<sup>st</sup> Century.

The League supports the promotion of public safety through stiffer penalties for violent offenders.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

- 1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.
  
- 2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.
  
- 3) **Build Strong Partnerships for a Stronger Golden State:** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

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**5. A RESOLUTION CALLING FOR AN EMERGENCY MANAGEMENT MISSION FOR CALIFORNIA CITIES**

Source: League Public Safety Policy Committee

Referred To: Public Safety Policy Committee

Recommendation to General Resolutions Committee:

**WHEREAS**, emergency management is a basic responsibility of city government and a fundamental duty of all city employees; and

**WHEREAS**, prepared, disaster resilient communities save lives, prevent injuries, protect property, promote economic stability, and rapid recovery; and

**WHEREAS**, employees who have a family plan and supplies will be more likely to stay at work or come to work after an emergency incident; and

**WHEREAS**, the National Incident Management System (NIMS) provides guidelines and requirements to ensure a national coordinated emergency response system, including training requirements; and

**WHEREAS**, the Standardized Emergency Management System (SEMS) provides the foundation for California cities to ensure a state-wide coordinated, standardized emergency response system. SEMS is intended to be flexible and adaptable to the needs of all emergency responders in California; and

**WHEREAS**, emergency managers are responsible for promoting and encouraging personal, family and community preparedness and readiness. It is critical to focus on and support public education and training to ensure that the public understands that government entities may need time to recover from disaster situations, and to spread the message that disaster resilience, or the ability to recover from a disaster situation, requires participation from the whole community; and

**WHEREAS**, The League of California Cities (League) recognizes that cities, counties and the state do not have the reserves to support residents with food, water, and other necessary supplies after an “emergency event”. Now, therefore let it be

**RESOLVED**, at the League General Assembly, assembled at the League Annual Conference on September 7, 2012, in San Diego, that the League encourages cities to actively pursue employee and resident emergency preparedness. In addition, the League encourages cities to actively engage residents in emergency preparedness programs that promote creating a family plan, including having supplies of food and water, in the promotion of self-reliance.

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**League of California Cities Staff Analysis on Resolution No. 5**

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214

Committee: Public Safety Policy Committee

**Summary:**

This Resolution seeks to create a clear statement of support for emergency preparedness in the League of California Cities existing policy and guiding principles. Specifically, it requests that the League encourages cities to actively pursue employee and resident emergency preparedness and to engage residents in

emergency preparedness programs that promote creating a family plan, that includes provisions for supplies of food and water, in the promotion of self-reliance, with the ultimate goal of creating “disaster resilient” cities.

**Background:**

This resolution was brought to the Public Safety Policy Committee by that committee’s Emergency and Disaster Preparedness Subcommittee to create a clear statement of support for emergency response, management, and recovery efforts as a community. While the League has extensive policy that supports related activities, there is no explicit statement of support in the existing policy or guiding principles.

In addition, numerous articles in *Western City Magazine*, the League’s monthly publication, have featured case studies and best practices about emergency response and disaster preparedness. This topic has been a key component of the Public Safety Committee’s work program for the last five years.

**Fiscal Impact:**

Unknown. This Resolution does not seek to create new requirements for the League or cities. Possible costs to cities that take steps to educate community members about disaster preparedness could be off-set by future limited damage and loss of life or injury due to those preparedness efforts.

**Existing League Policy:**

Related to this Resolution, existing policy provides:

The League supports the 2-1-1 California telephone service as a non- emergency, human and community services and disaster information resource.

The League supports “Good Samaritan” protections that include both medical and non-medical care when applicable to volunteer emergency, law enforcement, and disaster recovery personnel. The League also supports providing “Good Samaritan” protections to businesses that voluntarily place automated external defibrillators (AEDs) on their premises to reduce barriers to AED accessibility

The League supports activities to develop and implement statewide integrated public safety communication systems that facilitate interoperability and other shared uses of public safety spectrum with local state and federal law enforcement, fire, emergency medical and other public safety agencies.

The League supports a single, efficient, performance-based state department (the California Emergency Management Agency) to be responsible for overseeing and coordinating emergency preparedness, response, recovery and homeland security activities.

The League supports disaster recovery legislation that includes mitigation for losses experienced by local government.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

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**RESOLUTION REFERRED TO REVENUE AND TAXATION POLICY COMMITTEE**

- ◆1 **A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Resolution #1 also referred to Public Safety Policy Committee. **Please see Public Safety Policy Committee section for the resolution, background and staff analysis information.**