



CITY OF MORRO BAY HARBOR ADVISORY BOARD AGENDA

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

**Regular Meeting - Thursday, September 5, 2013
Veteran's Memorial Building - 6:00 P.M.
209 Surf Street, Morro Bay, CA**

Jeff Eckles, Chair

Bill Luffee, Vice Chair
Jim Phillips
Lynn Meissen

Gene Doughty
Dana McClish
(Vacant)

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
CHAIR AND ADVISORY BOARD MEMBER ANNOUNCEMENTS & PRESENTATIONS

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Commission on City business matters other than scheduled items 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 Chair, please come forward to the podium and state your name and address for the record. Commission meetings are audio and video recorded and this information is voluntary and desired for the preparation of minutes.
- Comments are to be limited to three minutes.
- All remarks shall be addressed to the Commission, as a whole, and not to any individual member thereof.
- The Commission 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 Commission to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in Commission 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 Harbor Department's Office Assistant at (805) 772-6254. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

- A-1 Approval of Minutes from Harbor Advisory Board meeting held on
August 1, 2013
Staff Recommendation: Approve minutes.

B. PUBLIC HEARINGS, REPORTS, AND APPEARANCES

- B-1 Harbor Department Status Report
Staff Recommendation: Receive and file.

C. UNFINISHED BUSINESS

- C-1 Update from Boatyard/Haulout Ad-Hoc Committee on Committee's Recent Activities
Staff Recommendation: Receive and file.

D. NEW BUSINESS

- D-1 Measure D Study Session to Take Public and Harbor Advisory Board Input on Placing an Initiative on the General Ballot in Regard to Amending the Measure
Staff Recommendation: Review background information and staff report, consider public input, and provide a recommendation to the City Council for their review.

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 the Morro Bay Harbor Department, 1275 Embarcadero, for any revisions or call the department at 772-6254 for further information.

Materials related to an item on this Agenda are available for public inspection during normal business hours at the Harbor Department and at Mill's/ASAP, 495 Morro Bay Boulevard, or online at www.morrobay.ca.us. Materials related to an item on this Agenda submitted to the Board after publication of the Agenda packet are available for inspection at the Harbor Department during normal business hours or at the scheduled meeting.

CITY OF MORRO BAY

HARBOR ADVISORY BOARD

SYNOPSIS MINUTES

The regular meeting of the City of Morro Bay Harbor Advisory Board was held Thursday, August 1, 2013 at 6:00 PM in the Veteran's Hall, 209 Surf ST, Morro Bay, California.

ESTABLISH QUORUM AND CALL TO ORDER

| | | |
|----------|----------|---|
| Present: | Members: | Gene Doughty Jeff Eckles Bill Luffee Dana McClish Lynn Meissen Jim Phillips (Vacant Seat) |
| | Staff: | Eric Endersby, Harbor Director Polly Curtis, Office Assistant |

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CHAIR AND ADVISORY BOARD MEMBER ANNOUNCEMENTS & PRESENTATIONS

Mr. McClish said the Morro Bay National Estuary Program is looking for volunteers to assist with the planting of 8,000 eelgrass plants in the bay. Sign up at their website: www.mbnep.org

Chair Eckles notified the Board that Agenda Item C-1 "Update from Boatyard/Haulout Ad-Hoc Committee on Committee's Recent Activities" has been moved to the September Harbor Advisory Board meeting.

PUBLIC COMMENT

Mr. Gary Hickson said the Harbor Advisory Board is doing a good job. He reviewed all the current events in Morro Bay.

Mr. Bob Fowler, City Leaseholder of Morro Bay Landing at 1215 Embarcadero, reviewed his lease site plans for the Board. He said he's received approvals from the City Council and the Army Corps of Engineers, and hoping to receive the building permit in two weeks.

Mr. Fowler said the first phase of the docks and slips will be built by Associated Pacific, with a target completion date of the end of September. There will be space for 22 boats. He is negotiating with Patriot Sport Fishing out of Avila to run a bait operation in Morro Bay. He said the second phase of docks should be completed in 2019. He presented an overhead view of the proposed docks and slips, and answered questions from the Board.

A. CONSENT CALENDAR
A-1 MINUTES

Mr. Phillips moved the June 6, 2013 Harbor Advisory Board minutes be approved as submitted. The Motion was seconded by Ms. Meissen and carried unanimously.

B. PUBLIC HEARINGS

B-1 Harbor Department Status Report

Mr. Endersby briefed the Board on the following topics:

Mega Yacht Hetairos 218' Visits MB

Harbor Patrol Staffing:

Introduced HPO Jeremiah Jacobs

New Harbor Patrol Vessel

New Harbor Patrol Trucks

Recent Events:

Tip-a-Cop Fundraiser

OES K9s Rescue Dog Meet and Greet

Fourth of July Event

44th Annual Brian Waterbury Memorial Rock to Pier Run

2nd Annual Rock'n Around the Pier Half Marathon

Junior Lifeguard Program

Rescue Incidents:

June 20 Cal Poly Student Missing at Spooner's Cove

June 23 Overturned Recreational Vessel at South Jetty

July 14 Recreational Vessel on Rocks at Spooner's Cove

Auction at Harbor Yard: Set for Sunday, August 18th at Noon

B-2 Review of Harbor Lease Sites with Construction or Other Lease/Lease Site Activity Currently Underway

Mr. Endersby presented an overhead map of the Harbor Department lease sites, and briefed the Board on activity or construction on the following lease sites:

- 30W-33W, Bay Front Marina (Coakley)
- 34W (Crizer)
- 37W Morro Bay Marina/Boatyard (Meyer)
- 50-51/50W-51W (Whibley)
- A1-3 Mooring Area, Morro Bay Yacht Club
- 62/62W, Kayak Horizons (Krueger)
- 63-64/63W-64W, Gray's Inn and Gallery (Gray)
- 65-66/65W-66W, Salt Building (Imani)
- 67/67W (Viola)
- 68/68W (Held)
- 69-70/69W-70W, Morro Bay Aquarium (Tyler)
- 82-85/82W-85W, Rose's Landing (Redican)
- 86/86W, 801 Embarcadero LLC (Caldwell)
- 87/87W, Off the Hook (V. Leage)
- 90/90W, Otter Rock Café (Steinmann)
- 93-95/93W-95W, The Harbor Center (Held)
- 96/96W, Rocca's (Van Beurden)
- 102/102W & 105.1W-105.2W, Central Coast Seafoods (Degarimore)
- 110W-112W, Great American Fish Co. (G. Leage)
- 122-123/122W-123W, Harbor Hut (T. Leage)
- 124-128/124W-128W & 113, Morro Bay Landing (Fowler)
- 129W-131W, Morro Bay Fish Co. (Santa Monica Seafood)
- Vacant Lease Site Request for Proposals

Chair Eckles commented on the proliferation of signage and flyers stapled to posts at Mr. Imani's business. Mr. Endersby said Code Enforcement (by City Attorney) is in ongoing discussions with Mr. Imani to resolve the issues of large banners and sandwich board signage.

Discussion by the Board on Lease Site 67/68 that the bay-side boardwalk is 3' lower than sidewalk; and also The Inn at Morro Bay's water lease (in front of the Inn) where the cliff is eroding; the difference between Pipkin leases and regular leases; the removal of the whale statue from Whale's Tale (last seen at McCarthy Steel in SLO); and the many new slip/dock proposals and improvements.

C. UNFINISHED BUSINESS

C-1 Update from Boatyard/Haulout Ad-Hoc Committee on Committee's Recent Activities

THIS AGENDA ITEM HAS BEEN MOVED TO THE SEPTEMBER HAB MEETING.

D. NEW BUSINESS

D-1 State Park Marina Proposed Major Maintenance Plan for 2013/2014

Mr. Endersby said the owner of Associated Pacific Constructors (APC), Paul Gillen, is not available to make the presentation. He reviewed the background of the concessionaire agreement between Associated Pacific and the state, as well as the requirement of APC to submit a Major Maintenance Program (MMP) at the beginning of each fiscal year. He said APC is required to allocate 15% of their projected revenues from operating the marina into the MMP.

Mr. Endersby reviewed the project of replacement of the State Park Marina Docks 4 and 7, which was completed in April, and the replacement of all finger docks scheduled for completion in March 2013.

Mr. Luffee asked if there is still a discussion on the possibility of the City taking over management of the State Park Marina. Mr. Endersby said the City Council has the item on their tentative agenda for discussion in September or possibly October. This topic will go to the Harbor Advisory Board before Council review.

Chair Eckles asked if there is a mechanism to verify the actual cost of the maintenance projects after completion. Mr. Endersby said the Harbor Department confirms the amounts by reviewing receipts and documents.

E. DECLARATION OF FUTURE AGENDA ITEMS

**Sep: Ad Hoc Committee Report on Haulout/Boat Storage Facility
Draft Harbor Department Rules and Regulations Re: Discussion of Slip
Regulations for Fishermen Owning Two Boats**

Review of Measure D

**Oct: Discussion on Alternative MBCFO Members for HAB Seat Vacancy
Presentation by a Commercial Fisherman on Types of Fishing
Morro Bay's Clean Marina Certification**

F. ADJOURNMENT

This meeting was adjourned at 6:45 PM.

Submitted by,

Polly Curtis

Polly Curtis
Harbor Department



AGENDA NO: B-1

MEETING DATE: September 5, 2013

Staff Report

TO: Harbor Advisory Board
FROM: Eric Endersby, Harbor Director
SUBJECT: Harbor Department Status Report

DATE: August 28, 2013

RECOMMENDATION

Receive and file.

DISCUSSION

Fishing: Over the past few weeks we had a pretty significant showing of market squid in the area, which brought several out-of-town vessels that participated in the catch. For one two-week stretch both the Morro Bay Fish Company dock and the Degarimore/Giovanni's dock had 5-10 semi-truck loads a day that were crowding the waterfront and creating quite a spectacle. During the busiest week, it was estimated that the two docks unloaded a combined 1000 tons, or 2 million pounds of squid. Although squid normally spawn in this area, fishing and unloading depend on specialty equipment on the docks, which until two years ago wasn't available here. All in all the bite was a boon to the docks and the local economy with all the visiting squid seine and light boats coming and going.

Recreational and commercial salmon fishing has been pretty slow as of late. The commercial season runs through September 30, and the recreational season through October 6 in our area, although typically mid-August is about the extent of the fish actually being in our area in any numbers. Most of our commercial salmon boats are fishing out of the Bay Area or beyond for any decent numbers.

Also on the horizon is the recreational albacore tuna season. Although not constrained by a regulatory season, albacore in our area are regulated by Mother Nature and depend on the right temperature and clarity of water moving in, which is just starting to occur in our area. Up off of Monterey and Santa Cruz the recreational fishermen are beginning to find the albacore offshore in their area, which is typical of the season.

Prepared By: EE

Dept. Review: EE

New Harbor Patrol Vessel: Progress continues on the new Patrol vessel construction in Santa Barbara, with the vessel moving from the "dirty" side of the yard where all the fiberglassing and sanding takes place, to the "clean" side for outfitting and installation of the various equipment, engines, etc.

North T-Pier: Completion of the engineering and bid documents are expected in early September, with bid packages going out later in the month.

Recent Events: Various City departments, including Harbor, lent assistance to Project Surf Camp, a non-profit organization designed to educate individuals with special needs. As their name implies, Project Surf Camp largely revolves around beach and ocean activities to teach the kids confidence, self esteem, and self-efficiency.

During the week of August 19th the National Estuary Program, in conjunction with other organizations including as the Black Brant Group, transplanted healthy eelgrass from a "donor" bed at Coleman Beach to various locations in the back-bay. This project was to not only help reestablish depleted back-bay beds, but also to test various transplanting techniques and locations.

Lease News: Percent-of-gross lease sales reporting was due and payable in July, and we are pleased to report that revenues are significantly up over last year on nearly all sites, some as much as 50%. This not only bodes well for the economy in general, but for the Harbor Fund as we estimated and budgeted for only a 1.7% revenue increase over last year.

The Request For Proposals (RFP's) for developing several historically vacant lease sites were due August 15th, but we received only one proposal from Virg's Fish'n for site number 107W-108W, the revetment and water-only lease between the south T-Pier and the slips to the pier's south. Staff will begin the evaluation process in the near future.

The draft RFP to redevelop the Morro Bay Aquarium lease site was approved by the City Council at their August 13th meeting. The Council-approved changes to the RFP are being made and the package will go out to the public in the near future.

The Morro Bay Landing (ex-Virg's) is up and running with the party boat Black Pearl now operating out of the site. It is also reported that their bait receivers are built and in the water, and awaiting bait to be delivered from the Avila-based Billy Boy.

The Harbor Hut project, a Planning Commission and Council-approved project that consists of an upstairs office and storage addition to enable more efficient use of the site, as well as to provide a break room for employees, was heard at the Coastal Commission on August 15th in Santa Cruz with a Coastal staff recommendation for denial. Good news, however, is that the Commission voted 7-1 to approve and the project will move forward.

On September 12 we will be conducting our annual Safety and Awareness meeting with the local kayak and rental boat and bay tour boat business owners. These meetings are to discuss and reiterate local safety, awareness, and environmental concerns, as well as to hear the concerns of our business operators to ensure that Morro Bay waters remain as safe and enjoyable as possible for everyone.

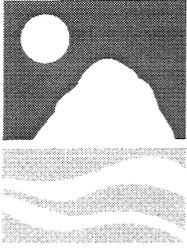
Beach Lifeguards: Beach Lifeguards go to weekends-only after the Labor Day holiday weekend, and will run through the Harbor Fest weekend. After that we roll the towers up for another winter. Under the leadership of Lifeguard Supervisor Kyle Shaffer we have had another successful season. Mr. Shaffer will be presenting a season recap to either the October or November HAB meeting.

Junior Lifeguards: The Recreation and Parks Department had another successful summer of Junior Lifeguards with two sessions and approximately 150 kids run through their paces. This excellent program teaches the kids not only beach and water safety, but good life lessons like teamwork, responsibility, and good citizenship. Herb White once again ran the programs.

Emergency Incidents: Knock on wood, the last month was quiet on the rescue and emergency front, with only one significant incident on August 25th off of Cayucos. A local boater and his three young passengers out fishing for the day began to take on large amounts of water when the boat sprung a leak. Due to the thick fog the owner wasn't sure of his exact position and Coast Guard and Harbor Patrol vessels headed out and homed-in on their radio signal. They were located about a mile offshore of the Whale Rock area. While the Harbor Patrol took the people off the boat, the Coast Guard got it under tow and back to the harbor without sinking. A \$3.00 wax toilet bowl ring, carried in the Harbor Patrol's damage control kit, was the thing that did the trick to slow the leak until the boat could be pulled from the water.

Over the past week an old 42-foot wooden Chris Craft powerboat "Glowing Star" sunk in the State Park Marina, despite efforts to keep it afloat. Depth Perceptions Diving Services was hired by the owner to refloat it, which is done, and the owner is currently weighing his options.

Offshore Geophysical Permit Program ("OGPP"): The OGPP is the permit process by which companies such as PG&E or research institutes would apply to the State Lands Commission ("SLC") for permits to do their underwater surveys and other work. For example, the Low Energy Seismic Survey ("LESS") work done by PG&E last year and this year is permitted under the OGPP. The SLC is currently in the process of updating that permit process, and have issued a Mitigated Negative Declaration for public comment. Due to several shortcomings identified by the City, particularly in regard to potential effects on commercial and recreational fishermen, the Harbor Director sent the attached comment letter to the SLC.



City of Morro Bay

HARBOR DEPARTMENT

1275 Embarcadero

Morro Bay, CA 93442

Ph. 805-772-6254

Fax: 805-772-6258

August 21, 2013

Division of Environmental Planning & Management
California State Lands Commission
100 Howe Ave., Suite 100-South
Sacramento, CA 95825

RE: CITY OF MORRO BAY COMMENTS ON LOW ENERGY OFFSHORE GEOPHYSICAL PERMIT PROGRAM UPDATE

Thank you for providing the City of Morro Bay the opportunity to comment on the State Lands Commission's proposed Mitigated Negative Declaration (MND) for the Offshore Geophysical Permit Program (OGPP) Update (hereinafter "Project"). As you may know, Morro Bay is an important commercial and recreational fishing port, and the Morro Bay City Council has passed several resolutions over the years supporting the Morro Bay Commercial Fisherman's Organization and the commercial fishing industry in general. As such the City is concerned with some of the conclusions drawn and lack or inadequacy of proposed mitigation measures in the MND. Therefore the City of Morro Bay submits the following comments for your consideration:

1. Region II of the Project, which includes San Luis Obispo County on the included maps, inadvertently does not include San Luis Obispo County in the narrative of figures ES-1 and 2-1 that describe the regions. The narrative for Region II should read "The area between the Los Angeles/Ventura County line and the San Luis Obispo/Monterey County line."

2. Section 4.1.1.2 of the MND cites overall declines in registered commercial fishing vessels statewide since 1980. This paints a picture of declining importance and participation in commercial fisheries and downplays their significance for consideration in the MND and OGPP. However, this is not an accurate portrayal in regard to the Morro Bay/Port San Luis areas and in other areas statewide as well. The decline in participating vessels can be partly attributed to a decline in numbers of participating fishermen; however, it can be equally accounted for by consolidation of fleets and an increase in vessel sizes, necessitating fewer vessels in the fleet. In addition, many fishermen now participate in several fisheries with one vessel, as opposed to single vessels working single fisheries as has generally been a common practice in the past.

Landings by weight have steadily and significantly increased since 2007 in our area. In 2012, commercial fishermen in Morro Bay generated over \$6.3 million in earnings at the dock, the second highest level since 1997, maintaining a continuous upward trend from the 20-year low in 2007 when the earnings at the dock were only \$1.7 million. Landings in Morro Bay have returned to mid-1990's levels, with over 5 million pounds landing in 2012, vs. only 686,000 pounds landing in 2007. Furthermore, 2012 Morro Bay landings supported approximately 170-195 jobs on the boats, docks, and processing plants, and the 17 new and returning commercial fishermen, and 12 new and returning vessels into the area in the past 4-5 years are all

indicators that the fisheries are on the rebound and that the positive upward trends will continue into the future (Morro Bay 2013 Commercial Fisheries Economic Impact Report, Lisa Wise Consulting, August 2013). In addition to supplying fresh, sustainable seafood to local, regional, national, and international markets, commercial fishing is an important driver of our local tourism economy. **With that information at hand, the role and importance of commercial fisheries to the Morro Bay and regional economies, as well as the continuing upward trend in landings cannot be downplayed as they currently are in the MND.**

3. Several areas in section 3.3.4.3 Impact Analysis of the MND conclude that there will be impacts and effects on fish and other marine animals, including but not limited to startle responses, avoidance behavior, and in some cases have "the potential to adversely affect the survival of individuals and/or populations." Pages 3-121 of the MND state, "Fish exposed to OGPP equipment noise would be expected to show a startle response, including avoidance behavior and movement out of the immediate area of the survey. Due to the relatively short duration and localized operations of OGPP surveys, impacts to fish are expected to be less than significant."

While the impacts to the fish and other animals may (or may not) be "less than significant" from a biological sense, the City of Morro Bay is concerned that the real impacts to our fishermen will be significant and thus warrant consideration of mitigating measures based on a case-by-case basis as permits are evaluated. This mitigation is absolutely necessary due to the spatial closures (marine protected areas, Essential Fish Habitat, Rockcod Conservation Areas, etc), seasonal closures and limits, and the physical limitations of wind, weather, and swell, that all serve to severely limit the areas and opportunities for commercial and recreational fishermen to fish. In addition, of those areas remaining available and open for fishing, the vast majority are open or barren bottom, and the fishing effort is often concentrated in the remaining productive habitat areas, so any further limits or impacts on those remaining areas such as OGPP activity are significant. **Therefore the conclusion drawn in the MND, that anything less than ten percent of the currently available fishing area lost or less than one month of fishing activity precluded is "less than significant" (Section 4.1.3 Impact Analysis), is an incorrect conclusion and that mitigating measures for commercial and recreational fishermen must be part of any OGPP process. Fishermen must be provided a mitigation path to pursue under the permitting process should they suffer economic or other losses.** Under its current form, the MND assumes that there will be no significant impacts to fishermen, thus precluding any mitigating requirements.

The City of Morro Bay respectfully requests that these oversights be addressed, and we are happy to provide more information or assistance if requested. Thank you for your consideration.

Sincerely,



Eric Endersby
Harbor Director

cc: Morro Bay Mayor and City Council
Andrea Lueker, City Manager
Morro Bay Commercial Fisherman's Organization



AGENDA NO: C-1

MEETING DATE: September 5, 2013

Staff Report

TO: Harbor Advisory Board

DATE: August 27, 2013

FROM: Eric Endersby, Harbor Director

SUBJECT: Update from Boatyard/Haulout Ad-Hoc Committee on Committee's Recent Activities

RECOMMENDATION

Receive and file.

DISCUSSION

The Boatyard/Haulout Ad-Hoc Committee will be presenting an oral update on their activities and progress.

Prepared By: EE

Dept. Review: EE



AGENDA NO: D-1

MEETING DATE: September 5, 2013

Staff Report

TO: Harbor Advisory Board **DATE:** August 28, 2013

FROM: Eric Endersby, Harbor Director

SUBJECT: Measure D Study Session to Take Public and Harbor Advisory Board Input on Placing an Initiative on the General Ballot in Regard to Amending the Measure.

RECOMMENDATION

Review background information and staff report, consider public input, and provide a recommendation to the City Council for their review.

FISCAL IMPACT

There is no fiscal impact to this discussion, however, should the City Council decide to place an item on the General Ballot regarding Measure D, there will be additional costs of which are unknown at this time

SUMMARY

Staff is bringing a Measure D Study Session forward for the consideration of amending Measure D. Following the study session, staff will forward any recommendations from the Harbor Advisory Board (HAB) as well as from other participants and stakeholders to the City Council for further consideration. Two City Council meeting items addressing the issue were considered in 2008 but resulted in no further action. The most recent action in regard to Measure D was City Council consensus earlier this year to agendaize Measure D.

BACKGROUND

At the June 9, 2008 City Council meeting, item B-4 on that agenda was a discussion of placing an initiative on the November 2008 General Election Ballot regarding a Utility User Tax and/or Transient Occupancy Tax, as well as amending or repealing Measure D. Measure D is the citizen-voted measure enacted in 1981 that limits waterfront development between Beach Street and Target Rock to commercial and recreational fishing-only dependant uses. At that Council meeting, after public comment and Council discussion, Council voted 4-1 to place a Measure D amendment on the upcoming November ballot, and directed staff to bring back to the next Council meeting (June 23, 2008) a staff report with suggested language to amend the measure. A copy of the pertinent June 9, 2008 Council staff report and meeting minutes are included with this staff report.

Prepared By: EE

Dept. Review: EE

The item was brought back to the June 23, 2008 City Council agenda as item B-3, and Council considered the options presented by staff and took public comment. After Council discussion, Council voted 3-2 to postpone placing Measure D on the General Election Ballot until there could be a meeting with stakeholders to further review the issues. A copy of the pertinent June 23, 2008 Council staff report and meeting minutes are included with this staff report. The item was not brought back for further review by the City Council after the June 2008 action.

At the April 23, 2013 City Council meeting, a Future Agenda item was supported by Council for discussion of Measure D. Given the 2008 history of this issue, as well as Council's recent action last April, staff is bringing a general discussion of Measure D to the HAB similar to that of the 2008-directed stakeholder meeting to move the discussion forward. Council is tentatively scheduled to hear the item in September or October this year.

In addition, due to public and other comments received by the City and City Council, two memos addressing Measure D concerns were issued by the City Attorney, one dated July 30, 2012 and one dated April 19, 2013. Both are included with this staff report.

DISCUSSION

Ample background information, including the text of Measure D itself, is included with the materials attached to this staff report, therefore, further background materials are not being included here. The June 23, 2008 staff report for item B-3 provided four amendment options, or "suggestions" in the staff report, that Council initially considered, although no Council action was taken with any of them. These can be considered a starting point for HAB discussion.

"Suggestion No. 1"

Clarification of what "noncommercial recreational fishing" includes in terms of "party boats" or "commercial passenger fishing vessels" (CPFV) as vessels such as those operated by Virg's Fish'n and Patriot Sportfishing are known as. Some people have the opinion that because Virg's-type sportfishing vessels, or CPFV's as they are officially called, have "commercial" in their title they are excluded from the Measure D area because Measure D's text reads "noncommercial recreational." However, others believe that when Measure D was enacted, "CPFV" was not the term in use then, and Measure D was worded in the way that was specifically to include Virg's and others engaged in recreational sportfishing for hire operations. Suggestion No. 1 of the June 23, 2008 Council staff report attempts to clarify this issue.

"Suggestion No. 2"

This suggestion from the June 23, 2008 Council staff report takes Suggestion No. 1 even further by simplifying the language to just read "fishing activities," with no reference to commercial or recreational.

“Suggestion No. 3”

Suggestion No. 3 removes any reference to fishing and replaces it with “coastal-dependant,” and would exclude those general public uses not defined by the Coastal Act as being “coastal-dependant.” This would obviously include commercial and recreational fishing uses, but could also include other non-fishing uses, for example boat haul outs, Harbor Patrol and Coast Guard facilities, energy generation facilities, and boating and other water-related activities and uses, etc.

“Suggestion No. 4”

Suggestion No. 4 is the most liberal change to Measure D, with commercial and recreational fishing replaced with “marine related activities” that includes further definition of “marine related” to those activities pertaining to a “working waterfront” with some examples provided.

Other discussion items for consideration could be:

Existing Grandfathered Businesses:

The existing legal non-conforming or “grandfathered” businesses within the Measure D area such as the Great American Fish Company restaurant or Tognazzini’s Dockside restaurant are very restricted by Measure D in being able to grow, even within their existing footprints, because Measure D includes the language that said uses “shall not be expanded or enlarged.” While this language may have been included to prevent the nonconforming uses from expanding and crowding-out fishing-related uses and was included for good reason, it also can serve to quash investment or reinvestment in those businesses and makes it difficult for those businesses to substantially upgrade or renovate, which is a requirement in the City’s Lease Management Policy. The Measure D language could be amended to better define what is and isn’t allowed in terms of “shall not be expanded or enlarged.” For examples, three interpretations from most to least restrictive could be:

1. No increase in square footage or useable area will be allowed.
2. Increases in square footage may be allowed provided that the core use is not expanded, for example, for a restaurant no expansion or enlargement that will result in additional seating or patronage will be allowed. The approval by the City and the Coastal Commission of an upstairs office and storage space at the Harbor Hut restaurant is a recent example of this.
3. Increases or enlargements may be allowed provided that they do not expand outside the existing lease lines and do not encroach upon, exclude, or compete with commercial or recreational fishing uses.

Definitions:

Measure D does not define what “...primarily for the purpose of...” is, although it has generally been interpreted to mean that the majority, i.e. 51%, of a business or use must be related to or about commercial or recreational fishing. An amendment to include better defining this could be considered.

Related to “Suggestion No. 1,” Measure D does not speak to whether or not privately owned recreational vessels can be included in the Measure D area if they are used for recreational fishing purposes, and if they are used for those purposes, to what degree and by what proof must they be used? An amendment to better define this could be considered.

Other Uses:

With the City’s long-standing desire to provide a modern boat haul out yard as well as see the completion of the Central Coast Maritime Museum, are these and similar uses allowable within the Measure D area?

Repeal the Measure:

A final option would be to repeal Measure D in its entirety. While to staff’s knowledge this option is not being actively pursued or suggested by anyone or any entity, it is an option.

Results, and any HAB votes or consensus reached on Measure D will be forwarded to the City Council in a staff report for Council hearing and consideration, tentatively scheduled for September or October of this year.

CONCLUSION

Review background information and staff report, consider public input, and provide a recommendation to the City Council for their review.



Staff Report

AGENDA NO: B-4

Meeting Date: 6/9/08 Action: Approved
Placing amendment of
Measure D on Nov. 08
ballot

TO: Honorable Mayor and City Council **DATE:** June 3, 2008
FROM: Rob Schultz, City Attorney
SUBJECT: Discussion on Placing an Initiative on the November 2008 General Election Ballot in Regard to a Utility User Tax and/or a Transient Occupancy Tax and/or Amending Measure D.

RECOMMENDATION:

Council to review information and provide direction to Staff.

FISCAL IMPACT:

If the Council decides to move forward with a Transient Occupancy Tax (TOT) ordinance and the voters pass the measure, the City could expect to receive an additional \$375,000 in TOT revenue per year.

If the Council decides to move forward with a Utility User Tax (UUT) ordinance and the voters pass the measure, the increase in revenues would depend upon the % of the tax and Staff has not at this time analyzed data to determine the amount of the increased revenues.

There would be no fiscal impact to place a measure related to Measure D.

SUMMARY:

At previous council meetings, Council has requested information on placing a voter measure on the November 2008 General Election ballot in regard to increasing TOT, establishing a UUT, and amending or repealing Measure D. Staff needs to be provided with direction regarding whether or

Prepared By: Rws Dept Review: _____

City Manager Review: AS

City Attorney Review: Rws

not to proceed with preparing any measure, as the full text of the measure and the exact form of the question must be submitted to the San Luis Obispo County Clerk by July 23, 2008.

DISCUSSION:

Transient Occupancy Tax (TOT)

Transient Occupancy Tax (TOT) at a rate of 10% per rental is currently collected by all entities renting lodging for 30 days or less. Those taxes are remitted monthly to the City, and that revenue stream accounts for 20.5% of the General Fund's revenues before transfers in. TOT is the second largest revenue source to the City. (Property tax is the largest.)

Utility User Tax (UUT)

The Utility User Tax (UUT) may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation, and cable television. The rate of the tax and the use of its revenues are determined by the local agency. A UUT may be imposed as a special tax earmarked for a specific purpose or as a general tax to be used for a variety of municipal service needs at the discretion of the city council. The tax is levied by the city, collected by the utility as a part of its regular billing procedure, and then remitted to the city.

Most of the approximately 150 cities and 4 counties with UUTs adopted the taxes by vote of the City Council or County Board of Supervisors prior to 1986. Generally, taxes imposed since then require voter approval. The Constitution (Article XIIC) requires 2/3-voter approval for any new or increased special tax. A special tax is dedicated to a specific purpose. A new or increased general tax requires majority voter approval. Currently, all City UUT levies in California are general taxes.

City Utility User Tax rates range from 1% to 11%. The particular utility to which the tax is applied varies. In some cities, different rates apply to residential versus commercial users. The most common rate (the mode) is 5%, applied broadly among many types of utilities. The average rate (mean) is 5.5% with a standard deviation of 2.1%. Because most large cities have UUTs, roughly half of California residents and businesses pay a utility user tax.

Measure D

According to City documentation, Measure "D" was approved by 57% of the voters and enacted in 1981. There have been no amendments presented to the voters since that time. The text of Measure "D" (City Ordinance No. 207 and codified in the Zoning Ordinance as MBMC Section 17.24.180B.) is as follows:

"The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing

activities or noncommercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”

The intent and language of Measure “D” is direct and unambiguous. The intent is that any development on the Tidelands between Beach Street and Target Rock must be primarily to serve licensed commercial fishing or non-commercial recreational fishing activities. The Ordinance then gives illustrations without limitations.

Process

If the Council provides Staff direction to proceed with a measure, Staff will return at the next meeting on June 23rd with a draft ordinance for review, consideration and introduction. Assuming the Council introduces the ordinance at its next meeting, the ordinance will come back to the Council at its meeting of July 14 for a second reading and final adoption. Adoption of the ordinance will require a 2/3 vote of the City Council, i.e. four votes. The ordinance will not be effective until approved by a majority of voters voting at a general city election where council members are elected.

In order to place the measure before the voters for approval in November, the Council will also have to adopt a resolution calling for a special election to be consolidated with the general election in November. If so directed, Staff will present the resolution to the Council for approval at its July 14th meeting at the same time it adopts the proposed ordinance. The resolution will contain the actual ballot language that will appear on the ballot. Staff will provide draft ballot language for Council’s consideration at the June 23rd meeting.

In order to be successful in securing voter approval of any measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money, or effort on the campaign or to seek or support passage of the ballot measure. Council members and Staff can work on a campaign to support passage of the measure on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not with City resources.

The Council may want to identify some key community leaders and organizations that should be approached to determine whether they will participate in such a campaign, or the Council may want to appoint a sub-committee of two members to work with Staff over the next few weeks to identify and contact community leaders who are supportive of the measure.

CONCLUSION:

Staff requests that Council review this report and provide direction to Staff.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 9, 2008

B-3 DISCUSSION ON WATER AND SEWER RATES AND THE
CALCULATIONS USED; (PUBLIC SERVICES)

Capital Projects Manager Bill Boucher stated this item has been placed on the agenda by Council request and intends to provide background and discussion on the genesis and calculations of the water and wastewater rate structures. The community's water rate structure was adopted in a two-step process in 1994 and 1995 and there have been no changes to the structure since that time. The most recent wastewater rate structure was adopted in November 2007 and will become effective on July 1, 2008. Any proposed changes to either rate structure must be done both with consideration of the public process required by Proposition 218 and adjusting portions of the rate structure upward if other portions are proposed to be lowered in order to generate the funding needed to pursue adopted programs and policies. The community's water and wastewater rates structures are both related to water consumption: water based upon direct meter readings and wastewater upon estimates of what portion of water delivered is "returned" to the sewer system. Wastewater rates also incorporate the constituents that the various types of customers add to the wastewater stream, such as detergents from laundry businesses and food products from restaurants. Mr. Boucher recommended the City Council receive this report for information, and direct staff accordingly.

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

This was an informational item, and no action was taken.

Mayor Peters called for a break at 8:50 p.m.; the meeting resumed at 9:00 p.m.

B-4 DISCUSSION ON PLACING AN INITIATIVE ON THE NOVEMBER 2008
GENERAL ELECTION BALLOT IN REGARD TO A UTILITY USER TAX
AND/OR A TRANSIENT OCCUPANCY TAX AND/OR AMENDING
MEASURE D; (CITY ATTORNEY)

City Attorney Robert Schultz stated at previous City Council meetings, Council has requested information on placing a voter measure on the November 2008 General Election ballot in regard to increasing transient occupancy tax, establishing a Utility User Tax, and amending or repealing Measure D. Mr. Schultz requested Council direction regarding whether to proceed with preparing any measure, as the full text of the measure and the exact form of the question must be submitted to the San Luis Obispo County Clerk by July 23, 2008.

Mayor Peters opened the hearing for public comment.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 9, 2008

Cathy Novak, representing Virg's Fishing, suggested the City meet with a couple of business owners and members of the Commercial Fishermen's Association who could assist with language amending Measure D.

Bill Martony stated Council should consider the original passage of Measure D was to protect the fishing industry. He said there are some businesses that are grandfathered in, and the northern portion of Embarcadero brings tourists to see a working harbor front. Mr. Martony requested Council consider modification and not a repeal of Measure D.

Dorothy Cutter stated a repeal of the Primary Election should be placed on the November ballot.

Joan Solu stated she would prefer entering into a Business Improvement District instead of increasing transient occupancy tax. She said the transient occupancy tax is meant to promote tourism and not build-up the General Fund for other costs. Ms. Solu stated if there was an increase in transient occupancy tax, Council should consider placing 50% of the increase in a tourism fund that would be overseen by a committee such as the Oversight Committee for Measure Q funds.

Andy Hamppp stated an increase in transient occupancy tax should be tabled because of the economy with the increase in fuel, food and other expenses that are passed on to the tourist.

David Weisman, Chair of Community Promotions Committee, stated an increase in transient occupancy tax would be premature with the Business Improvement District being proposed in September.

Mayor Peters closed the public comment hearing.

Councilmember Grantham, Councilmember Peirce and Mayor Peters expressed support for placing a measure increasing the Utility User Tax on the November ballot; Councilmember DeMeritt and Councilmember Winholtz stated they do not support this tax being placed on the ballot.

MOTION: Councilmember Grantham moved the City Council include a measure on the November 2008 ballot increasing the Utility User Tax by 5% on gas, electric, phone, cell phone, water, garbage and cable. The motion was seconded by Councilmember Peirce and failed with Councilmember DeMeritt, Councilmember Winholtz and Mayor Peters voting no. (2-3)

A majority of the City Council stated it was premature to place a measure increasing the transient occupancy tax on the November ballot with the Business Improvement District being proposed in September.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 9, 2008

The City Attorney noted the issue of placing a repeal of the Primary Election on the November 2008 ballot was not agendaized for discussion.

Consensus of the City Council expressed support for placing a measure amending Measure D on the November ballot.

Councilmember DeMeritt suggested the following amendments be made to Measure D:

“The City shall not grant any permit, authorization or other approval of any stated owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or ~~non~~commercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted for ~~any new passenger for hire boats or supporting facilities, or~~ any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”

Councilmember Peirce stated it would be appropriate to include in the Measure D language to allow a marine haul-out or dry dock storage for boats.

MOTION: Mayor Peters moved the City Council approve placing an amendment of Measure D on the November 2008 ballot based on the suggestions made by the City Council and any other appropriate input received. The motion was seconded by Councilmember Grantham and carried with Councilmember Winholtz voting no. (4-1)

C. UNFINISHED BUSINESS

C-1 COMMUNITY DEVELOPMENT BLOCK GRANT PLANNING AND TECHNICAL ASSISTANCE GRANT OPPORTUNITIES FOR ECONOMIC DEVELOPMENT AND HOUSING PROGRAMS; (PUBLIC SERVICES)

Public Services Director Bruce Ambo stated potential grant funding to investigate the feasibility of forming a Redevelopment Project Area has been identified in the CDBG Planning and Technical Assistance grant program. The full formation study could easily be in the order of \$200,000 and require a substantial amount of staff time and consultant expense, and is likely to require successive funding cycles or identification of another funding source. For the amount of time, effort and expense, it is strongly recommended that Council determine the level of true interest and actual commitment that the Council is willing to invest in getting the potential tax increment to grow and translate to changes that stimulate private investment and economic development. Mr. Ambo recommended the City Council direct staff to prepare CDBG Planning and Technical Assistance grant



AGENDA NO: 13-3

Meeting Date: 6/23/08 Action: _____

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 18, 2008
FROM: Rob Schultz, City Attorney
SUBJECT: Discussion on Placing an Initiative on the November 2008 General Election Ballot in Regard to Amending Measure D.

RECOMMENDATION:

Review suggested revisions to Measure D and provide direction to Staff.

FISCAL IMPACT:

If City Council decides to move forward with a ballot measure related to amending Measure D, there will be additional printing costs.

SUMMARY:

At your June 9th meeting, City Council directed Staff to bring back language amending measure D.

DISCUSSION:

According to City documentation, Measure "D" was approved by 57% of the voters and enacted in 1981. There have been no amendments presented to the voters since that time. The text of Measure "D" (City Ordinance No. 207 and codified in the Zoning Ordinance as MBMC Section 17.24.180B.) is as follows:

"The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily

Prepared By: _____ Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”

The intent of Measure D is that any development on the Tidelands between Beach Street and Target Rock must be primarily to serve licensed commercial fishing or non-commercial recreational fishing activities. The intent of Measure D is also well established in our General Plan/Local Coastal Plan which states that the “fishing industry has played a significant role in the development of Morro Bay” and that “facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided” and “coastal dependent developments shall have priority over other developments on or near the shore.”

There are many ways that the City could amend Measure D. The following are a few examples for your discussion (strike through is for deletion; underlined is for addition):

Suggestion No. 1:

“The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or ~~noncommercial~~ recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted ~~for any new passenger for hire boats or supporting facilities, or~~ for any new restaurant, cafe, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”

Suggestion No.2:

“The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating ~~licensed commercial fishing activities or noncommercial recreational~~ fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted ~~for any new passenger~~

~~for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”~~

Suggestion No. 3:

“The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily ~~for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or is clearly incidental thereto,~~ coastal-dependent. The Coastal Act defines a coastal-dependent development or use as any development or use which requires a site on, or adjacent to, the sea to be able to function at all. For purposes of illustration only, and not by way of limitation, no approval shall be granted for ~~any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”~~

Suggestion No. 4:

“The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving ~~or facilitating licensed commercial fishing activities or noncommercial recreational fishing~~ marine related activities, or is clearly incidental thereto. “Marine Related Activities” is defined as activities pertaining to a “working waterfront”, including, but not limited to: boat building, repair of docks, installation of moorings, facilities for commercial fishing, recreational fishing and commercial and pleasure boats. For purposes of illustration only, and not by way of limitation, no approval shall be granted for ~~any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.”~~

CONCLUSION:

Staff requests that Council review this report and provide direction to Staff.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 23, 2008

Point subdivision. All property owners on record have been noticed of the hearing and a publication of the public hearing was noticed in a local newspaper. The City Council must hold a protest/public hearing before considering the levy of the annual assessment. Ms. Lueker recommended the City Council adopt Resolution No. 41-08 directing the levy to the Annual Assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District.

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

MOTION: Councilmember Grantham moved the City Council adopt Resolution No. 41-08 directing the levy to the Annual Assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District. The motion was seconded by Councilmember Peirce and carried unanimously. (5-0)

B-3 DISCUSSION ON PLACING AN INITIATIVE ON THE NOVEMBER 2008
GENERAL ELECTION BALLOT IN REGARD TO AMENDING MEASURE D;
(CITY ATTORNEY)

City Attorney Robert Schultz stated at the June 9, 2008 City Council meeting, Council directed staff to bring back language amending Measure "D". According to City documentation, Measure "D" was approved by 57% of the voters and enacted in 1981. There have been no amendments presented to the voters since that time. The intent of Measure "D" is that any development on the Tidelands between Beach Street and Target Rock must be primarily to serve licensed commercial fishing or non-commercial recreational fishing activities. Mr. Schultz recommended the City Council discuss this issue and direct staff accordingly.

Mayor Peters opened the hearing for public comment.

Cathy Novak, representing Virg's Fishing, stated they are working with the Commercial Fishing Association on draft language for Measure D. She requested Council continue this item to the July 14, 2008 Council meeting in order to obtain further input.

Bill Martony requested clarification on the content of the proposed amendments of Measure "D".

Ray McKelligott stated the public should know what changes are being considered for Measure "D" because there will be people who will oppose any amendments.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 23, 2008

Ed Ewing stated Measure “D” was meant for the protection of the fishing industry. He said there are fishermen working with organizations to build back the fishing industry so it is imperative to save the areas designated for commercial fishing. Mr. Ewing stated there is no reason to change Measure “D”.

Mayor Peters closed the public comment hearing.

Councilmember Peirce stated it is premature to take action on this item until the stakeholders have discussed this further.

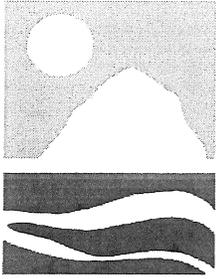
Councilmember Winholtz referred to the current Zoning Ordinance that defines the commercial/recreational fishing district in the CF zone, which does not meet the criteria of some activities that have slowly eroded Measure “D”. She also referred to the section of the code that refers to the parking requirements of projects that have been proposed for this area. Councilmember Winholtz stated Measure “D” should either be complied with or changed and placed on the ballot for the public to vote on. She said she prefers suggestion #4 in the staff report with the following amendment: “...commercial ~~and~~ pleasure boats.

Councilmember Grantham stated it is important to maintain this area for the fishing industry. He said he would also like the Papagallo and Chablis pleasure boats to continue operating where they are presently located because they bring in revenue to the City. Councilmember Grantham stated renovations should be allowed on the buildings located on these lease sites.

Councilmember DeMeritt stated she supports the renovation and expansion of Virg’s Fishing; however that is not presently allowed under Measure D. She said she supports suggestion #4 in the staff report with Councilmember Winholtz amendment, along with the removal of new restaurant, café, gift shop or other retail establishments.

Mayor Peters stated she does not support moving forward with this until the stakeholders have more time to review this issue.

MOTION: Councilmember Peirce moved the City Council postpone placing Measure “D” on the General Municipal ballot until there has been a meeting with the stakeholders. The motion was seconded by Councilmember Grantham and carried with Councilmember DeMeritt and Councilmember Winholtz voting no. (3-2)



CITY OF MORRO BAY
CITY ATTORNEY DEPARTMENT
595 HARBOR STREET. ♦ MORRO BAY, CA 93442
805-772-6568

MEMORANDUM

TO: CITY COUNCIL

FROM: ROB SCHULTZ

SUBJECT: ISSUES CONCERNING MEASURE D AND THE AMENDMENT TO LEASE SITE 124-128/124W-128W AND 113W LOCATED AT 1215 EMBARCADERO

DATE: JULY 30, 2012

Recently, the City Council received emails from Betty Winholtz and Linda Stedjee raising concerns and issues in regard to the City Council's recent approval of a Lease Amendment for Lease Site 124-128/124W-128W and 113W located at 1215 Embarcadero. Although their concerns are legitimate, the conclusions that they reach in accusing the City of violating Measure "D" by approving the recent Lease Amendment are both misplaced and incorrect.

First, it is important to understand the commitment the City has made towards the fishing industry. Contrary to Ms. Stedjee comments, the City is very proactive and supportive of Measure "D" and the fishing industry in Morro Bay. The Morro Bay City Council, through a series of resolutions, has consistently supported commercial fishing thereby protecting the Measure "D" area. The City has also provided generous lease agreements with commercial fishing related businesses and has supported relief funding to mitigate for closures. The City has also supported "Harbors of Safe Refuge" to assure that dredging is continued, and opposed legislation that imposes additional restrictions and regulations on the local commercial fishing fleet. In addition, the City has worked hard to obtain funds that help support the working waterfront. Due to the City's proactive and supportive role, the earnings for fishermen in Morro Bay have jumped to \$4.3 million in 2010 from a 20 year low of \$1.7 million in 2007, an increase of over 250%. These increased earnings are translated into wages for crew, purchases of fuel, ice, supplies, offloading fees, bait and baiting services, as well as vessel and gear repair, gear purchases, association dues and slip fees.

It is also important to point out that prior to the implementation of Measure "D", there were over 12 "passenger for hire or party boat vessels" in the Measure "D" area.¹ Today there are only four.² Therefore, since the implementation of Measure "D", the City has not authorized nor allowed any further "passenger for hire or party boat vessels" than existed prior to measure "D". In reality, the City has taken steps to further preserve Measure "D" for commercial fishing.

¹ CAPTAIN MIDNIGHT, PRINCESS, LOT A FUN, ADMIRAL, MALLARD, FIESTA, FLYER, BLUE FIN, BONANZA, LADY JANE, PATRIOT, KAREN SUE, HOOK UP, TRAIL MASTER, LONG FIN II, TIGER'S FOLLEY, TIGER'S FOLLEY II

² CHABLIS, PAPAGALLO, PRINCESS, FIESTA

In regard to the recent amendment to Lease Sites 124-128/124W-128W and 113W, as stated in my Staff Report, "The amendment also provides the City with an opportunity to clean up and clarify language regarding Measure "D" and acceptable boats to be docked at the Slips." Contrary to Ms. Winholtz and Ms. Stedjee assertions and allegations, the amendment does not violate Measure "D" and will actually help the City enforce the provisions of Measure "D".

Unfortunately, Ms. Winholtz and Ms. Stedjee did not include in their emails the "Permitted Uses" language of the original Lease, nor do they discuss the history of the Lease Site. In order to better understand the reason for the Amendment, you must first look at the Lease Agreement for Lease Site 124-128/124W-128W and 113W. The Lease Agreement approved by the City Council states under "Permitted Uses" the following:

Section 3.01 Permitted Uses.

The Premises shall, during the term of this Lease, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with, Conditional Use Permit Number UPO-058, as it may be amended from time to time, and for no other purpose. At the commencement date of the lease, such uses include operation of sportfishing boats, boat rental and repair, office, relocation of existing food services, sporting goods store, marine service station, fish cleaning facilities, shop buildings, docks and boat chandlery and allied marine dependent uses as set forth in Conditional Use Permit Number UPO-058. Per Coastal Development Permit 3-08-025, "All boat slips and side tie docks shall be used for commercial and recreational fishing vessels, commercial passenger vessels, and commercial service vessels only."

Interestingly, Former Council Member Betty Winholtz is now complaining about Lease language that she voted to approve as a Council Member. So where did the Lease Term "All boat slips and side tie docks shall be used for commercial and recreational fishing vessels, commercial passenger vessels, and commercial service vessels only" come from? It came from the Coastal Commission!

This Lease Term comes directly from the Coastal Commission Staff Report and Conditions of Approval for CDP 3-08-025. The Coastal Commission Staff report provides a detailed analysis of this Lease Site and the current project slated for development on this site. The following paragraphs that are bolded and indented come directly from the Coastal Commission Staff Report and Conditions of Approval for CDP 3-08-025:

The project sites are situated along the north Morro Bay waterfront between the South T-Pier and North T-Pier, at 1185 through 1215 Embarcadero Road. The character of the Embarcadero in this location is strongly focused on commercial fishing, although the land portion of development that is the subject of this permit action includes visitor-serving and commercial retail uses as well. There is also a network of floating dock and side-tie slips that is used to moor commercial fishing and recreational party boats and to provide access for a charter boat service. There are more intensive commercial fishing operations (i.e., boat repair dock, ice machine, fuel tanks, etc.) immediately adjacent to the north.

The sites are zoned Commercial/Recreational Fishing (CF)/Harbor (H) with a Planned Development (PD) overlay in the LCP. In 1981 the community adopted and incorporated Measure D into the City of Morro Bay certified LCP zoning code. This measure prohibits approval of any new passenger for hire boats or any new restaurant, café, gift shop, or similar uses within the CF zone district. All existing such uses are considered non-conforming and must not be expanded or enlarged.

As proposed, the project will expand existing commercial boating facilities in Morro Bay by increasing the capacity of the boat slips and side-tie docks from 6 boats (existing, depending upon size) to a maximum of 11 boats (proposed, also depending upon size). It also includes construction of an expanded commercial boating facility including new finger slips and floating dock for joint commercial and public access uses which involves installation of 100 steel pilings directly in the Morro Bay estuary.

The Applicants have indicated that the proposed use of the new floating dock and boat finger slips is primarily for commercial boating and partyboat vessels. Such facility can be found consistent with the Coastal Act if it includes parameters to ensure that it is clearly an integral part of the overall commercial fishing/commercial boating operations, and it is not used as a quasi-residential, long-term docking area.

This approval is conditioned to ensure that the finger slips and dock facility is understood in this way (see Special Conditions 2(b) and 6).

Special Condition 2(b): All parameters for use for the floating dock shall be clearly identified. The floating dock shall be publicly available for general public pedestrian access and transient boat use (and not as a long-term residential or live-aboard docking area) for general public and/or commercial fishing use, and shall be clearly integrated into the overall development (including integrating docking use with overall commercial operations of the site).

Special Condition 6. All boat slips and side-tie docks shall be used for commercial and recreational fishing vessels, commercial passenger vessels, and commercial service vessels only. The use of the docks and slips for long-term private residential, live-aboard, and/or recreational vessels is prohibited.

Based upon the Conditions imposed by the Coastal Commission, the City implemented Coastal Commission Special Condition 6 into its Lease Agreement. The City Council, including Betty Winholtz, approved the Lease Agreement.

Unfortunately, this language is ambiguous and has created issues between the City and the former tenant. In fact, in January 2012, the City put the Tenant on notice of potential violations for using the boat slips and side -tie docks for non fishing vessels and live-aboards. The tenant disagreed and maintained that

sailboats could be considered fishing vessels even though they did not have adequate fishing equipment nor had they been fishing on a regular basis. This situation could have ultimately ended up in litigation.

Since Lease Site 124-128/124W-128W and 113W located at 1215 Embarcadero was being assigned to new tenant, this gave the City an opportunity to clean up and clarify the language in the lease on acceptable boats to be docked at the Slips.

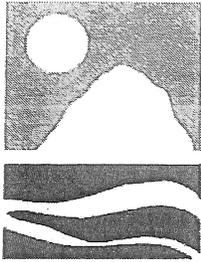
The City negotiated with the new tenant and came up with the following definitions for the language that already existed in the lease agreement.

" 'Commercial and recreational fishing vessels' shall mean a vessel that is equipped for fishing and is engaged in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. 'Commercial passenger vessels' shall mean a vessel that is engaged in a trade or business involving the transportation of goods or individuals. Upon request by the CITY, TENANT shall provide proof that vessels are engaged in fishing, or a trade or business on a regular basis."

This language will make certain that the vessels docked at the lease site are truly commercial and recreational fishing vessels and are actually engaged in fishing and not used for long-term private residential, live-aboard, and/or recreational vessels.

Clearly, based up the history of this lease site and the long standing commitment of the City to the fishing community, it is clear that the comments received are completely baseless, and the facts and actions of the City and its long standing relationship with the fishing industry and support of Measure "D" speak for themselves. I hope this clears up all of the concerns and issues in regard to the Amendment to Lease Site 124-128/124W-128W and 113W. If you have any other questions, please do not hesitate to ask.

RWS



CITY OF MORRO BAY
CITY ATTORNEY DEPARTMENT
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805-772-6568

MEMORANDUM

TO: CITY COUNCIL AND PLANNING COMMISSION

FROM: ROB SCHULTZ

SUBJECT: ISSUES CONCERNING MEASURE D

DATE: APRIL 19, 2013

You have received a memorandum from Planning Commissioner Tefft entitled "Proposed Discussion of Appropriate Interpretation of 'Measure D'" for next week's Joint Meeting. Commissioner Tefft's concerns are legitimate, timely and I look forward to the discussion on this topic. However, I do want to point out a few important points about Measure D and its implementation.

According to City documentation, Measure "D" was approved by 57% of the voters and enacted in 1981. There have been no amendments presented to the voters since that time. The text of Measure "D" (City Ordinance No. 207 and codified in the Zoning Ordinance as MBMC Section 17.24.180B.) is as follows:

"The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged."

The intent of Measure D is that any development on the Tidelands between Beach Street and Target Rock must be primarily to serve licensed commercial fishing or non-commercial recreational fishing activities. The intent of Measure D is also well established in our General Plan/Local Coastal Plan which states:

"The fishing industry has played a significant role in the development of Morro Bay.....facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided.....coastal

dependent developments shall have priority over other developments on or near the shore."

Since Measure "D" was adopted, the City has been very proactive and supportive of Measure "D" and the fishing industry in Morro Bay. The Morro Bay City Council, through a series of resolutions, has consistently supported commercial fishing thereby protecting the Measure "D" area. The City has also provided generous lease agreements with commercial fishing related businesses and has supported relief funding to mitigate for closures. The City has also supported "Harbors of Safe Refuge" to assure that dredging is continued, and opposed legislation that imposes additional restrictions and regulations on the local commercial fishing fleet. In addition, the City has worked hard to obtain funds that help support the working waterfront.

In regard to the establishment which sells kayaks and rents paddleboards, Commissioner Tefft is correct that this space was previously occupied by a sports fishing business. After the sports fishing business left in 2010 it remained empty for over two years. Although many businesses desired to rent this space, none of them qualified under Measure "D". The current tenant is renting half of the building and the leaseholder is looking to rent the other half to a sports fishing business. Please see the attached document that staff relied upon in reaching an opinion that the tenant is in compliance with Measure "D".

In regard to the two passenger for hire boats, Commissioner Tefft is correct that these two boats were not moored in this area at the time that Measure D was approved by the voters. However, at the time Measure "D" was approved there were over 12 "passenger for hire or party boat vessels" in the Measure "D" area.¹ Today there are only four.² Therefore, since the implementation of Measure "D", the City has not authorized nor allowed any further "passenger for hire or party boat vessels" than existed prior to measure "D". In reality, the City has taken steps to further preserve Measure "D" for commercial fishing. The two "passenger for hire" vessels referred to by Commissioner Tefft have been in the City Harbor for quite some time now and there simply are no other slips large enough for them. As new slips are built, there may be opportunities to relocate these "passenger for hire" vessels to eliminate any disagreement about compliance with Measure "D".

Clearly, there is a long standing commitment of the City to the fishing community and I would submit that the City for the past 30 years has specifically and strictly interpreted Measure D. This is evidenced by that fact the only potential disagreement over the implementation of Measure "D" is with two passengers for hire vessels and one tenant of approximately 800 square feet of space. That being said, I also include as an attachment a staff report I did back in 2008 on potentially amending Measure "D". In addition, included as an attachment is a whitepaper done by Citizens in 2009 on Recommendation for Changes to Measure D.

Looking forward to the discussion next week.

RWS

¹ CAPTAIN MIDNIGHT, PRINCESS, LOT A FUN, ADMIRAL, MALLARD, FIESTA, FLYER, BLUE FIN, BONANZA, LADY JANE, PATRIOT, KAREN SUE, HOOK UP, TRAIL MASTER, LONG FIN II, TIGER'S FOLLEY, TIGER'S FOLLEY II

² CHABLIS, PAPAGALLO, PRINCESS, FIESTA

Central Coast Stand Up Paddling (Central Coast Paddle Sports)

Measure D Compliance Proposal

As stated in Measure D, "The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to City lease between Beach Street and Target Rock, unless such development or use is primarily for the purposes of serving or facilitating licensed commercial fishing activities or non-commercial recreational fishing activities, or is clearly incidental thereto. For the purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or any new restaurant café, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered non-conforming and shall not be expanded or enlarged."

To comply with measure D, in spirit as well as law, Central Coast Stand Up Paddling is committed to taking the following steps:

1. Become an authorized dealer for Hobie Kayaks. As part of being an authorized Hobie Dealer we will have a video display with a kayak fishing show looping during business hours.
2. Stock and sell Kayaks, SUPs, and accessories intended primarily for kayak fishing.
3. Develop an instructional program aimed primarily at kayak fishermen to develop safety awareness, teach self-rescue's, and build skills for paddling in and out through the surf zone safely.
4. Rig several kayaks and SUP's for fishing, to be rented for use both inside and outside the harbor, depending on the skill level of the customer and the conditions.
5. Host kayak fishing club meetings and occasional events.
6. Offer all commercial fishing boat captains and crew a pro-deal purchasing program on orders.

Hobie Kayaks is the number one selling fishing kayak worldwide. The catalog and dealer workbook are extensively illustrated with fishing images. The majority of accessories they offer are for kayak fishing. Though their kayaks are also excellent general-purpose recreational craft, we are bringing them in primarily due to their focus on kayak angling. In addition to the kayaks the store will be stocking accessories, most of which will also fit kayaks from other manufacturers, and the majority of these accessories are directly involved with fishing, including such items as rod holders, bait tanks, fish finders, etc. Many of these items are equally suitable to powerboat-based fishermen as well.

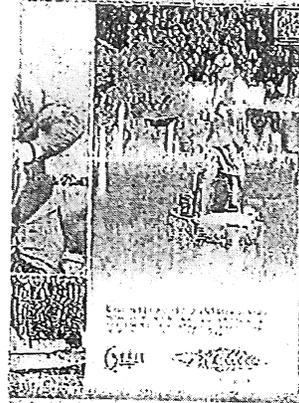
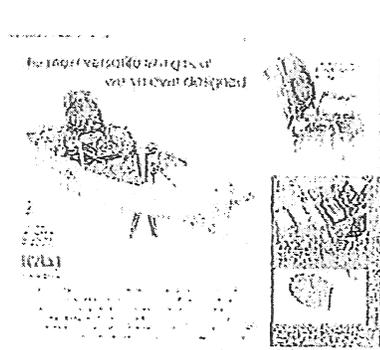
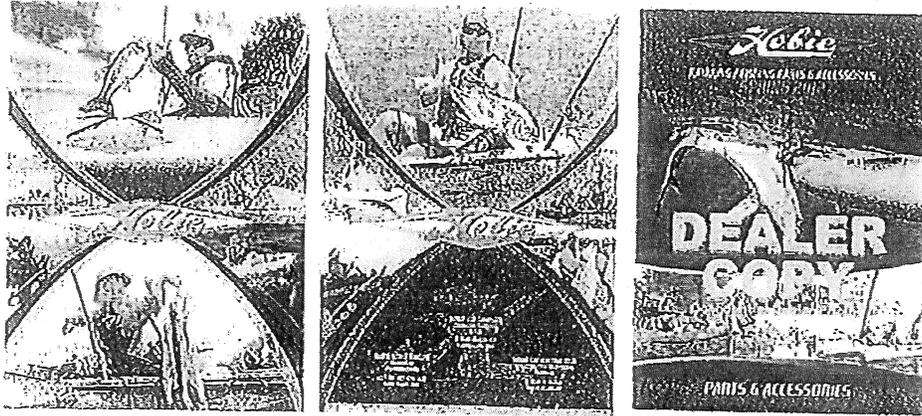
Beside the accessories and kayaks directly involved in fishing, much of the other inventory stocked will be items that are still incidental to fishing. PFD's, base layers made for cold, wet conditions, outerwear, sun protection, waterproof cases and drybags, GPS units, etc. are all products useful to any fishermen.

We project that roughly 70% of our initial inventory, dollar-wise, is directly intended for recreational fishing, another 8% to 15% will be in items indirectly related to fishing, and the remainder will be in incidental items.

Central Coast Stand Up Paddling (Central Coast Paddle Sports)

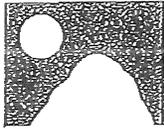
We believe our business would be a good fit in the location under consideration. Also by dividing the space, the existing building will still accommodate a sport fishing operation, and we feel that the flexibility provided by having two tenants in the location will only help both businesses thrive. Furthermore, when the new building is completed, it will be beneficial to have an established, profitable business in order to stay on in a larger, more expensive, space. Again, two thriving businesses, with a collaborative and synergistic relationship, will help insure long-term economic health for the entire lease site.

The images that follow are scans of the Hobie catalog. This is just a short selection, nearly every page in the catalog and dealer workbook has fishing involved, referenced, or pictured.



Thank you for your time and consideration,

Matt Hudgens,
Owner, Central Coast Stand Up Paddling
501 Embarcadero, Ste 5
Morro Bay, CA 93442
www.centralcoastsup.com
(805)395-0410



City of Morro Bay

HARBOR DEPARTMENT

1275 Embarcadero
Morro Bay, CA 93442
Ph. 805-772-6254
Fax: 805-772-6258

October 22, 2012

MMBS, LLC
Bob Fowler
PO Box 1008
Santa Margarita, CA 93453

RE: Lease Site 113W, 124-128/124W-128W - Sublease Approval

Thank you for providing the Consent to Sublease, your signed lease agreement, sublease application and fee of \$82.00 to complete the process for a sublease between MMBS, LLC and Central Coast Stand Up Paddling, LLC.

As you are well aware, your lease site is in the Measure D district. To assure we stay within the Measure D standards I have added it as Exhibit C in the Consent to Sublease Agreement between you and your subtenant Central Coast Stand Up Paddling, LLC. With CCSUP, LLC being an authorized Hobie Fishing Kayak Dealership, this sublease within Measure D will remain compliant provided that the overall business activity, retail sales, etc. are primarily recreational fishing serving. This means a majority of the business activity and retail goods must be fishing related.

Your request for sublease at Lease Site 113W, 124-128/124W-128W has been approved and a copy of the executed Consent to Sublease and receipt of application fee are enclosed for your records.

Eric Endersby
Harbor Director

Enc.

cc: Central Coast Stand Up Paddle

Recommendation for Changes to Measure D

Prepared By
Homer Alexander
Mike Durick
Dan Glesmann
John Meyers

January 15, 2009

Introduction

We are residents of Morro Bay. We have no vested interest in the property subject to Measure D (the Area) either individually or collectively. Our motivation in submitting this document is to provide constructive recommendation regarding the future of the Area. We feel it is important to support and enhance our commercial fishing industry and the other businesses in the Area. Last, but certainly not least, we feel it is important to support the small fishing town image that makes Morro Bay unique to the surrounding region.

We also share serious concern regarding the future financial viability of Morro Bay as a City. Power plant revenues have decreased and will likely disappear in the not too distant future. Our view is that the commercial fishing industry is turning the corner and will be a viable and sustainable business in the future. However the industry will return only to operating levels in the range of 20% to 30% of peak historical levels.

Whether Morro Bay will exist as a City ten years from now is in question. We do not believe that raising taxes or reducing services are the only options that should be considered. This community needs to act soon and wisely to preserve the town and area that has caused us all to live here. We feel careful changes to Measure D can provide substantial financial benefit to the City and community while preserving and enhancing the quaint fishing town image we currently enjoy.

Overview

The economic engines of the Central Coast are agriculture and tourism. Only one of those applies to Morro Bay, tourism. We need to understand and accept this. The competitive strengths of the region for tourism from wine to the Hearst Castle, are clear. What we need to do is determine how to best participate in the region's tourist revenue generating activities to increase the number of visitor dollars spent in the region and increase Morro Bay's portion of those dollars.

Visitors are attracted to Morro Bay because of the bay, the rock, the total environment and the quaint fishing town image and feeling that currently exists. Providing more of what the visitor wants will attract more visitors.

One way to accomplish this is to integrate tourism activities and the commercial fishing activities in the Area. While we realize that the City's entire economic engine must be appreciated and served, there can be no question that the greatest financial leverage for visitor dollars is on the waterfront. When tourists visit Morro Bay, they go straight to the water. The central theme of the entire embarcadero area is a quaint commercial fishing town. The draw is therefore to bring the tourist closer to the attraction (commercial fishing) by having tourists nearer to the commercial fishing activities. This is effectively building our "brand" (small fishing town) by capitalizing on the "entertainment" value of commercial fishing.

Visitors would feel lucky if they were there when a fishing boat docked and they could witness the off loading of the catch. An educational information center can also provide the history of local fishing and feature the successes of local fishermen in establishing sustainable fishing methods.

The problems facing the Morro Bay's commercial fishermen are not unique to Morro Bay. They are global. However, Morro Bay fishermen seem to be ahead of the curve in developing sustainable fishing methods. This success can be part of the brand and attraction to visitors that differentiates Morro Bay from anywhere else in the region. And, the emphasis on sustainable fishing methods and the marketing of that "brand" could make Morro Bay more of a global tourist destination.

We can integrate tourism and commercial fishing by letting existing non commercial fishing activities in the area expand provided they do not expand at the expense of our existing commercial fishing infrastructure. Some additional number of new ground leases would bring additional investment and additional tourism to the Area.

The power of limited changes to the Area can have a large impact on Morro Bay as a whole. Changes need to be implemented carefully to protect our brand and maximize financial benefit to the City. Tourist activities should focus on the higher revenue generating activities such a lodging which generates Transient Occupancy Tax and a goal should be to move up the tourist dollar food chain.

Any changes to Measure D should include consideration of the power plant site, oil storage tank area and the intake building. The plant is likely close in the next several years. Its owners will likely make decisions regarding the site sooner rather than later. The oil storage tanks are scheduled for demolition later this year (some permits are pending). The intake building is surrounded by the Area but not subject to Measure D. Any plans for the intake building should be consistent with the fishing village theme. It should be noted that intelligent changes or additions to the Area can increase the future value of the plant property and vice versa.

Recommendations

Our view is that Measure D was put in place 28 years ago in a substantially different environment. A review of the Measure is warranted. Recommendations regarding amending the Measure include the following:

- The initial purpose of the Measure was to provide and preserve an area for the business of commercial fishing to be conducted. That purpose is still valid. Ample areas for docking, loading and off loading, ice, storage, cranes, transportation, etc. need to be identified and protected.
- The existing "grandfathered" businesses in the Area cannot grow because of Measure D limitations and consequently there are few reasons to invest. The existing businesses should be allowed to improve and add to their properties.
- The use of the area should be expanded to include other marine related activities. For example, the Ships to Reef program or a maritime museum should be suitable uses.
- A limited number of additional lease sites should be identified in the area and made available for new business expansion. A model which fits is the boutique motel associated with a specialty restaurant. TOT, sales tax and ground lease revenue would exceed \$125,000 per year for a single lease site (See Attachment I for details). Three new lease sites and expanded existing facilities would generate in the range of \$500,000 in fresh tax revenue annually from the Area alone.
- Architectural standards should be established to insure that all buildings conform to the look and feel of a small fishing town and height limitations should be consistent with the rest of the embarcadero.
- A boat haul out, boatyard and boat storage area would benefit the fishing industry and recreational boaters. A portion of the new (fresh) ground lease revenues should be dedicated to the establishment these capabilities.
- Consensus is required to make progress. Support of the Commercial Fisherman's Association is critical. Support of existing leaseholders, environmentalists and community organizations such as Morro Bay Beautiful is fundamental to achieve approval from the Morro Bay Voters. Stakeholders should be involved in this process at an early stage.
- Adequate parking and careful attention to traffic flow and congestion must be given very high priority.

Attachment I

Measure D Recommendations
Potential "Fresh" Tax and Lease Revenue Per Lease Site

Lease Site Model

1. Eight room boutique motel - Room rate is \$200 per night and 65% occupancy.
2. Restaurant with gross sales of \$2,000,000 per year
3. Ground lease is \$2,500 per month plus 2% of revenue.

| | |
|---|------------------|
| <u>TOT</u> | Fresh |
| 365 days X 65% X \$200 X 8 X 10% = | <u>Revenue</u> |
| <u>Sales Tax - Restaurant</u> | \$37,960 |
| \$2,000,000 X 1.5% = | |
| <u>Ground Lease</u> | 30,000 |
| \$2,500 X 12 = | |
| 365 X 65% X \$200 X 8 + \$2,000,000 + \$500,000 X 2% - \$30,000 = | 30,000 |
| | 27,592 |
| Total Fresh Tax and Lease Revenue from One Lease Site Annually | \$125,552 |

Note: 1.5% of sales tax is earned by the City