

# 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  
TUESDAY, APRIL 8, 2014  
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

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS – None

PUBLIC COMMENT - Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council 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 AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON MARCH 25, 2014; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 PROCLAMATION DECLARING MAY 10, 2014 AS LETTER CARRIERS' FOOD DRIVE DAY; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 RESOLUTION NO. 23-14; DETERMINING ISSUANCE OF AN ALCOHOLIC BEVERAGE CONTROL PERMIT FOR AN ON-SALE WINE BAR AND TASTING ROOM LOCATED AT 845 EMBARCADERO SUITE H; (POLICE)

**RECOMMENDATION: Adopt Resolution 23-14 allowing an Alcoholic Beverage Control Permit for an on-site Wine Bar and Tasting Room located at 845 Embarcadero, Suite H.**

A-4 ADOPTION OF RESOLUTION 24-14; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AUTHORIZING AND DIRECTING MODIFICATIONS TO WATER CONSERVATION REQUIREMENTS; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Resolution 24-14.**

A-5 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLAN; (PUBLIC SERVICES)

**RECOMMENDATION: Receive and file.**

A-6 WATER RECLAMATION FACILITY (WRF) PROJECT STATUS; (PUBLIC SERVICES)

**RECOMMENDATION: Receive and file.**

B. PUBLIC HEARINGS

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE 585; AMENDMENT TO TITLE 17 (ZONING TEXT AMENDMENT - #A00-013 AMENDING SECTION 17.48.320 SECONDARY UNIT ORDINANCE); (PUBLIC SERVICES)

**RECOMMENDATION: Open the public hearing and receive testimony; and, continue the Public Hearing to the April 22, 2014 City Council meeting.**

B-2 RESOLUTION NO. 21-14 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

**RECOMMENDATION: Adopt Resolution 21-14 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2014-15 for the maintenance of the Cloisters Park and Open Space.**

B-3 RESOLUTION NO. 22-14 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

**RECOMMENDATION: Adopt Resolution No. 22-14, ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2014-15 for the maintenance of the North Point Natural Area.**

C. UNFINISHED BUSINESS

C-1 RESOLUTION 20-14 REESTABLISHING THE CHAMBER OF COMMERCE ECONOMIC AND BUSINESS DEVELOPMENT AGREEMENT FOR FY 2013/14 TO INCLUDE THE ECONOMIC DEVELOPMENT WORK PLAN FOR THE REMAINDER OF FY 2013/14; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Adopt Resolution 20-14, reestablishing the Agreement between the City and the Chamber of Commerce for the FY 2013/14, to include any changes made at this meeting.**

C-2 APPROVAL OF ASSIGNMENT AND ASSUMPTION OF LEASE SITE 63-64/63W-64W (GRAY'S INN, 561 EMBARCADERO) FROM JOSEPHINE GRAY TO TODD BASTON AND TAMARA GRAY BASTON AND CONSIDERATION OF CONSENT OF LANDOWNER FOR REDEVELOPMENT PROJECT PROPOSED FOR LEASE SITE; (HARBOR)

**RECOMMENDATION: Approve the Assignment and Assumption Agreement and accept the Leaseholders' proposal as submitted by approving a Consent of Landowner Form to enable Leaseholders to file their proposal applications with the Planning Division.**

D. NEW BUSINESS

D-1 DISCUSSION AND CONSIDERATION OF A REQUEST FOR PROPOSAL (RFP) TO DEVELOP A DETAILED WORK PLAN FOR THE GENERAL PLAN/ LOCAL COASTAL PLAN (GP/LCP) UPDATE; (PUBLIC SERVICES)

**RECOMMENDATION:** Authorize staff to prepare and issue an RFP and award a contract for the development of a detailed work plan for the GP/LCP update, in accordance with the City's Consultant Hiring Policy.

D-2 MORRO BAY FISHING COMMUNITY SUSTAINABILITY PLAN REVIEW, ACCEPTANCE, AND DIRECTION ON PLAN RECOMMENDATIONS; (HARBOR)

**RECOMMENDATION:** Hear the presentation, accept the Plan as policy guidance for future budget and project implementation and direct staff accordingly.

D-3 DISCUSSION OF THE SERVICE RETIREMENT INCENTIVE (SRI) PROGRAM FOR THE FISCAL YEAR 2014/15; (ADMINISTRATION)

**RECOMMENDATION:** Review the 2014/15 SRI Program, and advise staff as to how to proceed.

E. COUNCIL 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.**

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 25, 2014  
VETERAN’S MEMORIAL HALL – 6:00P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Mayor Pro Tem
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Edward Kreins	Interim City Manager
	Joe Pannone	City Attorney
	Jamie Boucher	City Clerk
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Services Director
	Damaris Hanson	Engineering Technician IV
	Logan Budd	Engineering Intern

As Mayor Jamie Irons was communicating by teleconference from the Phoenix Park Hotel in Washington D.C., Mayor Pro Tem Christine Johnson called the meeting to order at 6:00 p.m.

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT – there was no Closed Session.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS &  
PRESENTATIONS

PUBLIC PRESENTATIONS - NONE

PUBLIC COMMENT

Greta Schucker, owner of Hair Naturally, presented the business report. Located at 706 Morro Bay Blvd, Greta purchased the business in May from the previous owner. She promotes healthy and non-toxic products. They are family friendly serving men’s, women’s and children’s hair needs. They are open Tuesday – Saturday from 9am-5pm and walk-ins are welcome. They are your healthier hair and beauty option.

Adrienne Harris, Director of the NEP announced State of the Bay, a program beginning in April, comprised of a suite of activities, workshops, and family friendly learning activities throughout the month. You can get all the up-to-date information from their website: [mbnep.org](http://mbnep.org). She thanked Morro Bay for partnering with them at their Dog Fest event.

Jim Lewan is concerned at the lack of Code Enforcement in Morro Bay. He was thankful that the sidewalk displays of businesses' goods were dealt with. We have a lot of people coming to town with our upcoming events and he asked that we continue in our efforts of keeping our sidewalks clutter-free. One of our problems is that we don't have any code enforcement; he feels a short term solution to that could be getting our volunteer Police Department involved. We are headed into budget talks; maybe you could budget for a part time code enforcement officer. He also found out through Public Services that displaying items outside a business is legal with proper permits and he is fearful this could start all over again.

Keith Taylor and Carla Wixom spoke on behalf of the Friends of Morro Bay Fire Department. On April 12<sup>th</sup>, there will be an Emergency Car Show which promises to be a great event with all kinds of emergency vehicles, new and old. There will be an Open House Fundraiser at the Fire Department on April 26<sup>th</sup> earning money for education as well as encouraging Friends of the Fire Department membership. They will be selling commemorative 50 year challenge coins.

Nancy Castle spoke on the continued success of the community dinners which boasts of 30-40 guests each night. She wanted to publicly thank their supporters – the Circle of Friends, Rock Harbor Fellowship, St. Timothy's, St. Peters, and the Lions Club. She also thanked Susan Slayton for collecting items from City staff and bringing them down. The kitchen opens at 430pm with food served at 5pm. The Eagles are doing an Easter Egg Hunt and BBQ on Saturday, April 19<sup>th</sup>. They will be partnering with the Morro Bay 50<sup>th</sup>, the Historical Society and Chamber of Commerce to provide an Easter Bonnet Parade.

Taylor Newton runs the Guerilla Gardening Club for public service and community based projects. He spoke in support of Item D-1, Review and Discussion of the Draft Urban Forest Management Plan. The steps taken in the plan are above and beyond what he thought they would do; an urban forest management plan is essential to our future and he is looking forward to working in partnership and in support of this plan; it's nice to have some organization to all of this.

The public comment period was closed.

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON MARCH 11, 2014; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON MARCH 11, 2014; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING HELD ON MARCH 11, 2014; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 AUTHORIZATION TO FILL ONE RECREATION AND PARKS DEPARTMENT MAINTENANCE WORKER II POSITION – CONSOLIDATED MAINTENANCE; (RECREATION & PARKS)

**RECOMMENDATION: Authorize an internal/external recruitment for a Maintenance Worker II position.**

A-5 REQUEST FOR APPROVAL OF ASSIGNMENT OF LEASE AGREEMENT FOR LEASE SITE 93-95/93W-95W FROM THE HELD FAMILY TRUST AND THE SMITH W AND HANNAH W HELD FAMILY TRUST TO HARBOR CENTER LLC; (HARBOR)

**RECOMMENDATION: Approve the attached Assignment and Assumption of the Lease Agreement for Lease Site 93-95/93W-95W from the Held Family Trust and the Smith W and Hannah W Held Family Trust to the Harbor Center LLC.**

A-6 PROCLAMATION DECLARING THE MONTH OF APRIL “FAIR HOUSING MONTH; (PUBLIC SERVICES)

**RECOMMENDATION: Approve as submitted.**

Mayor Pro Tem Christine Johnson opened up the public comment period for items on the Consent Calendar; seeing none, the public comment period was closed.

MOTION: Councilmember Nancy Johnson moved the City Council approve the Consent Calendar Items as presented. The motion was seconded by Councilmember Smukler and by roll call vote, carried unanimously.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

B. PUBLIC HEARINGS

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE 585; AMENDMENT TO TITLE 17 (ZONING TEXT AMENDMENT - #A00-013 AMENDING SECTION 17.48.320 SECONDARY UNIT ORDINANCE); (PUBLIC SERVICES)

There was no staff report presentation as California Coastal Commission staff requested the item be continued for 2 weeks to allow Coastal staff additional time to provide input on the Ordinance.

As the item was noticed, Mayor Pro Tem Christine Johnson opened the public hearing for Item B-1.

Kathy Welles spoke on a previous item, unrelated to Ordinance 585. She thought that the previous speaker should have been allowed additional time to speak.

Barry Brannin is glad to see the granny unit back; he has an issue with only asking for a Conditional Use Permit for everything over 900 square feet. Since we have no architectural review process; and unless you require a Conditional Use Permit or establish some kind of Architectural Review Committee, then it's going to be difficult to do this properly. He feels we need a CUP on all secondary units.

Anne O'Brien has a granny unit that was grandfathered in; she feels her neighbor's tree in their backyard is destroying her granny unit.

The public hearing for Item B-1 was closed.

There was unanimous Council consensus to continue this item for 2 weeks.

C. UNFINISHED BUSINESS - NONE

D. NEW BUSINESS

D-1 REVIEW AND DISCUSSION OF DRAFT URBAN FOREST MANAGEMENT PLAN;  
(PUBLIC SERVICES)

Public Services Engineering Technician IV Damaris Hanson and Engineering Intern Logan Budd presented the staff report.

The public comment period for Item D-1 was opened.

Ann O'Brien stated that for over a year and a half, they have been trying to get the City to remove a tree as it has been infected with pitch pine canker disease. It was not removed because it was nesting season; since then all of her retaining walls, stairs, driveway and garage walls have sustained damage. She feels that the Urban Forest Plan and the City's attempt to transfer liability to home owners was prepared and presented as a reaction to them coming forward with their tree claim.

Greg Goris thanked staff for putting together a good plan. He made the point of stating that it's important to plant the right tree in the right space. He asked staff/Council to consider that there are some right trees in the wrong space which creates safety issues. He has a concern about the transfer of responsibility as is proposed. Citywide, we have some trees that don't belong in a

dense urban setting. The City has an obligation to replace those trees and there are great opportunities to do this correctly. He hoped that we wouldn't focus on just the downtown but look at the entire City.

Donna Goris is in approval of transferring City trees. However, she has felt the management process has been frustrating and that unfortunate tree plantings should not be transferred to property owners and hoped those trees would be removed before moving the responsibility over to adjoining property owners. She hopes we will have an urban forest that works.

John Headding thanked Councilmember Smukler for bringing up the issue of allergies which is a significant public health issue. Some of the worst offenders are diaceous male trees which include ash box, elder, cottonwood, juniper, mulberry, cedar, elm, pecan and Arizona cypress – a number of which we have a significant amount of. The bottom line is choice of plants from a health standpoint is important.

The public comment period for Item D-1 was closed.

Councilmember Nancy Johnson thanked the public for the valuable information they provided. She doesn't think you can expect a tree that isn't healthy to stay where it is, we need to address this issue more clearly and more effectively. It's great to see this formalized and yet there is still work to be done. The two big issues that she still sees are "right tree in the wrong place" and tree maintenance. It makes sense to plant at differing time intervals so that tree ages vary around the City.

Councilmember Smukler thanked staff for all their hard work. He would like to see us continue the public input process; it's clear that goal #1, defining public trees and the liability component of that, is of significant concern and will take more time and effort to work through. The Urban Forest Management Plan is more of a framework for going forward, not a rubber stamp for implementation. There is still more conversation, for example, about what the public right-of-way means. He feels taking a cautious approach is best. He is also fearful the public won't be able to take proper care of the trees in a healthy way creating a more dangerous situation. He also feels an integrated pest management policy is also important in an effort to reduce the use of herbicides and pesticides and try to manage the forest with fewer chemicals. He is ready to support this tonight.

Councilmember Leage has been called to many properties to look at trees, some look ready to tear houses down. It's time to be aggressive in looking at this situation.

Mayor Irons agrees with many of the comments, especially the "right tree in the right place". This plan would basically guide policy. He wants to make sure that removal of a hazardous tree as needed is being addressed fairly in the plan.

Mayor Pro Tem Christine Johnson stated we will be glad we have an urban management plan so that we can take these items and address them in a more cohesive way. She wanted to make sure that supporting this item will not change anything in the Code, Chapter 12.08.

MOTION: Councilmember Smukler moved to direct staff to incorporate the changes as discussed by the Council in the Urban Forest Management Plan and return with a Resolution for adoption thereupon bringing the plan to the PWAB for discussion and a special focus in the public/private issue. The motion was seconded by Councilmember Leage and by roll call vote, carried unanimously.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

Councilmember Nancy Johnson will vote for this as long as it's a framework that we will continue to refine.

#### D-2 CONSIDERATION OF ESTABLISHING AN AID TO AGENCIES PROCESS; (ADMINISTRATIVE SERVICES)

Administrative Services Director Susan Slayton presented the staff report.

The public comment period for Item D-2 was opened.

Carla Wixom stated that while it's nice to be able to play Santa Claus offering money for worthy causes, Council's first fiduciary responsibility is to the citizens of Morro Bay. She suggested that before considering bringing forward a tax item on the citizens, that we should hold onto the money because we have to take care of our own needs first. We don't really know what kind of shape we are in next year and we should put this on hold until you figure out what the budget will allow.

The public comment period for Item D-2 was closed.

Mayor Irons doesn't feel he could be in support of this at this time.

Councilmember Nancy Johnson thinks that especially in listening to Ms. Slayton, we have to understand where we are financially as we have upcoming expenses. She doesn't feel we can afford to look at this right now. While it might be good to have a policy in place, she doesn't see the point in spending the time to set up a policy we can't fund.

Councilmember Smukler feels it sends the wrong message to the community, employees and infrastructure needs as well as sets up unrealistic expectations that we can be there for them with additional funds.

Councilmember Leage feels this should be postponed but that we also need to give this some serious thought.

Mayor Pro Tem Christine Johnson stated that last year we received funding requests from some 501(c)(3)'s during the budget process that were funded. We also get and grant funding requests through the CDBG grant funding process. Nothing stops an organization from coming forward during the budget time. She is not in support of reviving the aid to agency policy at this time.

MOTION: Councilmember Smukler moved we continue to not fund the Aid to Agency process and program. The motion was seconded by Councilmember Nancy Johnson and by roll call vote, carried unanimously.

Ayes: Irons, C. Johnson, N. Johnson, Leage and Smukler

No's: None

D-3 DISCUSSION OF FUNDING THE REQUEST FROM THE MORRO BAY 4TH, INC.;;  
(ADMINISTRATION)

Interim City Manager Ed Kreins presented the staff report.

The public comment period for Item D-3 was opened.

Dan Podesto, President of Morro Bay 4<sup>th</sup> thanked Council for considering their request. His email request detailed their need as well as the economic impact the event has on the City and community. Their current board is only 6 members strong and none of them have ties to any tourism oriented business, they are doing this out of a duty to serve their community. This year they are unable to perform all of the fundraising tasks and as such, are requesting a waiver of City service fees for this year's event, approval of a donation flyer insert into the City's May and June water bill, and \$15,000 to help offset the financial needs for the July event. They are confident they are able to raise the balance of the funds for the event.

Chris Christianson asked the Council to imagine the disappointment of families and their children of not having the annual Bike Parade and 4<sup>th</sup> of July event; and of the restaurants that would usually be full that eve that now wouldn't. In response to the needs of Morro Bay, the Morro Bay 4<sup>th</sup> decided to have a family friendly, non-alcoholic celebration, the only one in the County. No one gets paid; it's a big event which helps the community raise their TOT as well as helps organizations raise money. Currently they can't raise all the money necessary to put the event on.

John Headding has been a volunteer for the July 4<sup>th</sup> committee. When you talk about community, this event is community; it's an outstanding event. At the same time, in the future you will have to consider funding other agencies like the Chamber or TBID, etc. and with declining revenues, you need to find a way to determine the value "it" brings to the community – what is the return on your investment for the money you put into these kinds of programs. The Chamber is amending their contract, requesting \$15,000 less than is budgeted. He is supportive of this as a community event.

The public comment period for Item D-3 was closed.

Councilmember Smukler stated the City has always been supportive of the Morro Bay 4<sup>th</sup> event. He feels that there is room for Tourism Bureau and department to step up further. It's important for the Morro Bay 50<sup>th</sup> and the Morro Bay 4<sup>th</sup> to join together and come up with a way to coordinate additional support so the City isn't burdened with the entire component. He is inclined to help the 4<sup>th</sup> – but he agrees, it's essential to come up with something more fiscally sustainable than this trend where every year we are scrambling. The City will need to look

closely at the budget cycle as to how we allocate monies for marketing, economic development and the visitor center so we aren't putting ourselves in the position where organizations think we are able to allocate at will. He is comfortable with allocating \$10,000.

Council questioned Mr. Podesto at the podium.

Mayor Irons feels at this time, he can only support funds for the fireworks, not the other elements of the event. The 4<sup>th</sup> of July committee has done a lot of work to continue bringing the event to the City. It's hard to determine the monetary return on investment. If we moved the fireworks over to the sandspit, we probably wouldn't have to worry about raising funds. It's important to discuss how we can get this reinvigorated again. With \$13,000 – 15,000 already in the bank including the Tourism Bureau donation, he would support them getting to the \$20,000 so could support \$5,000. He would also like to see how the Chamber members could step up and help out as well.

Councilmember Smukler stated with the deadline at the end of the month and the need for \$10,000 to reserve the fireworks, we need to or the committee needs to come up with \$10,000. He suggested going with the \$10,000 recognizing the changes in the Economic Development program allowed the money to be available. He would also support the waiver of fees as well as the donation letter being placed in the water bill.

Councilmember Nancy Johnson questioned that the Chamber has been the Morro Bay 4<sup>th</sup>'s best support in the past but haven't heard from them this year. She has a problem with giving \$10,000 given our current budget and our recent expenditures. She would be willing to ask the Morro Bay 50<sup>th</sup> to supply some of the money and wondered if the Morro Bay 4<sup>th</sup> could get an extension from the fireworks company.

Councilmember Leage stated that the \$10,000 sounds good and wishes we could do more.

Councilmember Smukler is suggesting \$10,000 but is also happy to hear Councilmember Nancy Johnson talk about going to the Morro Bay 50<sup>th</sup>. He would maybe suggest authorizing the \$10,000 from the Economic Development program allocated now and postpone the decision of event sponsorship to when we can possibly recoup those costs from Morro Bay 50<sup>th</sup> or other organizations.

Mayor Irons stated the City may not be able to do the \$10,000 but the 50<sup>th</sup> can. We should request the 50<sup>th</sup> to fund this and have the Morro Bay 4<sup>th</sup> continue with their fundraising to backfill some of those costs back to the 50<sup>th</sup>.

Mayor Pro Tem Christine Johnson stated this discussion could be held with any of our large event producers. In reality, we are asking volunteers in our community to produce events that we rely on to what we consider being economic development in our community. She would feel better doing this if we had a 5 year Economic Development strategy and until we have that strategy, we are unable to assess what our return on investment of events might be. As a community, we feel we have events that we can't do without but we are barely covering our essential services now with the events we have; if we want to have "heads in beds" and a kickoff

to a season, we need to make a commitment to fireworks. The 4<sup>th</sup> had not been given money prior to last year. She wants to see some of that economic development savings go towards an economic development plan. The Morro Bay 4<sup>th</sup>, unlike other large events, doesn't have a way to reasonably assess fees to their participants which is a disadvantage to them. Every event is valuable and appreciated. The Morro Bay 4<sup>th</sup> has done a good job of listening to businesses on the Embarcadero and they don't have vendors who bring retail items to sell and they have minimal food vendors.

MOTION: Councilmember Smukler moved that we allocate \$10,000 of available Economic Development funds to the Morro 4<sup>th</sup> to include a waiver of City fees as well as include approval of the mailer to go with water bills. The motion was seconded by Mayor Pro Tem Christine Johnson and carried 4-1 with Councilmember Nancy Johnson voting no.

Ayes: Irons, C. Johnson, Leage, Smukler

No's: N. Johnson

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS - NONE

ADJOURNMENT

The meeting adjourned at 9:56pm.

Recorded by:

Jamie Boucher  
City Clerk

**AGENDA NO: A-2**

**MEETING DATE: April 8, 2014**

**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY  
DECLARING MAY 10, 2014  
“LETTER CARRIERS’ FOOD DRIVE DAY”**

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

**WHEREAS**, every year on the second Saturday in May, letter carriers across the country collect non-perishable food as part of the nation’s largest one-day food drive, distributing the donations to local food banks; and

**WHEREAS**, the Letter Carriers’ Stamp Out Hunger Food Drive is just one example of how letter carriers work to make a difference in the lives of those they serve. Since the pilot drive was held in 1991, more than a billion pounds of food have been collected; and

**WHEREAS**, the City of Morro Bay would like to recognize all letter carriers for their hard work and their commitment to their communities. All of the food collected in our community stays in our community and the City of Morro Bay support carriers’ efforts to help those in need in our community.

**NOW, THEREFORE**, the City Council of the City of Morro Bay does hereby proclaim Saturday, May 10, 2014 as “**LETTER CARRIERS’ FOOD DRIVE DAY**” in the City and County of San Luis Obispo, and encourage the citizens of our community to support the food drive by placing non-perishable food items in or near your mailbox on food drive day. Your letter carrier will pick it up while delivering the mail – and together, we can all help to feed our hungry.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 8<sup>th</sup> day of April, 2014.

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JAMIE L. IRONS, MAYOR  
City of Morro Bay, California



AGENDA NO: A-3

MEETING DATE: April 8, 2014

# Staff Report

**TO:** Mayor and Council

**DATE:** March 24, 2014

**FROM:** Amy Christey, Police Chief

**SUBJECT:** Resolution No. 23-14 Determining Issuance of an Alcoholic Beverage Control Permit for an On-Sale Wine Bar and Tasting Room Located at 845 Embarcadero Suite H

## RECOMMENDATION

Staff recommends the City Council review and approve Resolution No. 23-14.

## ALTERNATIVES

- 1) Approve Resolution No. 23-14 allowing an Alcoholic Beverage Control Permit for an On-Sale Wine Bar and Tasting Room located at 845 Embarcadero, Suite H
- 2) Do not approve the Resolution allowing an Alcoholic Beverage Control Permit for an On-Sale Wine Bar and Tasting Room located at 845 Embarcadero, Suite H

## FISCAL IMPACT

To the extent the business is successful, it will add to the City's general sales tax revenues.

## SUMMARY

Gregory Allen Willcutt and Kathryn Eileen Willcutt applied for a permit from the Department of Alcoholic Beverage Control to operate an On-Sale Wine Bar and Tasting Room at 845 Embarcadero Suite H. An On-Sale Wine Tasting Room license will authorize the sale of all types of wine beverages for consumption on the premises. The Department of Alcoholic Beverage Control (ABC) automatically denies permits to sell alcoholic beverages if there is an "undue concentration" of licenses in the census tract (Business and Professions Code Section 23958). In order for the ABC to issue the license, they require the local governing body to determine that the "public convenience and necessity" would be served by issuance of the license. The ABC requires the governing board/council to pass a Resolution or a signed letter on official letterhead stating whether or not the issuance of the applied license would serve as a public convenience or necessity.

The Police Department has reviewed this application and has no significant concerns at this time in regard to an On-Sale Wine Bar and Tasting Room at this location. Furthermore, the approval of Resolution will support the City Council's goals and priorities to develop ways to attract businesses to Morro Bay, which are important to the economic vitality and diversity of the City. Therefore, the public convenience and necessity would be benefitted by this license.

Prepared By: AC

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

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

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

**RESOLUTION NO. 23-14**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DETERMINING ISSUANCE OF AN ABC PERMIT  
FOR AN ON-SALE WINE BAR AND TASTING ROOM LOCATED  
AT 845 EMBARCADERO, SUITE H WOULD SERVE THE  
PUBLIC CONVENIENCE AND NECESSITY**

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

**WHEREAS**, Gregory Allen Willcutt and Kathryn Eileen Willcutt applied for a Department of Alcoholic Beverage Control Permit for an On-Sale Wine Bar and Tasting Room located at 845 Embarcadero Suite H; and,

**WHEREAS**, the permit is automatically denied by the Department of Alcoholic Beverage Control due to an “undue concentration of alcohol licenses” in this census tract; and,

**WHEREAS**, in order for the Department of Alcoholic Beverage Control to issue the license, the City Council must determine the public convenience or necessity would be served by issuance of the license and pass a resolution stating such; and,

**WHEREAS**, after review by the Police Department there are no significant concerns in regard to the opening of an On-Sale Wine Bar and Tasting Room at this location.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California:

**Section 1.** The City Council desires to support new businesses in Morro Bay that are in conformance with the goals set by the City Council to “develop ways to be attractive to new businesses.”

**Section 2.** A business that will newly provide On-Sale Wine Bar and Tasting Room meets those goals.

**Section 3.** Based on all the foregoing, the public convenience and necessity will be served by issuance of a license from the Department of Alcoholic Beverage Control for an On-Sale Wine Bar and Tasting Room at 845 Embarcadero Suite H.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of April, 2014 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

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

**RESOLUTION NO. 24-14**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
AUTHORIZING AND DIRECTING  
MODIFICATIONS TO WATER CONSERVATION  
REQUIREMENTS**

THE CITY COUNCIL  
City of Morro Bay, California

**WHEREAS**, on December 14, 2009, the City of Council adopted Resolution 64-10 directing the Public Services Director to set the water conservation level based upon State Water Project allocations less than 35-percent; and

**WHEREAS**, at the City Council meeting on January 28, 2014, the Public Services Director announced the City increased its level of water conservation from Moderately Restricted to Severely Restricted water supply conditions based upon the anticipated State Water Project allocation of 0-percent for 2014 along with Governor Brown's emergency drought declaration; and

**WHEREAS**, Chapter 13.04 of the Morro Bay Municipal Code (MBMC) establishes the Water Conservation Requirements and the Powers of the City Council; and

**WHEREAS**, MBMC subsection 13.04.345 C.1.c. states, when during severely restricted water supply conditions exist, *Washing cars by use of a hose is prohibited. Use of a bucket is permitted subject to non-wasteful applications*; and

**WHEREAS**, MBMC subsection 13.04.345 C.3.a. states, when during severely restricted water supply conditions exist, *Use of fresh water to wash down boats, docks, or other incidental activities is prohibited*; and

**WHEREAS**, MBMC subsection 13.04.345 C.3.b. states, when during severely restricted water supply conditions exist, *All hoses shall have spring-loaded shutoff nozzles or similar controlling devices*; and

**WHEREAS**, MBMC subsection 13.04.330 E. allows City Council to provide for exemptions to any conservation measure.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council, City of Morro Bay, California, as follows:

**Section 1.** Pursuant to the authority in MBMC subsection 13.04.330 E., use of hoses with spring loaded shut-off nozzles for the washing of vehicles, boats and docks will be allowed, so long as only the minimum amount of potable water is used, and there are no other non-potable water alternatives.

**Section 2.** As stated in MBMC subsection 13.04.250 E. and section 13.04.340, if a water customer of the City is excessively wasting water (including, but not limited to, water running down gutters) and fails to correct that waste, the Public Services Director, and his/her designee (the "Director"), are authorized and directed to turn off the water of that customer; provided, that the Director shall not terminate any water service until the Director gives notice, in writing, to that customer of the reasons for the proposed termination, and the customer fails to correct that excessive waste or to provide evidence water was not being excessively wasted.

**PASSED, APPROVED, AND ADOPTED,** by the City of Morro Bay City Council, at a regular meeting held on this 8th day of April, 2014 by the following vote:

AYES:

NOES:

ABSENT:

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Jamie L. Irons, Mayor

ATTEST:

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Jamie Boucher, City Clerk



**AGENDA NO: A-5**  
**MEETING DATE: April 8, 2014**

## Staff Report

**TO: Honorable Mayor and City Council      DATE: April 4, 2014**  
**FROM: Rob Livick, PE/PLS - Public Services Director/City Engineer**  
**SUBJECT: Status Report of a Major Maintenance & Repair Plan (MMRP) for the Existing Wastewater Treatment Plan**

### RECOMMENDATION

Staff recommends that this report be received and filed.

### ALTERNATIVES

As no action is requested, there are no recommended alternatives.

### FISCAL IMPACT

No fiscal impact at this time as a result of this report. Fiscal impact is addressed through the budget process.

### BACKGROUND

This staff report is intended to provide an update on the development of the MMRP for the WWTP. At the February 14, 2013 JPA meeting the Council and District Board approved of the development of an MMRP and made the following motion:

- Direct staff to prepare a time sensitive and prioritized MMRP for the WWTP with an anticipated rolling 2 year budget;
- The JPA solicit proposals from a qualified firm, or firms, to provide technical advice and analysis on an as needed basis as determined by Morro Bay’s Public Services Director and Cayucos Sanitary District Manager; and
- The Morro Bay Public Services Director and Cayucos Sanitary District Manager report back to the JPA on a semi-annual basis on the progress and costs associated with the MMRP.

Development of a MMRP will assist the City and District in projecting the budgeting of expenditures required to keep the current plant operating in compliance with regulatory requirements.

Staff’s primary focus has continued to be on the next Fiscal Year and the projects contained within the FY 13/14 WWTP budget that was adopted by both the City and District. The adopted budget contains \$1.04M in funding for MMRP projects presented during the budget hearing at the JPA meeting. Staff has continued to work on developing and refining an implementation schedule for the projects funded in the FY 13/14 budget.

**Prepared by: RL/BK/RS Dept. Review: RL**  
**City Manager Review: \_\_\_\_\_**  
**City Attorney’s Review: \_\_\_\_\_**

## **DISCUSSION**

### **Digester #2 Repair**

City and District staff in coordination with Mike Nunley (MKN) executed the contract with Cor-Ray Painting Company for the sandblasting and coating of digester #2. A Notice to Proceed was issued on March 31. A task order contract has been put in place with MCS Inspection Group to provide coating inspection during this repair. Following review of submittals from Cor-Ray Painting, staff expects Cor-Ray to begin work April 7th.

Staff has continued to refine work tasks and schedules for completing projects required to bring the digester back on-line. Plant staff has continued with the repair and/or replacement of valves both above ground and below grade used to transfer sludge in the solids handling process. In addition, plant staff have completed repairs to the heat exchanger piping (HEX) for digester #2. The final step in the repair process is to have the insulation contractor finish installing new insulation on the HEX.

### **Headworks Influent Screening Project**

Vulcan Industries has submitted shop drawings to the City and MKN for review. The headworks influent screening project remains on schedule per the schedule outlined below:

- Award Equipment Supply/Execute Supplier Agreement February 13, 2014
- Shop Drawing Preparation February 14 – March 7, 2014
- Shop Drawing Review March 10 – March 21, 2014
- Revisions to Shop Drawings March 24 – April 11, 2014
- Approved Shop Drawings April 18, 2014
- Delivery of Equipment August 29, 2014

During the procurement process for the screens, a set of plans and specifications (bid package) will be developed for hiring a contractor to install the screen units. A task order contract has been put in place with Thoma Electric to design the electrical installation.

### **Chlorine Contact Basin Improvements**

MKN has developed a draft bid package for the purchase and installation of new chains and flights in the chlorine contact tank as well as various concrete repairs to the basin. City staff is currently reviewing the draft bid package. The schedule for this project calls for the bid packet to be public noticed on April 7.

### **Development of MMRP Projects and Budget for FY 14/15**

City and District staff have met to discuss and refine the MMRP projects to be included in the FY 14/15 budget. Staff is currently in the process of compiling project descriptions and estimated costs for presentation during the budget adoption process. A task order contract has been put in place with BTC Labs-NV5 to perform materials testing on Digester #1 and various other components to further define project scope.

## **CONCLUSION**

Staff will continue to bring a status report on the development of the MMRP at City Council meetings on a monthly basis.



AGENDA NO: A-6

MEETING DATE: April 8, 2014

# Staff Report

TO: Mayor and City Council

DATE: April 1, 2014

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

SUBJECT: Water Reclamation Facility (WRF) Project Status

## RECOMMENDATION

Staff recommends the City Council review this informational item.

## ALTERNATIVES

Not applicable at this time.

## FISCAL IMPACT

Not applicable at this time.

## SUMMARY

Staff provides this report as a monthly update to the progress made to date on the new WRF project.

## BACKGROUND

With the denial of the permit for the WWTP project in its current location, the City has embarked on a process for a WRF. This staff report provides a review of what has occurred to date.

## DISCUSSION

Below is a brief review of dates, status and accomplishments on the WRF facility project. Note the bolded information has been added since your last review.

<u>Date</u>	<u>Action</u>
01/03/13	Special City Council meeting – City Adopted Resolution No. 07-13 <b>supporting the California Coastal Commission staff recommendation for denial.</b>
01/08/13	WWTP Project denied by the California Coastal Commission (CCC).
01/08/13	January JPA not held due to CCC meeting.
01/24/13	City Staff, Morro Bay JPA Sub-Committee, Cayucos SD representatives, staff

Prepared By: RL

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

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

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

and attorney meet and discuss strategy and moving forward.

02/14/13 February JPA meeting held, “Discussion and Consideration of Next Steps for the WWTP Upgrade Project” was on the agenda and discussed.

02/26/13 City Council meeting - draft schedule/project timeline presented to City Council.

03/11/13 City Council directed staff to prepare an RFP for a project manager.

03/14/13 City Council goal session, WRF established as Essential City Goal.

03/14/13 City Council goal session, WRF established as Essential City Goal.

03/14/13 March JPA meeting held, “Status Report on the Discussion with RWQCB Staff Renewal Process for the WWTP NPDES Permit No. CA0047881” and “Verbal Report by the City and District on the Progress of the future WWTP” were on the agenda and discussed.

03/18/13 RFP issued.

03/26/13 City Council meeting - City Council approves citizens to serve on the RFP selection committee.

03/27/13 Announcement placed on City website, etc. regarding citizen selection committee application period.

04/05/13 Citizen selection committee deadline.

04/09/13 City Council meeting - appointment of 5 citizens for the RFP selection committee at City Council meeting.

04/10/13 Addendum to RFP issued, re: selection committee

04/11/13 April JPA meeting held, “Verbal Report by the City and District on the Progress of the future WWTP” and Discussion and Approval to Terminate the Consultant Services Agreements with Delzeit; Dudek, McCabe and Company; and Montgomery Watson Harza (MWH)” were on the agenda and discussed.

04/15/13 RFP due.

04/16/13 Study Session on WRF facility announced for April 29, 2013

04/23/13 City Council meeting –reaffirmation of 5 members of citizen selection committee.

04/25/13 Quarterly Meeting with California Coastal Commission staff, WRF discussion and status report on the meeting agenda.

04/25/13 Initial meeting with Selection Committee for the RFP for Planning Services for the WRF.

04/29/13 WRF Study Session at Veteran’s Hall.

05/02/13 Interviews to recommend the individual/team for the WRF project manage

05/09/13 May JPA meeting held, “Verbal Report by the City and District on the Progress of the future WWTP” was on the agenda and discussed.

05/14/13 City Council meeting – Approval of John F. Rickenbach, Consulting as the Preliminary Planning Consultant for the WRF project.

05/14/13 City Council meeting – Approval of John F. Rickenbach, Consulting as the Preliminary Planning Consultant for the WRF project

05/15/13 Public Services staff continues to work with John F. Rickenbach, Consulting to finalize the consultant contract.

05/28/13 Closed Session Item scheduled to discuss Righetti appraisal.

06/13/13 JPA Meeting – Cayucos Veteran’s Hall

06/24/13 Kick-off Meeting with John Rickenbach and team members

06/24/13-06/28/13 Work with Rickenbach to determine updated schedule pursuant to the scope of work in the RFP. Determination of Stakeholder groups/individuals

07/03/13 Tentative Schedule from Rickenbach for the New WRF posted online and available.

07/03/13 Working with Coastal Commission staff to finalize date for quarterly meeting/teleconference.

07/11/13 July JPA Meeting Cancelled.

07/18/13 Quarterly Coastal Commission/City of Morro Bay meeting, Rickenbach Team participated in review and discussion of the status of the WRF project.

07/19/13 WSC Report entitled Conceptual Wastewater Treatment Alternatives Technical Memorandum commissioned by the Cayucos Sanitary District (CSD) released on the CSD website and delivered to the City. Report located at the following address:  
[www.cayucossd.org/documents/Conceptual%20WW%20Treatment%20AltTM\\_CSD.pdf](http://www.cayucossd.org/documents/Conceptual%20WW%20Treatment%20AltTM_CSD.pdf)

07/24/13-07/25/13 Stakeholder Interviews conducted by Rickenbach team

08/08/13 August JPA Meeting Cancelled

08/15/13 Community Workshop #1 held at MB Veteran’s Hall

Week of 8/19/13 Workshop Summary posted on City’s website  
Comments Form available on City’s website for additional comments on the workshop and/or project

09/12/13 September JPA Meeting held

09/16/13 Biosolids and Treatment Options Workshop at MB Veteran’s Hall

09/27/13 October 2013 JPA Meeting cancelled

10/21/13 Quarterly Coastal Commission/City of Morro Bay Meeting

10/29/13 Release of Public Draft – Options Report

11/04/13 Public Works Advisory Board – Options Report to Board for Public Feedback

11/05/13 Second Public Workshop – Presentation of Options Report for Public Feedback

11/12/13 Presentation of Options Report to City Council

11/14/13 November 2013 JPA Meeting Cancelled

11/19/13 Meeting with RWCQB Staff regarding project Status and Permit Renewal

12/10/13 Presentation of Options Report to City Council

12/19/13 December JPA Meeting held – Verbal update by both CMB and CSD

01/16/14 January JPA Meeting canceled

01/20/14 Received proposal from Cheath-Harris to study Chorro Creek discharge and effect on City water supply. Estimated fees not to exceed \$7,500.

01/23/14 Onsite staff meeting with property owner at Rancho Colina to tour a potential location

01/23/14 Telephone discussion with City’s Water Attorney regarding water rights to

creek discharge of wastewater.

1/29/14 Received proposal from Rickenbach for a contract amendment to perform due diligence on alternative WRF sites for final site selection. Estimated fees not to exceed \$63,806.

01/31/14 Status report preparation assigned to Public Services Director

02/11/14 Mid-year Budget adjustment to include additional funding for WRF alternative site analyses. \$100,000 was approved.

**02/13/14 WRF Sub-Committee meeting to discuss the 5 year time schedule and grant opportunities.**

02/13/14 February JPA Meeting held

02/25/14 City Council received a status update on the New WRF and adopted Resolution 17-14 prescribing a 5-year time frame for the construction of the New WRF.

02/28/14 Received a revised scope of work for a contract amendment received from Rickenbach recognizing the accelerated time schedule for the WRF. Estimated fees not to exceed \$76,129

03/06/14 Scheduled WRF Subcommittee meeting with staff to discuss grant opportunities and schedules.

**03/20/14 WRF Sub-Committee meeting along with staff and property owner at the “Rancho Colina” Morro Valley site to get an overview of the potential for it as a project location..**

**03/21/2014 Meeting between City of Morro Bay (Irons/Smukler) and CSD (Enns/Lloyd) Sub-Committees along with Morro Bay and CSD County and Water Board Staff to discuss overall project status and the CMC option.**

**TBD Meeting to review the “Rancho Colina” site with the Morro Bay and CSD Sub-Committees along with Water Board staff.**

**CONCLUSION**

City Council, since the denial of the WWTP permit in January 2013, has made measured and deliberate progress in the WRF project, as outlined above.



AGENDA NO: B-1

MEETING DATE: April 8, 2014

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 3, 2014

**FROM:** Cindy Jacinth, Associate Planner

**SUBJECT:** Introduction and First Reading of Ordinance 585; Amendment to Title 17 (Zoning Text Amendment - #A00-013 Amending Section 17.48.320 Secondary Unit Ordinance)

**RECOMMENDATION:**

Staff recommends that the City Council:

- 1) Re-open the public hearing and receive testimony; and
- 2) Continue the Public Hearing to the April 22, 2014 City Council meeting

This matter was previously continued to this evening due to a request from the Coastal Commission staff. City staff is again requesting this item be continued to the April 22, 2014, City Council meeting. Ordinance 585 which seeks to amend the Zoning Ordinance, a component of the City's Local Coastal Program (LCP), will require certification by the Coastal Commission. A draft of the Ordinance and Exhibit A had been forwarded to Coastal staff for their input with the expectation comments would have been received and we could have moved forward with the item at this meeting. Staff is still awaiting those comments and as such, is requesting another continuance prior to Introduction and Reading of Ordinance 585.

Prepared By:  CJ

Dept Review:  RL

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

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



After the initial formation of the assessment district; each year, beginning in April, the City must hold a series of three (3) public hearings to confirm the levy of assessment for the upcoming fiscal year. The first public hearing initiates the annual levy process and directs the preparation of an Engineer's Report; the second hearing approves the Engineer's Report and notices the intent to levy the assessment; and the third public hearing actually levies the assessment for the upcoming fiscal year.

### **DISCUSSION**

After the first public hearing and upon adoption of Resolution No. 21-14, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review and acceptance at the May 13, 2014, City Council meeting, which will be the second public hearing. At that second hearing will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, names the district and gives its general location; it also refers to the proposed assessment and gives notice of the time and place for the third and last public hearing regarding the levy of the proposed assessment, as well as stating whether or not the proposed assessment is an increase from the previous year. The Government Code states the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 24, 2014. Any interested person may file a written or oral protest with the City Clerk stating all grounds of objection for levy of assessment. However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district.

The Cloisters Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be utilized for improvements within the District. Once set, the annual assessment is transmitted to the County Auditor for recording on the County assessment role. The assessment amount will then appear each year on the parcel owner's property tax bill.

In conformance with Proposition 218, The Right to Vote on Taxes Act, passed in 1996 by the voters in the State of California, the Cloisters Landscaping and Lighting Maintenance Assessment District was approved by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

### **CONCLUSION**

Resolution No. 21-14 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space for the purpose of assessing private property owners of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice that a public hearing on the intent to levy the assessment, review and acceptance of the Engineer's Report, will be held on May 13, 2014.

**RESOLUTION NO. 21-14**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT  
FOR CLOISTERS LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE  
“LANDSCAPING AND LIGHTING ACT OF 1972”  
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

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

**WHEREAS**, the City Council has placed certain conditions on the development of Tract 1996, The Cloisters, requiring formation of a property Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration area, and other common area improvements to be held by or dedicated to the City of Morro Bay as required by City Ordinance and;

**WHEREAS**, these conditions are more specifically identified in Vesting Tentative Tract Map (condition 10e) and Precise Plan (condition 2c) as required by City Ordinance; and

**WHEREAS**, the owners of the real property within the proposed district (the “Owners”) have consented in writing to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

**WHEREAS**, the Owners of real property within the proposed district have dedicated in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has accepted that Offer of Dedication; provided that the costs of maintenance thereof, are borne by an assessment district as required by the Conditions of Approval of the project; and

**WHEREAS**, one hundred percent (100%) of the property owners approved formation of the district to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay:

- a. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.
  
- b. The improvements to be subject to assessment for maintenance by such District shall

include those enumerated in the conditions of project approval and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 1996; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.

- c. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
- d. An Engineer's Report will be prepared for consideration at a public hearing to be held on May 13, 2014, by the City Council.
- e. This District is called the "Cloisters Landscaping and Lighting Maintenance Assessment District."

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of April, 2014 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

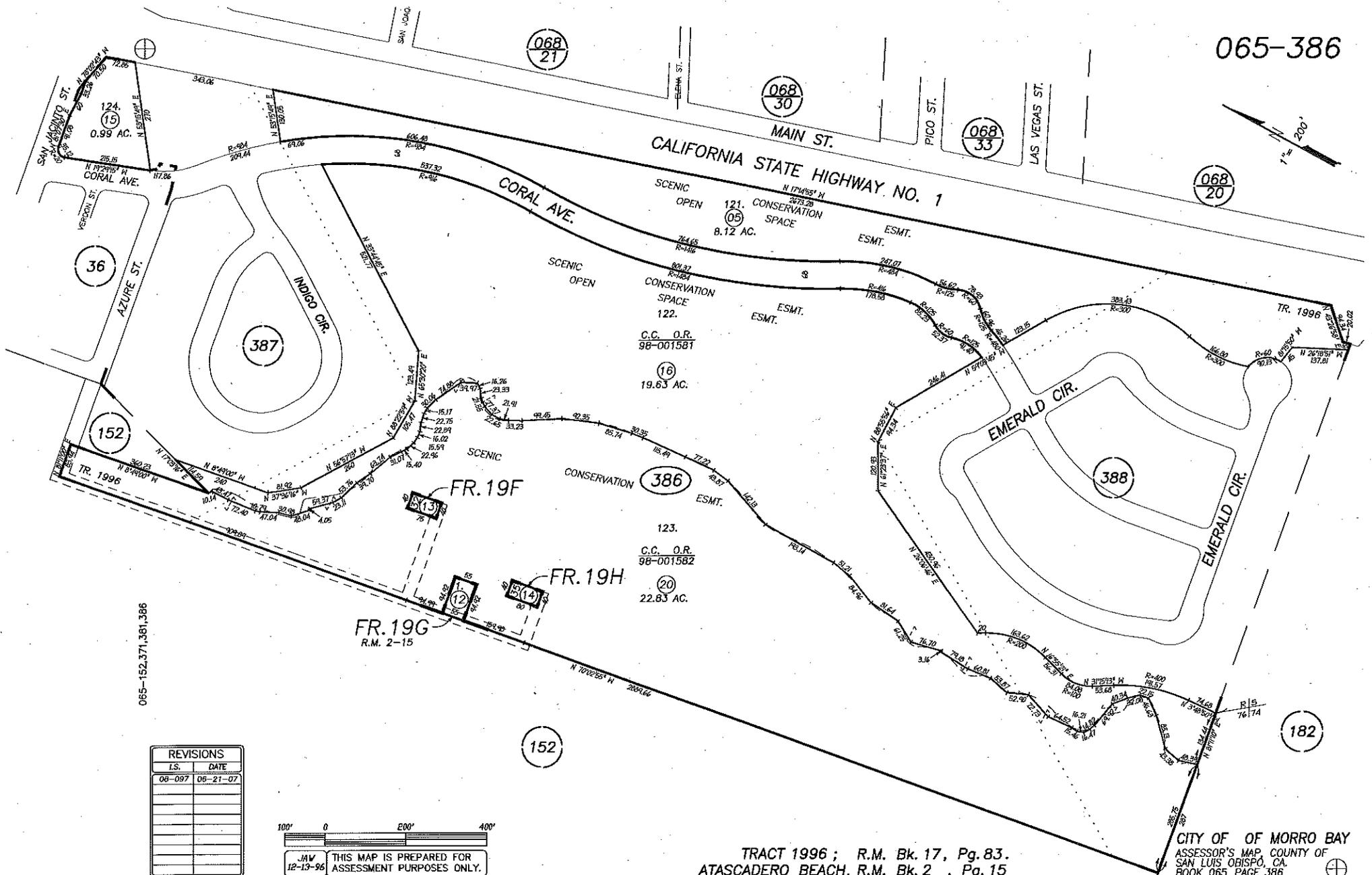
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**Jamie L. Irons, Mayor**

**ATTEST:**

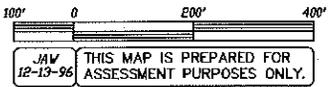
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**Jamie Boucher, City Clerk**



065-152,371,381,386

REVISIONS	
I.S.	DATE
06-097	06-21-07



TRACT 1996 ; R.M. Bk. 17, Pg. 83.  
 ATASCADERO BEACH, R.M. Bk. 2 , Pg. 15

CITY OF MORRO BAY  
 ASSESSOR'S MAP, COUNTY OF  
 SAN LUIS OBISPO, CA.  
 BOOK 065 PAGE 386.



Upon adoption of Resolution No. 22-14, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for the second public hearing scheduled for the May 13, 2014, City Council meeting. Also included will be a Resolution declaring the City Council's intent to levy and collect the assessment. The Resolution also lists the improvements, names the district and gives its general location, refers to the proposed assessment, gives notice of the time and place for the third and last public hearing regarding the levy of the proposed assessment as well as states whether or not the proposed assessment is an increase from the previous year.

The Government Code states the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 24, 2014. Any interested person may file a written or oral protest with the City Clerk stating all grounds of objection for levy of assessment. However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district. However, the assessment amount could not be increased over the highest assessment on record, \$5,645, if a majority protest is received.

The North Point Natural Area Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount will then appear each year on the parcel owner's property tax bill.

In conformance with Proposition 218, "The Right to Vote on Taxes Act," passed in 1996 by the voters in the State of California, the North Point Natural Area Landscaping and Lighting Maintenance Assessment District was approved by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

### **CONCLUSION**

Resolution No. 22-14 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area for the purpose of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice a public hearing on the intent to levy the assessment, review and accept the Engineer's Report will be held on May 13, 2014.

**RESOLUTION NO. 22-14**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT  
FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE  
“LANDSCAPING AND LIGHTING ACT OF 1972”  
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

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

**WHEREAS**, the City placed certain conditions on the development of Tract 2110 “North Point,” requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay; and

**WHEREAS**, those conditions are more specifically identified in the Precise Plan (condition F1-F7) related to North Point; and

**WHEREAS**, the owners of the real property within the proposed district (the “Owners”) consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

**WHEREAS**, the Owners of real property within the proposed district offered in fee and in perpetuity, Lot 11 of Tract 2110, and the City accepted that Offer of Dedication; provided, that the cost of maintenance, thereof, would be borne by an assessment district as required by the Conditions of Approval of North Point; and

**WHEREAS**, one hundred percent (100%) of the property owners approved formation of the District to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII, C & D).

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California:

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.

2. The improvements to be subject to assessment for maintenance by the District shall include those enumerated in the conditions of approval of North Point and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for North Point as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 13, 2014 City Council meeting and that date is set for a public hearing to review that report.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of April, 2014 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

---

**Jamie L. Irons, Mayor**

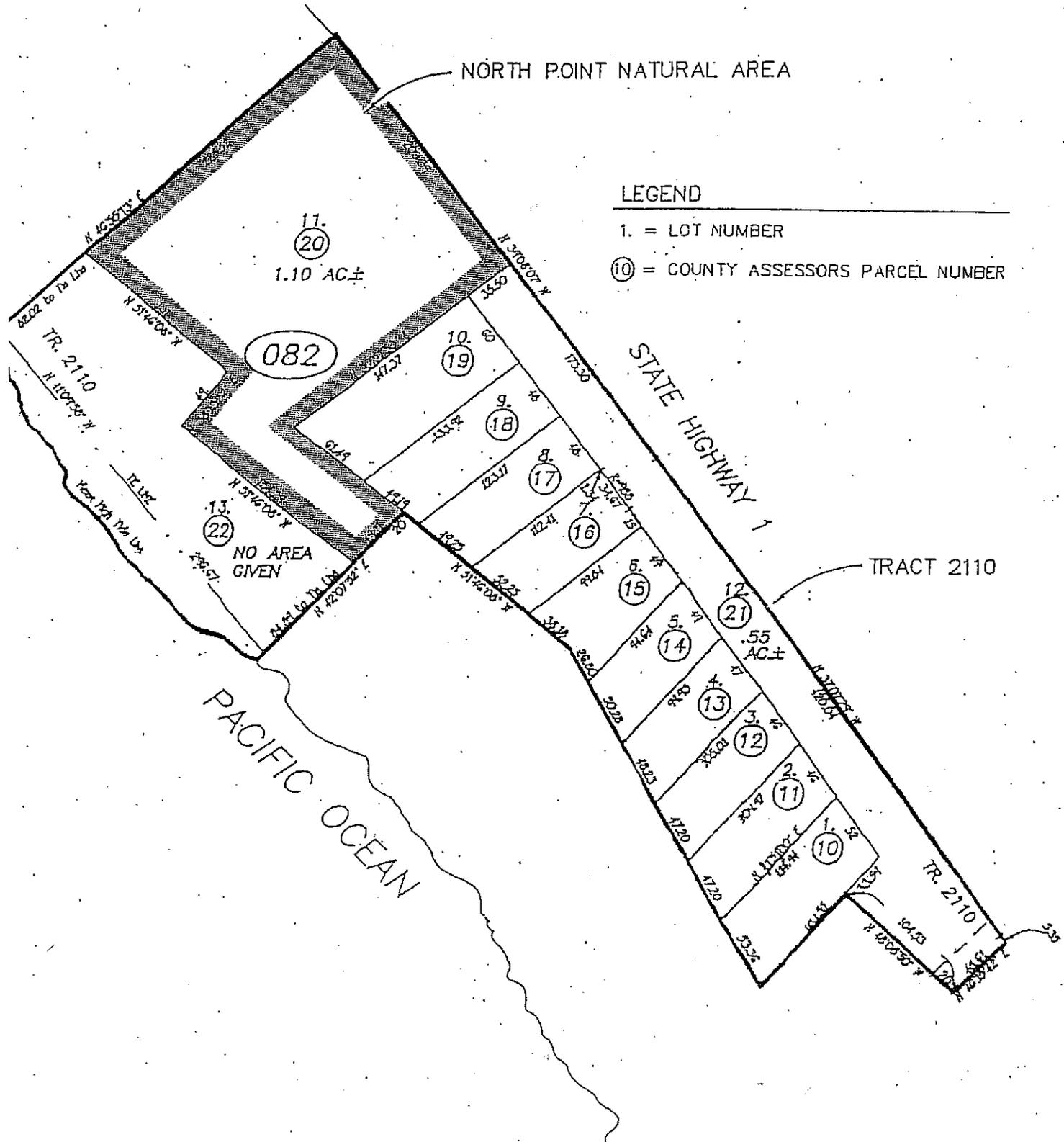
**ATTEST:**

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**Jamie Boucher, City Clerk**

# NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

## ASSESSMENT DIAGRAM





AGENDA NO: C-1

MEETING DATE: 04/8/14

# Staff Report

**TO:** Mayor Irons and City Council                      **DATE:** March 14, 2014

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

**SUBJECT:** Resolution 20-14 Reestablishing the Chamber of Commerce Economic and Business Development Agreement for FY 2013/14 to Include the Economic Development Work Plan for the Remainder of FY 2013/14

## **RECOMMENDATION**

Staff recommends the City Council adopt Resolution 20-14, reestablishing the Agreement between the City and the Chamber of Commerce for the FY 2013/14, to include any changes made at this meeting.

## **ALTERNATIVES**

After reviewing the Economic and Business Development Agreement and Work Plan, to include the amount requested for the remaining months of FY 2013/14 (February – June), Council may choose to make modifications to work plan and/or requested monthly invoice amount.

## **SUMMARY**

Resolution 20-14 is presented for adoption, which will reestablish the FY 2013/14 Agreement between the City of Morro Bay and the Chamber of Commerce for Economic and Business Development. Any changes made at this meeting will be incorporated in the Agreement.

## **BACKGROUND**

As part of the 2012/13 budget, an allocation was made for the Chamber of Commerce for its economic and business development program. Payments began on August 23, 2012, and were made for July and August 2012 services; ensuing payments were then made monthly.

On August 28, 2012, the former City Manager brought an agenda item to the City Council, recommending the lease of the former Fire Station modular, located at 695 Harbor Street, to the Morro Bay Chamber of Commerce. Council approved the concept of the lease agreement, but final approval was contingent upon the approval of the Chamber's Economic Development Program.

Prepared By: SS

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

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

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

At the September 11, 2012 meeting, Craig Schmidt, the Chamber of Commerce's Chief Executive Officer, made his presentation to the City Council. He stressed that with the Chamber's Economic and Business Development Plan, the Chamber would be able to provide for the retention and expansion of businesses, recruitment of businesses, and entrepreneurial development. To measure impacts, the Chamber would provide a monthly business barometer, which would track vacancies, new businesses in town, TOT receipts, employment numbers, sales tax and businesses served with exit survey results.

He also discussed the use of the Fire Department modular building, stating that it would provide the partner space needed to fully develop the economic development proposal, as well as ensure the space necessary for the business incubator program. The Council was in support of this program, and directed staff to bring back an agreement for the economic development proposal to include measurable milestones/benchmarks.

At the October 9, 2012 City Council meeting, the Economic Development Program was brought back to Council. The item presented to Council was titled: **Discussion and Approval of the Agreement with the Morro Bay Chamber of Commerce to provide certain economic services in exchange for \$58,250 and a Lease Agreement with the Chamber for Property located at 695 Harbor Street.** The former City Attorney informed Council, based on the funding agreement, the Council had control each year, and if, at any time, the program was not performing to Council's satisfaction as an economic development engine, then the contract could be terminated or renegotiated. The Agreement was approved by a unanimous vote of the Council.

In January 2014, staff discovered the Economic and Business Development Agreement with the Morro Bay Chamber of Commerce had expired; the Agreement had inadvertently not been renewed. With the adoption of the 2013/14 budget and the allocation of \$58,425 to the Chamber once again for economic and business development services, Finance continued to pay the Chamber, unaware the Agreement had expired. To date, the City has paid the Chamber \$34,081.25 (July – January) of the approved \$58,425 allocation. No additional payments have been made.

On February 25, 2014, staff presented the City Council with the above information, and requested further instructions. Council voted to have the Chamber provide a revised invoice for the month of February, and to come back in 30 days with a scope of work for the rest of the fiscal year. Chamber President-elect, John Headding, requested clarification, and Mayor Irons stated the Chamber would provide Ms. Slayton with a revised invoice for the month of February, based on scope of work to date; in 30 days, the Chamber would come back to Council, providing the scope of work for the rest of the fiscal year. Mr. Headding wondered about the 2014/15 fiscal year, and if Council was expecting 2 reports, one for the balance of 2013/14 and one for the upcoming 2014/15 fiscal year to be brought back in 30 days, which Interim City Manager Kreins affirmed that statement.

On March 12, 2014, Mr. Kreins and Ms. Slayton, along with Mayor Irons and Councilmember Christine Johnson, met with Mr. Headding and current Chamber President Jennifer Redman to further clarify the process for the March 25<sup>th</sup> City Council meeting, concluding the plan for the balance of the 2013/14 fiscal year would be presented, and the 2014/15 fiscal year plan will be presented at a budget workshop. That matter was continued until the April 8<sup>th</sup> meeting.

**DISCUSSION**

Presented tonight is the 2013/14 Agreement with the Chamber of Commerce for Economic and Business Development. Section 1, *Fund Authorization Use of Funds* states that the City shall provide the following funding for the fiscal year 2013/14:

From July 2013 – January 2014:     \$34,081.25 (this is the amount that has already been paid)  
From February 2014 – June 2014:    \$15,000

Resolution 20-14 and the draft Agreement are attached.

**RESOLUTION NO. 20-14**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
REESTABLISHING THE CHAMBER OF COMMERCE ECONOMIC AND  
BUSINESS DEVELOPMENT AGREEMENT AND WORK PLAN FOR FY 2013/14**

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

**WHEREAS**, the City, recognizing the need for continued development of the economic base of the community is a municipal purpose, desires to provide for a coordinated effort to encourage, promote, and foster the economic development of the community; and

**WHEREAS**, the Chamber has traditionally and actively promoted business development and economic growth within the City for the purpose of creating jobs and expanding the tax base, and as a result has obtained certain knowledge and expertise in this field of endeavor; and

**WHEREAS**, it is the desire of the parties that the entities involved in furthering the economic well-being of the community maintain their historic effort in that regard while combining their efforts for such purposes, so that an effective economic development program for Morro Bay results; and

**WHEREAS**, the parties agree that these goals can best be accomplished through the operation of a program by the Chamber under the terms and conditions outlined, making use of funds provided pursuant to this Agreement by the City to supplement the funds made available by other public and private investors in the community economic development partnership.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that in consideration of the covenants and conditions stated in the Agreement, and in consideration of the mutual benefits that accrue to each of the parties hereto, as well as to the public good of all the citizens of Morro Bay, the parties do hereby agree the Economic and Business Development Agreement and Work Plan, a copy of which is attached to this Resolution, between the City and Morro Bay Chamber of Commerce is reestablished for the Fiscal Year 2013/14.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of April 2014, by the following vote:

AYES:  
NOES:  
ABSENT:

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JAMIE L. IRONS, Mayor

ATTEST:

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JAMIE BOUCHER, City Clerk

**FUNDING AGREEMENT ~~AND WORK PLAN~~ BY AND BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY CHAMBER OF COMMERCE FOR ECONOMIC AND BUSINESS DEVELOPMENT SERVICES FOR FISCAL YEAR 2013-2014**

This AGREEMENT is made and entered into by and between the City of Morro Bay, a municipal corporation (hereinafter called "City") and ~~T~~the Morro Bay Chamber of Commerce, a non-profit corporation (hereinafter called "Chamber").

**Section 1. Fund Authorization Use of Funds.**

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A. For the Fiscal Year 2013-2014 (July 1, 2013 - June 30, 2014) ("Period"), City shall provide funding to Chamber from City's General Fund for expenditures as follows: for economic and business development programs for the benefit of City ~~as detailed in Exhibit A ("Chamber's Economic Development Plan"), attached hereto and incorporated herein:~~

From July 2013 – January 2014:	\$34,081.25
From February 2014 – June 2014:	\$15,000.00

B. Chamber shall use the funds from the City during the Period, as specified in the Chamber's Economic Development Plan ~~attached as Exhibit A, and~~ and as set forth as follows:

- ~~1. Provide qualified and competent staff for the~~ Provide information resources to assist with the recruitment of and assistance to new business and industry, as well as for the retention and expansion of existing business, ~~providing all management and administrative services necessary to present a viable program.~~ This includes, but is not limited to, the gathering and dissemination of information, ~~research,~~ promotional programs, publications and services, ~~and representing the City's interests in negotiating with industrial and business prospects considering location or relocation in Morro Bay.~~
2. Be responsible for the operation of the programs carried out under the terms of this Agreement. Chamber's ~~CEO~~Director, or Chamber's designee, shall be responsible for the day-to-day operations of economic development activities, as well as the general supervision and management of the business affairs under this Agreement.
3. Provide ~~office space, general office supplies, office equipment, auto, rent, employee benefits, memberships, accounting and legal services, insurance, payroll taxes, postage, and telephone~~ the necessary resources for carrying out the terms of this Agreement.
4. ~~Continue efforts to retain and expand existing businesses, particularly businesses that are non-tourism related, with an emphasis on additional family wage jobs. The strategies should be based on research on the needs and growth potential of existing businesses. Utilize the Chamber's Economic Development Committee to begin the process of developing a 5-year Economic Development Strategy document specific to Morro Bay. Specifically, the work product shall include a vision for economic development in Morro Bay, the development of specific strategies/goals, timelines, milestones and measurements of success for the plan. Additionally,~~

broad input from a variety of community stakeholders will be obtained.

~~5. Continue efforts to recruit new businesses to Morro Bay. As with the business retention and expansion plan, the Chamber should focus on non-tourism related businesses that provide family wage jobs. Assist other community organizations in the coordination, promotion and fiscal management of various local, large-scale events.~~

6. ~~Develop and p~~Provide accurate and timely information to assist businesses interested in locating, expanding, or remaining in Morro Bay.

7. Provide advice and information to existing businesses that may wish to remain or expand in Morro Bay. Coordinate with appropriate other agencies, governments, and non-profits to assist in business retention and expansion. Continue the development and support of the business incubator program.

8. Provide advice, information, and technical assistance to businesses interested in relocating in Morro Bay. Coordinate with appropriate other agencies, governments, and non-profits to assist in business location decisions. Provide business coaching teams via EVC, SCORE, etc.

9. Develop and maintain strong working relationships with agencies and governments that provide financial and technical assistance or training to business. Assist the City in gaining input from businesses, regarding important City initiatives (sign ordinance, water conservation program, etc.).

10. Engage a cross-section of people and organizations in the work supported through *this* contract.

~~11. Implement the economic development program as outlined in the Chamber's Work Plan and Budget. Market local businesses and the community through the development of an all inclusive website and mobile app~~

12. Ensure no funds provided by City shall be used to support activities that generally serve and benefit only Chamber membership or programs not directly related to economic development. Nothing in this Agreement, however, shall prevent City from specifically funding new projects as proposed by Chamber.

13. Operate the programs hereunder for the general public good for the promotion of business, industry, and trade within City.

~~14. Indemnify the City and hold it harmless from any and all claims, suits, demands and causes of action resulting from the acts or failure to act of any agent, servant or employee of the Chamber, or any other person pursuant to this Agreement.~~

~~15.~~ Coordinate recruitment of industries with the City Manager to ensure there will be no adverse impact on Morro Bay's environment.

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156. Make its books and financial records, concerning the funds expended under this Agreement, available to City for inspections, review and audit. Chamber will provide an annual report and accounting of expenditures of the funds covered by this Agreement.

167. Prepare, within thirty (30) days ~~after~~ the end of each quarter, a report detailing the economic development activities of Chamber under this Agreement. The quarterly report shall include:

~~a) data that measures its success in economic development in its report. The quarterly report shall include: a) data that describes the total number of jobs within Morro Bay, by major sector (e.g., retail, wholesale, government, etc.);~~

b) the Morro Bay businesses that received direct assistance from Chamber for business retention or expansion;

c) the prospective businesses Chamber talked with about relocating or opening in Morro Bay;

d) a summary report of outreach efforts made by Chamber to other organizations, businesses;

e) the total number of businesses that contacted Chamber or that were contacted by Chamber; ~~and~~

f) the people to support the work of this contract; ~~and~~

g) the progress of the Economic Development Committee's work.

## **Section 2. Payments.**

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Chamber shall submit written requests for advanced payments for expenditures based on Chamber's adopted budgets under the Scope of Services. City shall provide payment to Chamber, upon approval of the request by City's Administrative Services Director. City shall use its best efforts to make payment to Chamber within 25 days of receipt of request.

## **Section 3. Reports.**

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A. Chamber shall present quarterly updates to the City Council at a regularly scheduled City Council meeting on the status of its efforts, ~~listed in the Scope of Services attached as Exhibit A.~~

B. Prior to the conclusion of the Period, Chamber shall submit a report to City, in a form acceptable to the City Manager or his/her designee, which shall include, without limitation, detailed information on overall project management and achievement of goals, as compared to Chamber's work plan and budget, ~~as set forth in Exhibit A.~~

C. ~~Upon the request of the City~~ Annually, Chamber shall provide City with an annual report prepared by a Certified Public Accountant, itemizing how Chamber expended City's payment specified in Subsection 3.A(4). Such report shall provide separately detailed accounts for each program funded by City, and be due no later than 6 months after the end of the fiscal year. **This provision shall survive the termination of this Agreement.**

D. With reasonable notice from City, Chamber shall provide to City copies of any and all work product, documents, reports, property and books produced by Chamber in fulfillment of this Agreement ("Documents"). This shall be solely for the purpose of confirming and evaluating the execution of the programs described in this Agreement, and shall not include records and documents unrelated to the execution of such programs (e.g., personnel records). Chamber's

obligation to maintain such Documents shall continue for three (3) years after the termination of this Agreement. **This provision shall survive termination of this Agreement.**

| **E** Chamber shall establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs, and comply with any applicable State and Federal standards.

| **E** Chamber shall endeavor to develop, in consultation with City, a program-based budget for all City-funded programs. Implementation of a program-based budget is not intended to affect the requirements outlined in paragraph 3(e) of this Section relating to generally accepted accounting principles.

| **Section 4. Ownership of Work Product.**

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| **A** Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber, in the performance of this Agreement, if paid in whole by the funding provided by this Agreement ("Work Product") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be "works made for hire," and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

| **B** Chamber hereby irrevocably assigns exclusively to City, all right, title and interest in such trademarks and/or copyrights or other intellectual property rights in the Work Products. Chamber shall take all acts requested by City in order to enforce City's rights under this Section.

| **C** Chamber shall not retain ownership of or any right, title or interest in any of the Work Products including, but not limited to, any related trademarks, copyrights, or other proprietary rights. City and Chamber agree that the Work Product and all such rights, title and interest in or to the Work Products belong to and are being sold and assigned in their entirety to City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all right, title and interest in and to all of the Work Product worldwide, any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark and trade secret rights). Nothing contained herein shall be deemed to constitute a mere license or franchise in City. The parties further agree that City will be free to use, modify, distribute, sell, license or otherwise exploit all such Work Products and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to Chamber and that Chamber shall have no such rights.

| **D** From time to time, Chamber will engage photographers to take photographs, or will purchase images for use in Chamber's marketing campaigns, collateral or other uses. As to those third party photographs or images whereby Chamber negotiates to purchase not only the photograph or image,

but also the copyright or other intellectual property rights, the provisions of this Section 4 will apply. As to those third party photographs or images whereby Chamber negotiates to purchase only the use of the photograph or image and the copyright is maintained with the photographer, the provisions of this Section 4 will not apply.

E. It is understood and agreed Chamber currently owns exclusively intellectual property rights to its name, committee and event titles, and logos, which will be utilized in the performance of this Agreement, ("Chamber Property"). Chamber reserves all rights, title and interest in Chamber Property, and hereby grants City a revocable, nonexclusive, license to the use of Chamber Property to the extent it becomes incorporated into, and inseparable from, the Work Product.

E. **This section shall survive termination of this Agreement.**

Section 5. Assignment. This Agreement shall not be assigned by Chamber without the written consent of City.

**Section 6. Independent Contractor.**

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At all times during the term of this Agreement, Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City.

**Section 7. Personnel.**

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Chamber represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. City shall approve all subcontractors used in the provision of services under this Agreement within five (5) business days of Chamber's submission and prior to their engagement by Chamber. Such approval shall not be unreasonably withheld by City. Chamber, however, shall be solely responsible for the work performed by those third party contractors, including timely performance and payment.

**Section 8. Term.**

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This Agreement shall ~~be deemed to be remain~~ in full force and effect from July 1, 2013 until June 30, 2014, unless terminated earlier as provided in Section 9 of this Agreement.

**Section 9. Termination of Agreement.**

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City may terminate this Agreement at any time, with or without cause, upon ~~thirty days~~ (30-days') written notice to Chamber. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in ~~satisfactorily~~ performing its services under this Agreement prior to the date of termination, and such payment shall be in full satisfaction of City's obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

**Section 10. Notice.**

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Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail, postage prepaid, to the addresses below, unless and until a different address may be furnished in writing by any party:

To City: City Clerk  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

To Chamber: Morro Bay Chamber of Commerce  
695 Harbor Street  
Morro Bay, CA 93442

Such notices shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

**Section 11. Insurance.**

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A. Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Chamber.

B. Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

C. Chamber agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

D. Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

E. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+; VII in the latest edition of Best's Insurance Guide.

F. If Chamber fails to keep the aforesaid insurance in full force and effect, City shall notify Chamber it is a breach of this Agreement and Chamber has three (3) days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, then City may terminate the

Agreement or, if insurance is available at a reasonable cost, then City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon.

G. At all times during the term of this Agreement, Chamber shall maintain on file with City Attorney a certificate or certificates of insurance on the form required by City, showing the aforesaid policies are in effect in the required amounts. Chamber shall, prior to commencement of work under this Agreement, file with the City Attorney such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty-days' (30-days')-days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement

H. The insurance provided by Chamber shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

I. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

#### **Section 12. Indemnification.**

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Chamber shall defend, indemnify, and hold ~~harmless~~ the City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of ~~City~~ officials (collectively ~~the "Indemnitees")~~ ~~free and harmless~~ from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Chamber, or of its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and ~~reasonable~~ attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of ~~any of the Indemnitees the City~~. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Chamber shall defend Indemnitees, at Chamber's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Chamber shall reimburse ~~the Indemnitees, City and its directors, officials, officers, employees, agents and/or volunteers,~~ for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Chamber's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Chamber ~~or any of the Indemnitees, the City, its directors, officials, officers, employees, agents or volunteers~~. All duties of Chamber under this Section shall survive termination of this Agreement.

#### **Section 13. Extent of Agreement.**

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This Agreement represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, instrument signed by all parties to the Agreement.

**Section 14. City Not Obligated to Third Parties.**

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~~The~~ City shall not be obligated or liable under this Agreement to any party other than Chamber.

**Section 15. Severability.**

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Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the ~~XXXX~~ day of ~~XXXXXX~~ 2014, at Morro Bay, California.

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

\_\_\_\_\_  
EDWARD S. KREINS  
Interim City Manager

By: \_\_\_\_\_  
Its (Board Member)

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Attest:

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

By: \_\_\_\_\_  
Its (Board Member)

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AGENDA NO: C-2

MEETING DATE: April 8, 2014

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** March 31, 2014

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of Assignment and Assumption of Lease Site 63-64/63W-64W (Gray's Inn, 561 Embarcadero) from Josephine Gray to Todd Baston and Tamara Gray Baston and Consideration of Consent of Landowner for Redevelopment Project Proposed for Lease Site

## RECOMMENDATION

Staff recommends the Council consider the alternatives and provide staff direction. Staff is recommending Alternative 1.

## ALTERNATIVES

1. Approve the Assignment and Assumption Agreement and accept the Leaseholders' proposal as submitted by approving a Consent of Landowner Form to enable Leaseholders to file their proposal applications with the Planning Division.
2. Approve the Assignment and Assumption Agreement and accept the Leaseholder's proposal with Council-desired changes/modifications, if any, and approve the Consent of Landowner Form to enable project submittal to Planning.
3. Deny Assignment and Assumption and Consent of Landowner and direct staff accordingly.

## FISCAL IMPACT

Increased revenue is expected when the Pipkin lease agreement for this site is retired and replaced with a modern lease that would include percent of gross sales requirements in addition to property re-appraisal and new Base Rent adjustment every five years.

## SUMMARY

The Leaseholder of lease site 63-64/63W-64W has proposed an Assignment and Assumption of the site by new buyers, and a redevelopment proposed by those new buyers is attached for public comment and Council consideration for Consent of Landowner approval.

## BACKGROUND

Prepared By: EE

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

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

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

Lease Site 63-64/63W-64W (Gray's Inn) is operated under a 50-year Pipkin lease originally entered into in 1968 and expires in September 2018. Last year the owner of this site, Josephine Gray, was in negotiations with potential buyers of the site: Todd Baston and Tamara Gray-Baston. At the July 9, 2013, City Council meeting the Bastons submitted a written proposal in outline form for acquiring the lease and implementing a redevelopment project on the site in exchange for a new lease.

At that meeting, Council approved with a 5-0 vote to have staff begin working with the Bastons on their assignment and redevelopment proposal and not go out for a Request for Proposals (RFP) on the site, with the intent the Bastons would bring their full proposal back to Council at a future date for further consideration and requested approval.

## **DISCUSSION**

The Bastons have completed their negotiations with Ms. Gray and are requesting an Assignment and Assumption of the lease and Consent of Landowner Form be approved per the documents included with this staff report. Ms. Gray is a tenant in good standing per the lease management policy, and the Bastons have paid the application fee, acquired insurance effective the date of assignment, submitted for a business license with the City and submitted their financial records necessary for the assignment which have received satisfactory review by the Administrative Services Director, City Manager, and Harbor Department.

At the July 9, 2013 City Council meeting, there was Council support for the Baston's general proposal of the site's main building remaining in place, with improvements tentatively proposed. The Bastons have now fully investigated the site and are proposing the following primary elements:

- Various improvements to the main facility in the near-term including stairway, deck, and roof repairs, ADA access to hotel Unit A and the Gallery.
- Enhanced viewing corridor between Gray's and the Kayak Horizons site to the south including removal of a storage structure; landscaping improvements; and, ADA accessibility for coastal access to the proposed waterfront Harborwalk.
- Eight-foot waterfront Harborwalk connecting to the Salt Building's Harborwalk to the north including ADA accessibility from the sidewalk.
- Increase street-side sidewalk to full eight-foot width.
- Replace boat dock decking, lower deck, and roof of main building within a 10-year timeframe.
- Replace boat dock gangway and any needed pilings within a 15-20 year timeframe.

The Bastons are requesting a Consent of Landowner approval enabling them to submit their project proposals to the Planning Division which begins the full public review process starting with Concept-level approval.

## **CONCLUSION**

Staff is seeking Council input and approval of an Assignment and Assumption Agreement and Consent of Landowner Form for the now-detailed proposal that was previously considered by Council in outline form last summer for Lease Site 63-64/63W-64W, Gray's Inn. Staff is recommending Alternative 1.

City of Morro Bay Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Attn: Eric Endersby and Lori Stilts

March 24, 2014

From: Todd Baston and Tamara Gray-Baston  
409 Pioneer Drive  
Glendale, CA 91203

Request consideration of lease purchase and renewal for Lease Site 63-64/63W-64W based on purchase of remaining lease held by present lease holder, Josie Gray, along with the redevelopment of site according to city recommendations.

#### Current Status

We, Todd Baston and Tamara Gray-Baston, signed the purchase agreement and submitted a deposit for the Grays Inn and Gallery with the present owner, Josie Gray. Development and improvements to the property have been given to Gene Doughty for further development. We submitted an application for a Morro Bay Business License, and all paper work, copies of financial statements and credit reports, requested by Eric Endersby, have been sent to the Harbor Management Office along with the lease application, fees, and the Assignment and Assumption Agreement. Insurance required by lease has been purchased through Engle Insurance. Title transfer will be managed by Martha G. Sohacki of First American Title.

#### Site Development Plan

##### Enhance viewing corridor

- Remove small storage structure at south side of facility
- Redesign shrubs, fence, and sidewalk to provide more visual access.
- Provide ADA requirements for Coastal Access

##### Street side pedestrian walkway

- Increase street sidewalk to 8 feet
- Relocate street side signs

##### Waterfront walkway

- Develop 8 foot waterfront pedestrian walkway
- Collaborate with neighboring lease holders in the development and construction
- Provide ADA access to walkway via viewing corridor

##### Facility Improvements

- Repair exterior staircase
- Repair lower deck
- Roof shingle repair
- Provide ADA access to Unit A
- Provide ADA access to Gallery
- Redesign Gallery to improve visual appeal from street walkway
- Develop a plan to possibly add a fourth unit to second floor

Improvements needed within 10 years

Dock decking replacement

Lower deck replacement

New roof

Improvements needed within 15 to 20 years

Gangway replacement

Possible piling repairs for dock

Maintenance program

Provide a regular maintenance program retaining the city cleanliness standards

Relocate trash containers out of public site

Participate in the cleaning of facilities in the vicinity of the business

Encourage buildings with distinctive visual quality

Grays Inn facility is in good condition

Reflects the historical and cultural identity of the Embarcadero

Preserves the character of a working fishing community

<p>This document is recorded for the Benefit of the City of Morro Bay and is exempt from recording fees, pursuant to Government Code Sections 6103 and 27383.</p> <p>RECORDING REQUESTED BY: City of Morro Bay</p> <p>WHEN RECORDED MAIL TO: City of Morro Bay City Attorney 595 Harbor Street Morro Bay, CA 93442</p>	<p>Space above reserved for use of County Recorder</p>
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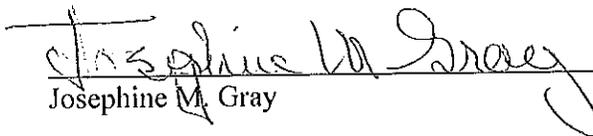
## ASSIGNMENT AND ASSUMPTION AGREEMENT

This assignment is made and entered into this 8th day of April, 2014, by and between Josephine M. Gray (hereinafter referred to as "Assignor") and Todd Baston and Tamara Gray-Baston (hereinafter, collectively, referred to as "Assignees").

1. Assignees acknowledge the City of Morro Bay (the "City") has, through approvals of previous assignment and assumption agreements, leased the premises to Assignor under the Master Lease dated October 1, 1968, first Amendment dated March 22, 1993, second Amendment dated April 5, 1993, and known as Morro Bay Lease Site 63-64/63W-64W (the "Master Lease"). Assignees acknowledge any assignment of the Master Lease is subject to prior approval by the City's City Council and is also subject to prior execution between Assignor and Assignees.
2. Assignees, jointly and severally, agree (i) to comply with all the terms and conditions of the Master Lease, (ii) to assume all liabilities required under the Master Lease and any amendments, (iii) to defend, indemnify and hold harmless the City and its officers, employees and representatives from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney's fees and court costs arising from, or in any way related to the Master Lease, and (iv) to maintain liability insurance in the manner, form and amount required by Master Lease and any amendments, thereto, with the City, its officers, employees and representatives, included as an additional insureds without the offset against the City's insurance.
3. Assignor hereby assigns to Assignees all rights, title and interest she has in the Master Lease.

Assignor confirms to the City she has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Assignors' occupation of the leased premises that has not been reported pursuant to Health & Safety code #253597.

Dated: ~~April~~ <sup>to March</sup> 24, 2014

  
Josephine M. Gray

The undersigned, jointly and severally, consent to and accept, on and after April 8, 2014, assignment & assumptions of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations as set forth in the Master Lease.

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Todd Baston

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Tamara Gray-Baston

The City, Lessor named in the Master Lease, consents to this Assignment upon the conditions set forth above. The City also consents to the agreements by Assignee to assume on and after April 8, 2014, the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations as set forth in the Master Lease. This Assignment has been approved by the City's City Council prior to the date set forth below.

City of Morro Bay

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
By: Jamie L Irons, Mayor  
City of Morro Bay

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT  
CIVIL CODE § 1189**

State of California

County of San Luis Obispo }

On 3-24-14 before me, Jessica Renea Wadley  
Date Here Insert Name and Title of the Officer

personally appeared Josephine M Gray  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Jessica Renea Wadley  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Assignment & Assumption Agreement Document Date: 3-24-14

Number of Pages: 2 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Josephine M Gray Title(s): \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_ Title(s): \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Josephine M. Gray

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Dated: 3/27/14, 2014

\_\_\_\_\_  
Todd Baston

Dated: 3/27/14, 2014

\_\_\_\_\_  
Tamara Gray-Baston

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City of Morro Bay

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
By: Jamie L Irons, Mayor  
City of Morro Bay

**ACKNOWLEDGMENT**

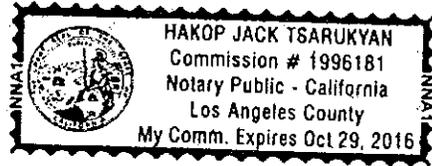
State of California  
County of LOS ANGELES )

On MARCH 27, 2014 before me, HAKOP JACK TSARUKYAN, Notary Public,  
(insert name and title of the officer)

personally appeared TODD JOSEPH BASTON AND TANARA DARLENE GRAYBASTON,  
who proved to me on the basis of satisfactory evidence to be the person(s) ~~is~~are  
subscribed to the within instrument and acknowledged to me that ~~he~~~~she~~they executed the same in  
~~his~~~~her~~their authorized capacity(ies), and that by ~~his~~~~her~~their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Hakop Tsarukyan (Seal)

**City of Morro Bay**  
**Tidelands Trust Grant Properties**  
**Consent of Landowner Form**

Consent For:

**Submission for redevelopment of Lease Site 63-64/63W-64W by Tenant,  
Todd Baston and Tamara Gray-Baston, commonly known as Gray's Inn,  
as proposed in attached site plan.**

Site Location: Lease Site 63-64/63-64W - 561 Embarcadero, Morro Bay, CA 93442

Property Owner: City of Morro Bay Telephone: 805-772-6254

Address: 595 Harbor St. City: Morro Bay State: CA Zip: 93442

Applicant: Todd Baston and Tamara Gray-Baston Telephone: (818) 730-5129

Address: 409 Pioneer Drive City: Glendale State: CA Zip: 91203

I/We, the undersigned owner(s) of record of the fee interest in the above noted land for which an application for a permit, business license or other City entitlement is being requested, do certify that:

**1. Building Permits, Land Use Permits:** Such application may be filed and processed with my/our full consent. The applicant is authorized to act as our agent in all contacts with the City in connection with this matter. I/We hereby grant the City of Morro Bay or any of its authorized agents the right to enter upon the land described herein at any time during normal business hours for the purposes of site inspection in advance of City action on the Land Use Permits; inspection of any construction, grading or other development activities following any land use permit approval or evaluation of the satisfactory completion of development authorized through land use permit approval, including continuing compliance with any conditions of approval.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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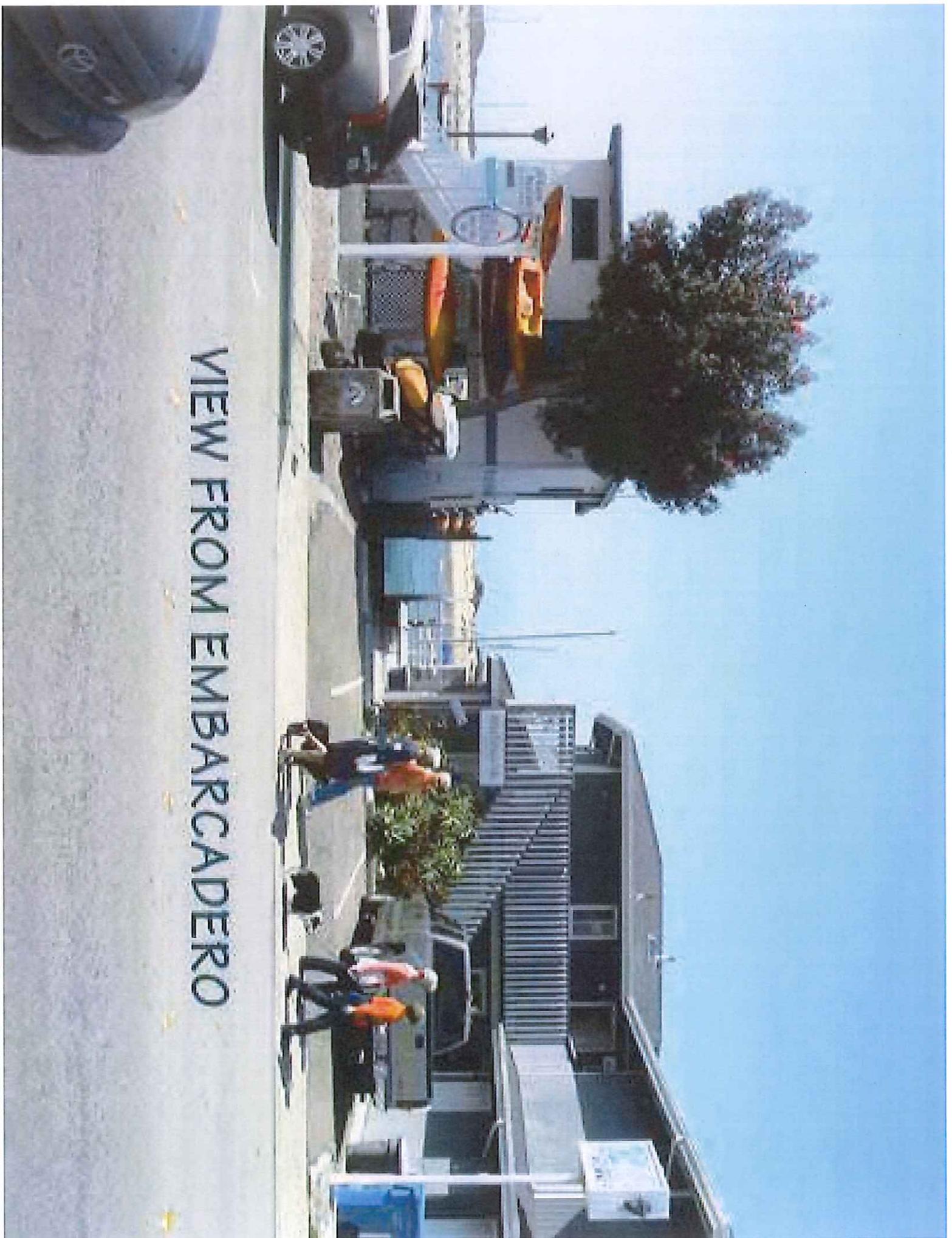
**Edward S. Kreins, City Manager**

**Date**

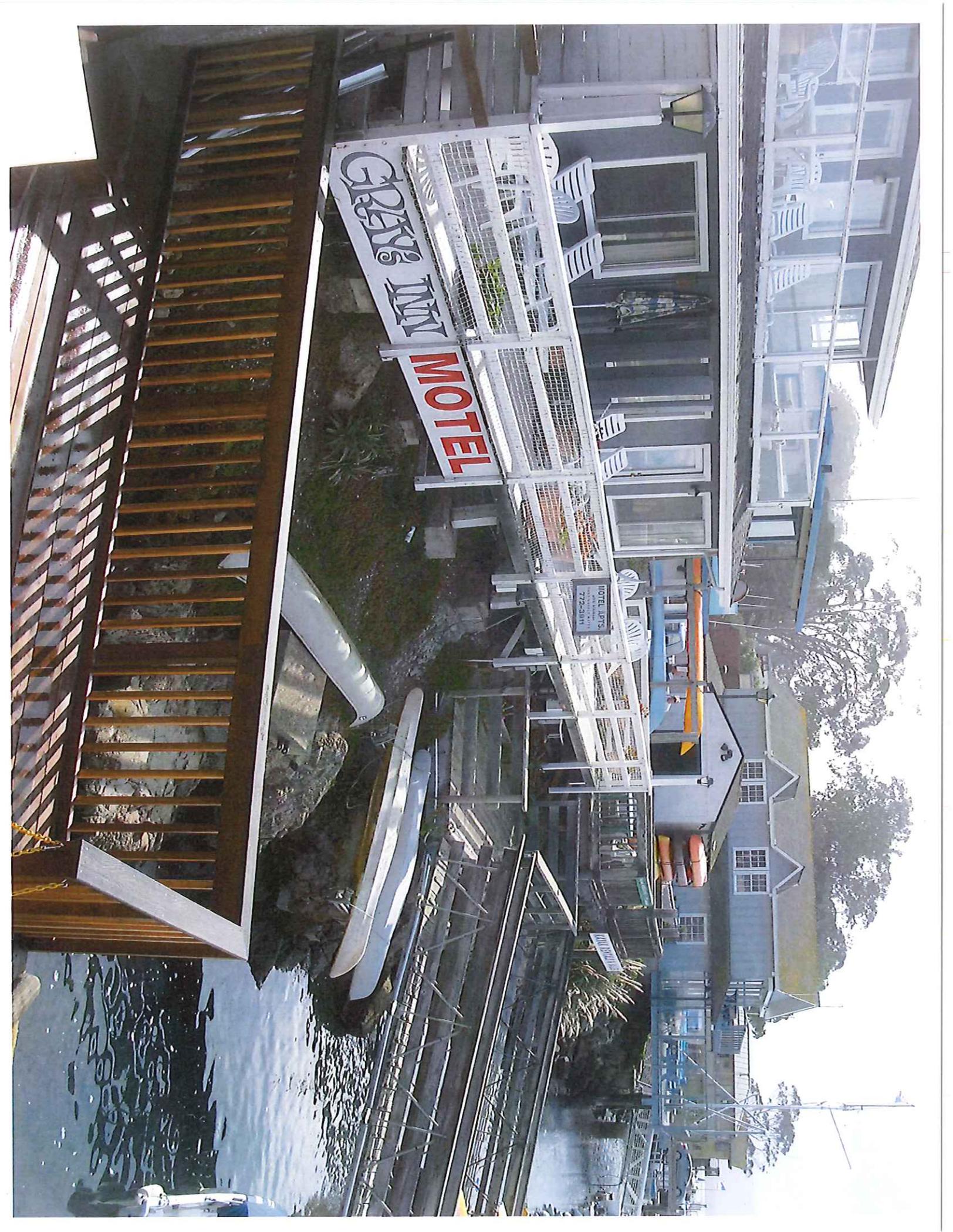








VIEW FROM EMBARCADERO









## **DISCUSSION**

The City's General Plan was last updated in 1982 and the Local Coastal Plan was last updated in 1988. At its April 22, 2013 meeting, Council identified the update of those two core City planning documents as one of the top three City goals. The City has made multiple applications for grant funding sources to address the GP/LCP update and has been successful in securing one grant that will provide technical information to develop and update plans that will conserve and protect coastal resources from future impacts of sea-level rise and related climate change impacts such as extreme weather events.

The City will continue to make application for potential funding opportunities as they become available. Unfortunately, waiting until all of the funding is accessible through grants does not meet the goal of a GP/LCP update. In order to meet that goal, staff proposes to develop a detailed work plan and budget that will provide the framework to update the GP/LCP incrementally. In order to perform the incremental update, staff proposes to engage a planning consultant who will inform the process of the update and provide manageable work product and reachable goals over the next several years. The following items need to be assessed and addressed in the proposed work plan:

- **Overall General Plan & LCP Update Management:** Management and coordination of the GP/LCP update will be performed by City Planning staff.
- **Understanding the Community:** Provide a summary of existing conditions to use as a starting place for the GP/LCP update and corresponding environmental analysis as covered by our current climate change grant.
- **Subcommittee:** Form and work with the General Plan Subcommittee to provide input/advice at key phases of the General Plan update efforts.
- **Key Issues Identification, Analysis and Recommendation:** Engage public and stakeholder groups in a discussion of the most important issues facing Morro Bay to ensure the goals and desires of the community are put forth in the new General Plan in a way that also is consistent with the City's coastal planning responsibilities under the Coastal Act.
- **Prioritize Elements:** Assess the various elements that make up the GP/LCP and provide recommendations of their relative priority within the schedule and the cost to perform. There are technical specialty studies that will need to be performed in order to complete several of the required elements. The work to be completed in the City's existing grant will feed into the Safety Element and the Land Use, Open Space and Conservation Element. There will need to be traffic studies performed in order to complete the circulation element. The updates to the Water Master Plan, the Sewer Master Plan and the Storm Drainage Master Plan will also support this proposed update. Unfortunately, these specialized studies come with a cost and more than likely cannot be performed with existing City resources and will require supplemental consultant assistance.
- **Land Use Alternatives:** Prepare land use alternatives for consideration by the community, Planning Commission and City Council.
- **Guiding Principles and Key Policies:** Conduct public workshops and joint study sessions between City Council and Planning Commission for the purpose of receiving direction on

guiding principles and key policies for the General Plan update. The public will be invited to provide comments at the joint study session.

- **Documents** Prepare a draft General Plan for public comment which includes an incorporated and updated Local Coastal Plan to meet the requirements of the Coastal Act.
- **Environmental Analysis:** Create an Environmental Impact Report pursuant to CEQA for the General Plan and Local Coastal Plan update.
- **Public Review:** Schedule a series of meetings for review and input on the draft documents.
- **Public Hearings:** Formal adoption of the General Plan which would include incorporation of the Local Coastal Plan as well as Climate Action Plan.

This proposed work plan sets the foundation for moving forward with the update of the General Plan and Local Coastal Plan. Staff continues to look for other funding opportunities to support an update of the General Plan and Local Coastal Plan.

In addition to pursuing funding opportunities, staff has also been diligently working toward pursuing a comprehensive update of the General Plan and Local Coastal Plan through the following steps:

1. Development of Greenhouse Gas Inventory. Council adopted Resolution 56-08 which established milestones for the community to reduce greenhouse gas and air pollution emissions. Many General Plans now contain an optional element for sustainability.
2. Development of a Climate Action Plan (CAP). The CAP is a strategic document for reducing greenhouse gas emissions.
3. The City's Housing Element updated in 2009 is required to be updated every five years; that update is currently in progress. The update is being funded through the City's Affordable Housing In-lieu funds.

## **CONCLUSION**

Waiting until all of the funding is available through grants does not meet the goal of timely updating the GP/LCP. In order to meet the City's goal, staff proposes to develop a detailed work plan and budget that will provide the framework to update the GP/LCP incrementally. Staff is seeking the authorization to prepare and issue an RFP and award a contract for the development of a detailed work plan for the GP/LCP update, in accordance with the City's Consultant Hiring Policy.



AGENDA NO: D-2

MEETING DATE: April 8, 2014

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** March 31, 2014

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Morro Bay Fishing Community Sustainability Plan Review, Acceptance, and Direction on Plan Recommendations

## RECOMMENDATION

The City Council hear a presentation on the Final Draft of the Morro Bay Fishing Community Sustainability Plan (the “Plan”), accept the Plan as policy guidance for future budget and project implementation actions and direct staff accordingly now or as a future agenda item(s).

## ALTERNATIVES

1. Accept the Plan as presented and direct staff on implementation.
2. Accept the Plan with comments to be incorporated as an attachment.
3. Do not accept the Plan.

## FISCAL IMPACT

There are no direct fiscal impacts from City Council acceptance of the Plan; however, implementation of certain recommendations in the Plan would incur costs. If accepted, then staff will use the Plan, including its recommendations as policy guidance in future Harbor Department budget and project development processes.

## SUMMARY

The Plan was produced with grant funding as part of the efforts to establish Community Fishing Organizations and Quota Funds in Morro Bay and Monterey. It makes key findings and recommendations on a range of high-priority issues, and will serve as a strategic planning and budgeting document for the community and local fishing industry.

## BACKGROUND

In 2012, the cities of Monterey and Morro Bay were awarded a National Fish and Wildlife Foundation (NFWF) Grant to develop Fishing Community Sustainability Plans for each City. The grant activity was managed by the City of Morro Bay. In summer of 2012, the City engaged Lisa

Prepared By: EE                      Dept Review: \_\_\_\_\_  
City Manager Review: \_\_\_\_\_  
City Attorney Review: \_\_\_\_\_

Wise Consulting (LWC) to complete the plans for each City; it was agreed to prioritize work on Monterey's plan. In October 2013, the Monterey City Council accepted the final draft and directed staff to begin implementation of some of Monterey's plan recommendations. Morro Bay released the Plan for public review and comment at the February 6, 2014, Harbor Advisory Board meeting. This agenda item is to provide the Council a short presentation from Plan Consultant, Lisa Wise and recommend the City Council accept the Plan as a policy guidance document for future budget development and project implementation.

## **DISCUSSION**

A link to the Plan in its final form is:

[https://www.dropbox.com/s/5tjrbhkcn8krze/LWC\\_Morro%20Bay%20CSP\\_Final.pdf](https://www.dropbox.com/s/5tjrbhkcn8krze/LWC_Morro%20Bay%20CSP_Final.pdf)

Included with this staff report is a copy of the Executive Summary which includes a "Key Recommendations Section."

This project is the first comprehensive attempt at such a Fishing Community Sustainability Plan on the West coast. It will be an important step in learning how such plans and tools identified therein may be useful in preserving the cultural and economic benefits of fishing to coastal communities. The Plan takes a broad approach to understanding the economic, social and environmental setting of fishing on the Central California Coast and makes recommendations to improve the performance and sustainability of the entire industry in Morro Bay.

The Plan consists of seven parts: **1) Introduction; 2) Critical Services and Facilities; 3) Economic Setting; 4) Environmental Setting; 5) Social Setting; 6) Recommendations; and 7) Potential Funding Sources.** Providing an economic, social and environmental analysis is known as a "triple bottom line assessment." The development of the Plan emphasizes an open, constituent-driven process that includes three public presentations/hearings, over 35 group and one-on-one interviews with industry participants, local stakeholders and organizational representatives. Data was also gathered from the California Department of Fish and Wildlife, the National Marine Fisheries Service, conservation organizations, the Pacific Fisheries Information Network, representatives from other ports and harbors up and down the coast and other science/academic resources.

Some important findings of the Plan include:

**Economic:** "The working waterfront and working commercial fishing port are valuable and unique resources and create a strong link to the County's \$1.2 billion tourism industry." "Ex-Vessel Value (price paid to fishermen) has climbed from a 20 year low in 2007 of under \$2 million to over \$6.3 million in 2012.

**Social:** "The Morro Bay fishing community has maintained a strong sense of social cohesion, self-organization and leadership as evidenced by the formation of the Morro Bay Commercial Fishermen's Organization in 1974 and its current membership of over 100." "Participation in the

management process, strong relationships within and outside the community, and capable leadership add to a sense of accomplishment and hope for the future, hallmarks of a sustainable human system.”

**Environmental:** “Every species targeted by the Morro Bay fleet is overseen by State or Federal regulators and include one or several spatial or temporal closures, gear restrictions, trap limits or quota based management, and are guided by management plans and science-driven stock assessments. Due to the resilience of the marine environment, efforts of the fishing community and effective management measures, many impacted species, those targeted by Morro Bay fishermen, have regained healthy population levels such as thresher shark, swordfish, salmon, Petrale sole, sablefish and several species of rockfish (bocaccio, dark-blotched, cowcod).”

Key Recommendations from the Executive Summary included with staff comments are:

**Boatyard and Haulout Facility:** “The community has responded with strong support for a haulout facility and boatyard to serve the needs of a broad cross section of marine users including commercial fishermen, recreational boaters, the Commercial Passenger Fishing Vessel fleet, U.S. Coast Guard and Harbor Department. All of these entities haul their vessels out of the water for regular maintenance and major repairs. The community also understands that such a facility is needed so the City can react appropriately to protect the sensitive estuary in the event of an oil (or other hazardous liquid) leak from a compromised or derelict vessel.”

The Morro Bay Harbor Advisory Board, with the formation of of a Marine Facility Ad-Hoc Committee, has recently renewed their interest and activity in promoting the study of the financial and logistical feasibility of a yard and haulout. In addition, the Morro Bay Commercial Fisherman’s Organization recently received a \$30,000 grant from the Central California Joint Cable Fisheries Liaison Committee to partially fund these feasibility studies as their leadership determined they have a vested interest in the prospect of a full-service boatyard coming to Morro Bay.

**Fuel:** “The current fuel facility has large capacity underground tanks and an over-the-water fuel dock and dispensing facility that are compliant with State (SB989) and Federal standards. The fuel dock at 1099 Embarcadero provides convenient and consistent access to gasoline and diesel for the entire fleet. The fuel business is marked by high volume and low margins and the City, the lease holder and fishermen have struggled with pricing. The City should continue to negotiate with the leaseholder and investigate approaches for lower prices to fishermen while maintaining a viable return for the operator.”

The lease for the fuel dock is currently in a holdover situation, with the last work on negotiations being done by the former Harbor Business Manager and City Attorney. Current Harbor Department staff have recently renewed discussions with the leaseholder.

**Refrigeration and Deep Freeze Facilities:** “Identified as a need in the 2008 Morro Bay/Port San Luis Commercial Fisheries Business Plan, refrigerator and freezer storage would give fishermen a

place to store bait and baited gear, making their operations more efficient and enabling faster trip turn-arounds and the ability to hold fish for longer periods to meet market demand and obtain (potentially) better pricing.”

As with most infrastructure needs, a suitable location from both economic and accessibility standpoints is likely the primary issue to resolve.

**Promotion and Marketing:** “Morro Bay has a unique and valuable fishing community profile with small scale, family-owned fishing operations, many of them multi-generational and in an environmentally striking setting. There was general agreement, among respondents, that better promotion and marketing of the fishing community would add to seafood sales and increase earnings at the dock and better invigorate the waterfront and overall Morro Bay economy.”

As the fleet in many sectors moves from a “high-volume, low-price” model to a “low-volume, high-price” one, continued promotional and marketing innovation and success will be the key to continued sustainability as the consumer market appears willing to bear a higher cost in exchange for a local, wild and sustainably-caught product.

**Regulation and Community Participation:** “Co-management, or participation of the City and fishing community in the development of regulation, is considered a hallmark of sustainability. The City and fishing community should continue to take a proactive approach in securing the success of its fishermen and working waterfront as it has in the development of the Morro Bay Community Quota Fund (MBCQF) and by supporting measures aimed at reducing costs to fishermen associated with regulatory compliance and protecting legislation such as Measure D.”

City Council, City Manager and Harbor Department staff have historically participated with our commercial fishing fleet on various regulatory fronts such as the State Fish and Game Commission, Federal Pacific Fisheries Management Council, National Marine Sanctuaries and with our State and Federal legislators, including the Mayor and Harbor Director’s recent trip to Washington DC to attend the California Marine Affairs and Navigation Conference.

**Berth and Slips:** “Safe and convenient options to secure boats is essential to the fishing industry and a healthy working waterfront and should not be reduced.”

With challenges such as local codes and regulations, including Measure D, and State and Federal oversight such as the California Coastal Commission and U.S. Army Corps of Engineers, not just new construction but major maintenance and repair often require considerable (and costly) planning, permitting and management efforts.

**Processing:** “Fishermen and the representatives from the City have consistently asked if seafood processing closer to the Embarcadero would give the industry greater control and provide a net benefit with an increase of jobs and return from expanded activities throughout the value chain.

There is currently some processing capacity at local seafood retailers and restaurants and Santa Monica Seafoods has a plant in Atascadero (15 miles east), recently acquired from Central Coast Seafoods. A greater diversity of processing options could benefit fishermen and the community. As such, the community should consider a feasibility analysis for a local processing facility.”

**Vehicle Access:** “Vehicle access is constrained but sufficient at present; however continued expansion in the industry may warrant circulation improvements to ensure seafood landed at Morro Bay gets to processing plants, buyers and the market efficiently. Any reduction in the access of large trucks to offloading facilities should be avoided.”

Of recent concern is the deteriorating condition of the throughway between the Morro Bay Fish Company (Central Coast Seafoods) wharf and Tognazzini’s Dockside restaurant. In addition, large commercial truck access to all seafood buyers along the waterfront can be challenging at best due to vehicle and pedestrian congestion and lack of proper large truck circulation elements.

**Managing Sea Level Rise:** “Sea level rise poses a risk to nearly all facilities serving the fishing community and waterfront in Morro Bay, particularly during high tides and storm events. The City is actively engaged in efforts to understand and address the risk through an update of the Local Coastal Program (LCP). The LCP update is being funded by a Sea Level Rise Adaptation Grant from the Ocean Protection Council (OPC). The City should continue to pursue actions and strategies outlined in the LCP update to better protect citizens and valuable waterfront infrastructure.”

On a practical level, new projects and major maintenance and repair should be made, if feasible and practical, with the latest sea level rise guidance taken into consideration. This is a difficult challenge on existing facilities that were designed, built and must function on the water with the current sea level.

## **CONCLUSION**

The Morro Bay Fishing Community Sustainability Plan was created as part of the City’s efforts to establish a Community Fishing Association and Quota Fund to participate in the Groundfish Individually Transferrable Quota system. It is a strategic planning document meant to focus on high priority issues and to guide policy, program, and budgeting activities in order to maximize the fishing industry’s resiliency and productivity while at the same time contributing to the greater community.

Public comments received on the Plan are included with this report. Staff is seeking City Council review and acceptance of the Plan, in addition to direction on its recommendations and findings now or agendized in the future as policy, program, and budgeting decisions are made.



Photo Courtesy of Charles Nadeau

# CITY OF MORRO BAY FISHING COMMUNITY SUSTAINABILITY PLAN

March 2014



Prepared by:  
Lisa Wise Consulting, Inc.

# EXECUTIVE SUMMARY

In May of 2012, the City of Morro Bay was awarded a National Fish and Wildlife Foundation (NFWF) grant to develop Community Sustainability Plans (CSP) for the City of Morro Bay and the City of Monterey. The NFWF Fisheries Innovation Fund grant provided funds for these two communities to consider the economic, social and environmental implications of their fishing industries and working waterfronts.

CSPs are cited in the Magnuson Stevens Fishery Conservation and Management Act (MSA) as a requirement for communities that wish to remain eligible to participate in programs such as Individual Transferable Quota (ITQ) that was instituted in the federal groundfish fishery in 2011. The MSA is the overriding law for all federal fisheries in the U.S. This CSP is seen by leaders in Morro Bay as an opportunity to assess current baseline conditions and plan strategically for a stable and vibrant fishing industry and waterfront infrastructure.

The Morro Bay CSP assesses critical infrastructure and services, quantifies the number of jobs generated by the fishing industry, addresses synergies with tourism, aquaculture and recreational fishing, and distinguishes fishing's prominent role in Morro Bay's cultural identity and marine stewardship. The CSP relies heavily on input from the fishing community and local civic leaders gained through dozens of personal interviews and site visits. The Morro Bay CSP culminates with recommendations aimed at the implementation of projects with greatest priority and potential economic, environmental and social return.

The Morro Bay CSP began with a kick-off meeting that included fishing industry representatives and project

## COMMUNITY MEETING

### City of Morro Bay Fishing Community Sustainability Plan

The City of Morro Bay was awarded a National Fish and Wildlife Foundation grant to work closely with local fishing industry stakeholders and interested community members to assess the performance of the industry, build on past work, and develop strategies for economic, social, and environmental sustainability.

A kick off meeting will be held on January 7, from 6:00 pm - 7:30 pm, at the Morro Bay Veteran's Hall (209 Surf Street).

**What:**  
City of Morro Bay  
Fishing Community  
Sustainability Plan  
Kick off Public Meeting

**When:**  
Monday, January 7, 2013  
6:00 PM - 7:30 PM

**Where:**  
Morro Bay Veteran's Hall  
209 Surf Street  
Morro Bay, CA 93442  
Phone: 805.772.6254



This first meeting is intended to inform the community of the goals of the project, identify opportunities for participation, and answer questions.

The public is invited and encouraged to attend.

If you have any questions, feel free to contact the City of Morro Bay Harbor Department, Rick Albert at 805.252.7314 or Eric Underdy at 805.772.234, or Lisa Wise Consulting at 805.569.1345.

lisa wise consulting, inc.

AECOM CAL POLY

Poster notice for first public meeting for the Morro Bay Community Sustainability Plan project.

managers from the City of Morro Bay on November 26, 2012 and a Public Meeting and presentation on January 7, 2013. Throughout the project, the Consultant Team, led by Lisa Wise Consulting, Inc. (LWC) conducted one-on-one interviews with over 35 representatives from the fishing community (retired and active), City Council, local business community, marine dependent businesses, conservation NGOs and City staff. LWC also interviewed representatives from ports, harbor districts and marinas in Port San Luis, Half Moon Bay, Monterey, San Diego, Santa Barbara and the San Joaquin Delta, as well as the Port of San Francisco and Port of Los Angeles. The community outreach also included representatives from fuel cooperatives throughout the U.S. and site visits to boatyard facilities in Moss Landing and Port San Luis.

The grant pursuit process and project management was led by the City of Morro Bay (City) and Rick Algett, former City Harbor Director and Eric Endersby, current Harbor Director. The Consultant Team was made up of LWC as project manager and economics and community engagement lead; Dr. Mike Downs (Ph.D Anthropology) and ethnographer Stephen Weidlich of AECOM providing input and direction on the social and socio-cultural components of the project; and Dr. Dean Wendt, Associate Dean of the Cal Poly College of Science and Math and Director of the Center for Marine Coastal Sciences, providing guidance and input on environmental data gathering, assessment and reporting.

The report is structured in seven chapters: 1) Introduction, 2) Critical Infrastructure and Services, followed by 3) Economic Setting which includes Rents and Wharfages, Tourism and Aquaculture 4) Environmental Setting and 5) Social Setting. The report culminates with 6) Recommendations and 7) Potential Funding Sources.

## PROJECT SETTING

Morro Bay is equidistant from Los Angeles and San Francisco on the coast of California. Fishing grounds off Morro Bay are marked by a diversity of productive habitats including deep canyons, underwater seamounts, soft sand and mud bottoms and rocky nearshore areas. The port has a rich fishing heritage dating back before the founding of the City in the late 19th century. Native people inhabited Morro Bay for centuries, with evidence of their reliance on fishing in middens scattered along the coast.

Commercial activity grew in the early 1900s with the development of a commercial abalone fishery. By the 1930s there were robust sardine, groundfish, salmon, and albacore fisheries in Morro Bay. By this time there was also an active Commercial Passenger Fishing Vessel (CPFV) fleet serving thousands of visitors and locals annually. By the 1960s and 1970s, with the establishment of the MSA, the 200 mile Economic Exclusion Zone (EEZ) and the political



Photo: Capt. Ed Ewing oversees the construction of a trawl net at the MBCFO storage and gear maintenance facility.

and regulatory shift toward securing American fishing dominance in the EEZ, Morro Bay had become a vibrant and productive fishing port, led primarily by the trawl fleet. This vibrancy was complemented by on-shore industry including fish processing, offloading facilities, ice production, seafood buyers, and fuel facilities. Along with the establishment of critical physical infrastructure was a formalization of the social infrastructure. The Morro Bay Commercial Fishermen's Organization (MBCFO) was formed in 1974 and provides leadership, a more concerted voice in fishing related issues, and represents the diversity of fisheries and fishing operations in Morro Bay. By the 1990s and with the influx of inexpensive foreign imports, changes in consumer preferences, the collapse of several groundfish species and heightened regulatory oversight, the industry experienced a downturn. Total ex-vessel value (EVV) or earnings at the dock fell from approximately \$8.5 million in 1990 to \$1.9 million in 2007. However, since 2007, landings in Morro Bay have rebounded steadily to over \$6.3 million in 2012. The fishing community in Morro Bay has accomplished this through hard work, ingenuity, the ability to plan and collaborate with diverse partners and pervasive leadership.

The Morro Bay fishing community is very capable and insightful, and in conjunction with the City and with diverse partners like the State of California, academia and conservation NGOs, has engaged in extensive and consistent strategic planning marked by the 2007 MBCFO Dock Business Plan, 2008 Morro Bay/Port San Luis Commercial Fisheries Business Plan, 2009 Groundfish Threshold Analysis, and Commercial Fishery Economic Impact Reports in 2011, 2012 and 2013.

## CRITICAL INFRASTRUCTURE AND SERVICES

Morro Bay maintains much of the critical infrastructure on which a vibrant fishing industry relies, such as a high quality, high-capacity ice facility, fuel facility, four offloading hoists and buyer stations, truck access, bait and baiting service, docks, slips and piers, live fish tanks, dry storage, chandlery and a well-dredged harbor.

Facilities and services that are lacking and indentified as priorities by the fishing community, such as a boatyard and haulout facility, processing and cold/freezer storage, are included in recommendations herein.

## ECONOMIC FINDINGS

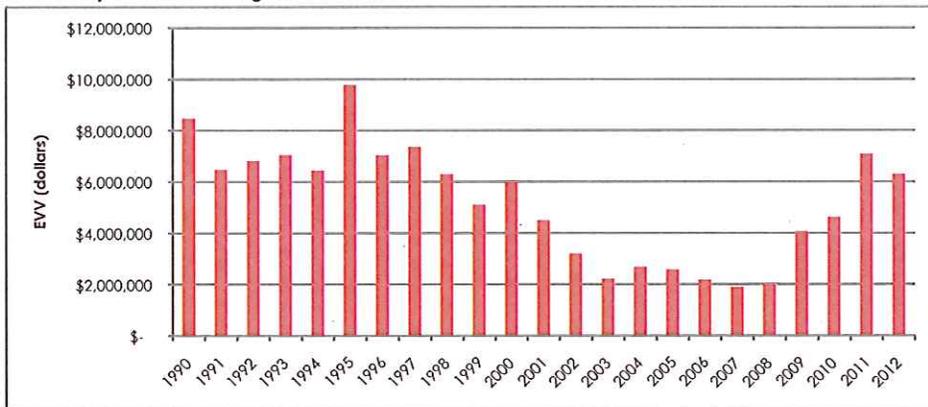
The Morro Bay fishing community and broader working waterfront is a vibrant mix of complementary activities and industries, including commercial fishing, recreational fishing, tourism and aquaculture. The working waterfront and a working commercial fishing port are valuable and unique resources and create a strong link to the County's \$1.2 billion tourism industry.



Photo: Ice pumped into the hold of a hook and line vessel. Morro Bay Municipal Dock.

Key economic indicators and metrics in the fishing community, those that provide a perspective into the industry’s performance, include earnings at the dock for fishermen or ex-vessel value (EVV). EVV has climbed from a 20 year low in 2007 of under \$2 million to over \$6.3 million in 2012. Steady and or growing EVV is an indicator of economic resilience and well being. That the earnings are spread across a broad range of fishery types, aimed at differing habitats using different gear, is another indicator of sustainability. Fishermen in Morro Bay target spot prawn, Pacific hagfish and sablefish with traps, groundfish with hook and line and trawl, squid with purse seine nets, swordfish with drift gillnets, and salmon by surface troll. Commercial fishing activity indicators such as vessel IDs, fish tickets and trips are on the rise. The number of fishing trips as measured by the Department of Fish and Wildlife has risen from 3,712 in 2008 to 5,889 in 2012. Each trip represents potential wages for crew and skippers, and the purchase of fuel, ice, and supplies as well as landings at the dock. The fishing industry supports between 170 and 194 jobs on the water, on the docks and in the local processing plant. New and returning participants is another key economic indicator. An industry that can attract new players will ultimately be in a better position over the long run. In the last 4 years there have been 17 new and returning fishermen in Morro Bay and numerous new and returning vessels.

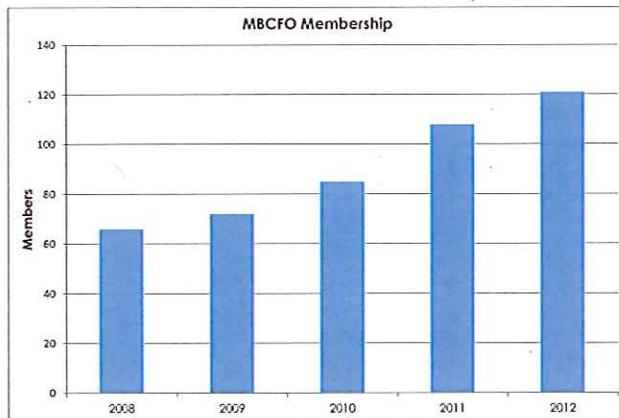
Morro Bay Overall Earnings at the Dock, 1990 - 2012, Source: CDFW



## SOCIAL FINDINGS

The Morro Bay fishing community has maintained a strong sense of social cohesion, self organization and leadership, as evidenced by the formation of the Morro Bay Commercial Fisherman’s Organization in 1974 and its current membership of over 100 members. Social cohesion is also evidenced by the fishing industry’s strong relationships with City of Morro Bay staff and civic leaders, the aquaculture industry, local merchants, and with the Commercial Passenger Fishing Vessel fleet, skippers and deckhands switching back and forth. The fishing fleet has strong ties to the academic community and has engaged in collaborative research with California Polytechnic State University and other institutions for decades. The fishing community has also shown effective communication capabilities, attracting support in the form of grant funding from the California Coastal Conservancy, National Fish and Wildlife Foundation, the Central Coast Joint Cable Fishery Liaison Committee as well as Environmental Defense Fund and The Nature Conservancy. The recent formation and successes of the Central Coast Women for Fisheries is further evidence of the

community's ability to self organize, attract funding, support fishermen and fishing families, and educate the general public.



Morro Bay is an active participant in the regulatory arena for over 40 years and participation, particularly at the Pacific Fishery Management Council level has been substantial as the federal groundfish fishery began transitioning to a quota-based management system in 2003. Participation in the management process, strong relationships within and outside the community, and capable leadership add to a sense of accomplishment and hope for the future, hallmarks of a sustainable human system.

## ENVIRONMENTAL FINDINGS

The Morro Bay fishing community has successfully transitioned from a larger fleet reliant on trawl and large volumes of landings to a smaller fleet profile with a wide diversity of species and gear types. Diversity has implications throughout the triple bottom line equation but in the case of environmental indicators, pressures on marine resources are more widely distributed, reducing the intensity of impact on any one species or habitat type and giving systems better opportunity to function and recover.

The Morro Bay marine environment is rich and diverse. The habitats in which the local fishermen operate are marked by steep canyons, rocky in shore habitats, soft and sandy bottoms, sea mounts and the steep continental shelf. How fishing activity is managed or controlled is a prominent environmental sustainability indicator. Every species targeted by the Morro Bay fleet is overseen by state or federal regulators and include one or several spatial or temporal closures, gear restrictions, trap limits or quota based management, and are guided by management plans and science-driven stock assessments. Due to the resilience of the marine environment, efforts of the fishing community and effective management measures, many impacted species, those targeted by Morro Bay fishermen, have regained healthy population levels such as thresher shark, swordfish, salmon, Petrale sole, sablefish and several species of rockfish (bocaccio, dark-blotched, cowcod).

## KEY RECOMMENDATIONS

The CSP culminates with a focused list of recommendations and their economic, environmental and social implications. Recommendations are based on extensive guidance from the fishing community, City staff and interviews and field visits conducted with civic leaders, conservation NGOs and the local business community. The development of the Recommendations is also guided by an assessment of the economic, social and environmental setting in which the fishing community operates. The recommendations are aimed at facilitating the sustainability of the fishing community and the working waterfront, and perpetuating the economic, social and environmental return.

### BOATYARD AND HAULOUT FACILITY

The community has responded with strong support for a haulout facility and boatyard to serve the needs of a broad cross section of marine users: commercial fishermen, recreational boaters, the CPFV fleet, Coast Guard and Harbor Department. All of these entities haul their vessels out of the water for regular maintenance and major repairs. The community also understands that such a facility is needed so that City can react appropriately to protect the sensitive estuary in the event of an oil (or other hazardous liquid) leak from a compromised or derelict vessel.

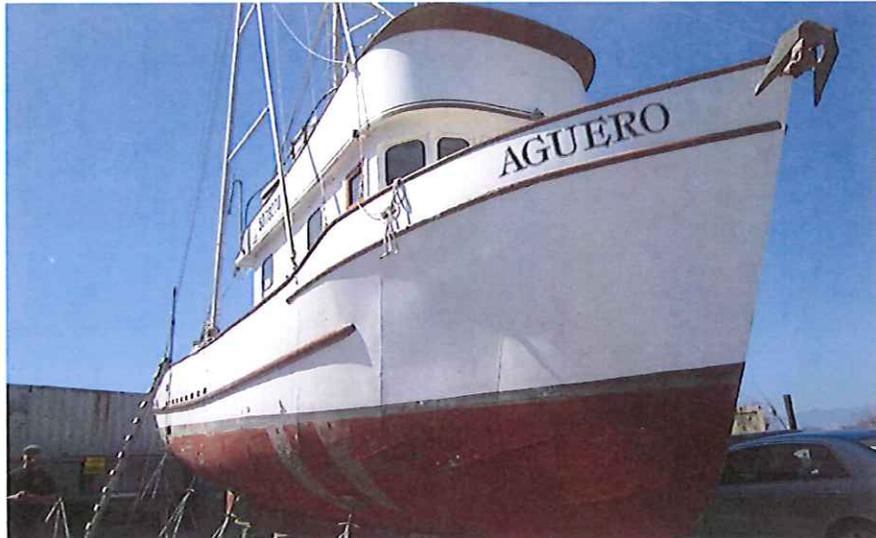


Photo: The Aguero, a Morro Bay albacore vessel at Gravelle's Boatyard, Moss Landing for bottom maintenance.

### FUEL

The current fuel facility has large capacity underground tanks and an over the water fuel dock and dispensing facility that are compliant with state (SB989) and federal standards. The fuel dock at 1099 Embarcadero provides convenient and consistent access to gas and diesel for the entire fleet. The fuel business is marked by high volume and low margins and the City, the lease holder and fishermen have struggled with pricing. The City should continue to negotiate with the lease holder and investigate approaches for lower prices to fishermen while maintaining a viable return for the operator.

### **REFRIGERATION AND DEEP FREEZE FACILITIES**

Identified as a need in the 2008 Morro Bay/Port San Luis Commercial Fisheries Business Plan, refrigerator and freezer storage would give fishermen a place to store bait and baited gear, making their operations more efficient and enabling faster trip turn-arounds and the ability to hold fish for longer periods to meet market demand and obtain (potentially) better pricing.

### **PROMOTION AND MARKETING**

Morro Bay has a unique and valuable fishing community profile with small scale, family-owned fishing operations, many of them multi-generational and in an environmentally striking setting. There was general agreement among respondents that better promotion and marketing of the fishing community would add to seafood sales and increase earnings at the dock and better invigorate the waterfront and overall Morro Bay economy.

### **REGULATION AND COMMUNITY PARTICIPATION**

Co-management, or participation of the City and fishing community in the development of regulation is considered a hallmark of sustainability. The City and fishing community should continue to take a proactive approach in securing the success of its fishermen and working waterfront as it has in the development of the Morro Bay Community Quota Fund (MBQF) and by supporting measures aimed at reducing costs to fishermen associated with regulatory compliance and protecting legislation such as Measure D.

### **BERTH AND SLIPS**

Safe and convenient options to secure boats is essential to the fishing industry and a healthy working waterfront and should not be reduced.

### **PROCESSING**

Fishermen and the representatives from the City have consistently asked if seafood processing closer to the Embarcadero would give the industry greater control and provide a net benefit with an increase of jobs and return from expanded activities throughout the value chain. There is currently some processing capacity at local seafood retailers and restaurants and Santa Monica Seafoods has a plant in Atascadero (15 miles east), recently acquired from Central Coast Seafoods. A greater diversity of processing options could benefit fishermen and the community. As such, the community should consider a feasibility analysis for a local processing facility.

### **VEHICLE ACCESS**

Vehicle access is constrained but sufficient at present, however continued expansion in the industry may warrant circulation improvements to ensure seafood landed at Morro Bay gets to processing plants, buyers and the market efficiently. Any reduction in the access of large trucks to offloading facilities should be avoided.

### **MANAGING SEA LEVEL RISE**

Sea level rise poses a risk to nearly all facilities serving the fishing community and waterfront in Morro Bay, particularly during high tides and storm events. The City is actively engaged in efforts to understand and address the risk through an update of the Local Coastal Program (LCP). The LCP update is being funded by a Sea Level Rise Adaptation Grant from the Ocean Protection Council (OPC). The City should continue

to pursue actions and strategies outlined in the LCP update to better protect citizens and valuable waterfront infrastructure.

#### **IMPLEMENT AND UPDATE**

From the onset of the project, the fishing community stressed that they wanted the CSP to focus on the promotion and implementation of high priority issues. In general, the fishing community believes that they have engaged in effective strategic planning and it is time to focus on implementation. As such, the fishing community and the City should work together to link recommendations to potential funding sources and consider the next steps in the development of a boatyard and haulout facility, freezer/cold storage facility, promotion and marketing, and the on-going development of the Community Quota Fund. The CSP should be distributed as widely as possible in the community and made available on the City, MBCFO, Chamber of Commerce and other related websites. The CSP also should be updated when feasible and progress in the industry should be compared against the benchmarks within.

#### **POTENTIAL FUNDING SOURCES**

There are over 20 potential funding sources listed in the CSP, from grants and loans to the formation of special districts. Funding sources include state, federal and local sources as well as public-private partnerships and conservation NGOs.

#### **APPENDICES**

A summary of the extensive research on the boatyard and haulout facility and fuel facility and options are included in the appendices as they are too detailed for the main document but may provide guidance to the City and the fishing community when considering implementation alternatives.



Photo: Baiting of a barbless circle hook used by hook and line fishermen, baiting facility, Morro Bay. Photo courtesy of Marigee Bacolod.

# Morro Bay Fishing Community Sustainability Plan

## Public Review Draft Public Comments Received

March 11, 2014

[Message 1 of 3]

From: Joe Falcone <joe@phondini.com>  
To: Eric Endersby <eendersby@morro-bay.ca.us>  
Cc: Jeff Eckles <jeff@eckleswealth.com>, "jirons@charter.net" <jirons@charter.net>, Gayle Bufo <gayle@phondini.com>, Julie Thomas <julie@phondini.com>  
Date: Sat, 1 Mar 2014 23:57:02 -0800  
Subject: Comments on Morro Bay Fishing Community Sustainability Plan

Dear Sirs,

I have reviewed the Sustainability Plan and have the following comments.

In particular reference to **Recommendation 4: Promotion and Marketing**, we agree that the community of Morro Bay could better communicate its unique attractions, and that FishLine should be a part of the solution.

The FishLine Mobile Application project was originally funded by a 2013 grant from the Central California Joint Cable/Fisheries Liaison Committee. This grant allocated \$12,150 to the following marketing activities which were carried out between March 1, 2013 and February 28, 2014, and largely executed by Julie Thomas, working as the FishLine Local Project Manager for Morro Bay and Port San Luis, and Gayle Bufo, her intern.

1. Daily data collection on available local seafood from Morro Bay and Port San Luis fishermen sold at markets, restaurants and CSFs
2. FishLine app demonstrations & training for fishermen, restaurants, and markets
3. Content sourcing (stories, history, photos, etc) for the app, Facebook, Twitter, YouTube, etc
4. Mobile communications (push, news, events, etc)
5. Advisory group management (FishLine Advisory Board)
6. Social Networking (Facebook, Twitter, YouTube, etc)
7. Newspaper, website and mobile advertising
8. Festival & event sponsorships
9. Email promotion
10. Flyer & banner design and production
11. Outreach activities and meetings

These activities either contributed or encouraged over 600 posts of local seafood to the Morro Bay section of FishLine and over 250 posts of local seafood to the Port San Luis section of FishLine. Users, in turn, had over 44,000 sessions on the FishLine mobile app looking for local seafood.

Likewise, Julie and her team contributed many of the 900 posts to Facebook which were seen by 149,000 people.

The FishLine mobile app attracted over 5,700 downloads, with 71% of those in California ZIP codes, and the bulk of those being within driving distance of Morro Bay and Port San Luis.

I mention all of this because the 2014 grant from the CCJCFCLC only provides funding for the development costs of new features for the FishLine app and FishLine Web (and that funding is matched 1-1 by Phondini Partners).

# Morro Bay Fishing Community Sustainability Plan

Public Review Draft Public Comments Received

March 11, 2014

There is **no funding for any of the marketing activities** listed above in the approved 2014 grant, largely because of the substantial cuts across all grants required to fund the Port San Luis crane project.

In addition, in past discussions, we have been asked to support new initiatives at the harbor, such as direct off-the-boat sales, which we have successfully promoted at Pillar Point Harbor.

As a courtesy to Morro Bay and Port San Luis, Phondini Partners will continue to support these local marketing activities while seeking funding from other sources.

However, as a small company with limited funds, we can only do so for 1-2 months at most.

Therefore, we ask that funding for FishLine local seafood marketing in Morro Bay be considered in any "Promotion and Marketing" plans considered by the City of Morro Bay for Morro Bay Harbor as part of the implementation of the Sustainability Plan.

Finally, we will be submitting a proposal to the Harbor Department for the continuation of the most important marketing activities pertaining to Morro Bay.

Cheers, Joe Falcone  
CTO, Managing Partner & Founder,  
Phondini Partners  
PO Box 157  
Half Moon Bay, CA 94019

# Morro Bay Fishing Community Sustainability Plan

Public Review Draft Public Comments Received

March 11, 2014

[Message 2 of 3]

From: Owen Hackleman <ohackleman@gmail.com>

To: [endersby@morro-bay.ca.us](mailto:endersby@morro-bay.ca.us)

Cc: None

Date: Sat, 1 Mar 2014 11:47:08 -0800

Subject: Comments: Morro Bay Fishing Community Sustainability Plan Public Review Draft

Dear Mr. Endersby,

I have a few comments regarding Sustainability Plan and the way it describes the groundfish fishery in Morro Bay. Sablefish has consistently been the highest value fish in our port, but the report gives it little discussion, especially in consideration of recent difficulties in our fishery. Unlike nearshore fish (which are also groundfish) it is buried under the "groundfish" heading. With the exception of the South Bay, all of the "groundfish" boats are in fact targeting sablefish.

From 2011 to 2012, sablefish revenues dropped by more than half and many fishermen were put out of business or moved to other fisheries, as virtually all of our trawl sablefish have been bought by large operations from out of town. As our ports most valuable fishery, sablefish should have more in depth discussion. I don't take a 2 million dollar loss of income to our local fishermen lightly, but it appears that LWC does. Some hand waving and "shifts in markets and sablefish stocks" (p 37) is offered as an explanation. But this is as generic an answer that could be offered. No substantive explanation or solution is given. No mention is even made of the correlation between the trawl IFQ system being put into place in 2011 and the subsequent sablefish disaster. The new catch share system radically changed the way sablefish is caught and marketed in Morro Bay, emphasizing large boats from Washington and Oregon. The Trawl Sector was awarded 42% of our sablefish in 2011 and not a single pound of this Trawl Sector sablefish is owned by a Morro Bay fisherman.

I and other local fishermen who have been weathering this disaster would appreciate an in depth and honest look at our fishery and the changes that have resulted in our huge loss of income. 2 million dollars might not be as significant for some of the higher volume ports in Oregon and Washington, but in Morro Bay we work hard for every dollar we can keep in this port and that sort of loss is devastating.

Thank you for your consideration,

Owen Hackleman, F/V Provision

# Morro Bay Fishing Community Sustainability Plan

Public Review Draft Public Comments Received

March 11, 2014

[Message 3 of 3]

From: Jon Griesser <[jon@wildcaliforniaseafood.org](mailto:jon@wildcaliforniaseafood.org)>

Date: Thu, Feb 13, 2014 at 1:29 PM

Subject: Re: Morro Bay CSP & Beyond

To: Henry Pontarelli <[henry@lisawiseconsulting.com](mailto:henry@lisawiseconsulting.com)>

Cc: Rob Seitz <[southbay@wildcaliforniaseafood.org](mailto:southbay@wildcaliforniaseafood.org)>, Tiffani Seitz <[tiffani.seitz@gmail.com](mailto:tiffani.seitz@gmail.com)>

Hi Henry,

Thanks for your follow up. The report, especially given the lack of precedence in this industry, is impressive; and I applaud LWC's efforts. As others have said, it's especially noteworthy to see a focus on social considerations of commercial fishing.

My feedback is minimal with one specific comment and one main high-level comment:

- Specific: Please reference CCSMA – when written out – accurately and consistently. There may be more instances, but on pgs. 74 and 82, our name is used a few different ways. We are, unfortunately, *Central California Seafood Marketing Association*.
- High-Level: Everyone is focused on recommendations, priorities, and next steps and that's a good thing. I think your excellent recommendations would be well-served by a fuller setting of context and next steps on page 79 that would help manage people's expectations and position the report's findings and those responsible for its implementation for next steps. Here are some suggestions:
  - Many of these recommendations are synergistic and would be most successful if implemented along with or in coordination with other recommendations.
  - Many of these recommendations are already underway (to one degree or another) and simply need further support in the form of.....funding, resources, planning, policy advocacy to make them truly successful.
  - Many of these recommendations will require either or both technical or financial feasibility analysis (as a condition of funding or financing) to better understand their viability, resource requirements, and return on investment to the City and/or other private partners.
  - Many of these recommendations have compelling co-benefits including increased tax revenue, increased tourism, co-branding, beautification of Morro Bay, cleaner water, lower emissions, etc. etc. that should be taken into consideration prior to implementation.

My two cents,

Jon



April 1, 2014

Mayor:  
CHUCK DELLA SALA

Mayor Jamie Irons  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

Councilmembers:  
LIBBY DOWNEY  
ALAN HAFFA  
NANCY SELFRIDGE  
FRANK SOLLECITO

City Manager:  
FRED MEURER

RE: Support for the Fisheries Community Sustainability Plan

Dear Mayor Irons and Council Members,

On behalf of the City of Monterey, please accept my gratitude and congratulations on completing a "Community Sustainability Plan" (CSP) for your City.

Monterey is grateful for the effort your city provided in preparing the grant application to the National Fish and Wildlife Foundation for funding the preparation of a CSP for both Monterey and Morro Bay. The grant request was successful, and the City of Morro Bay also administered the grant. The Monterey City Council received our CSP last October, and we are beginning to implement its recommendations.

Congratulations on completing the CSP for Morro Bay. Your CSP, like ours, contains specific information about your fisheries and recommendations for preserving the economic and social benefits of fishing in your community. I believe that our two cities share a common feature that our working waterfronts, including the ability to provide fresh seafood products, help attract visitors, with the economic benefits tourism creates.

The City of Monterey looks forward to continuing our collaborations with the City of Morro Bay.

Sincerely,

Chuck Della Sala  
Mayor

**Alliance of Communities for Sustainable Fisheries**

**256 Figueroa Street #1, Monterey, CA 93940**

**(831) 373-5238**

[www.alliancefisheries.com](http://www.alliancefisheries.com)

Mayor Jamie Irons  
City of Morro Bay  
City Hall  
595 Harbor Street  
Morro Bay, CA 93442

RE: Support for the Fisheries Community Sustainability Plan

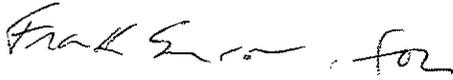
Dear Mayor Irons and Council members,

The Alliance of Communities for Sustainable Fisheries (ACSF) is a 501-c-3 not-for-profit educational organization, founded in 2001 for the purposes of providing clear representation for fishermen and their communities for local, state, and federal fishery issues. We are a regional organization, with commercial fishing leader representatives from Port San Luis, Morro Bay, Monterey, Moss Landing, Santa Cruz, and Pillar Point harbors on our Board of Directors. Port communities and several prominent recreational fishing organizations also are represented on our Board. Thus, the ACSF represents a large cross-section of fishing and community interests for the Central Coast of California.

The ACSF, whose mission statement "Connecting Fishermen with their Communities" fits perfectly with the goals of the Fisheries Community Sustainability Plan, strongly supports this Plan. We note that the City of Morro Bay provided the leadership in obtaining a grant from the National Fish and Wildlife Foundation to prepare "community sustainability plans" for both Morro Bay and Monterey. The Monterey plan was received in October, 2013, and its recommendations are being submitted to the Monterey City Council for implementation.

We are pleased to see that some of the work the ACSF has done, such as the report we commissioned on the relationship between fishing, working waterfronts, and tourism, that featured Morro Bay, are cited in the Plan and useful to the City. The findings of this report underscore the economic importance of preserving the public's ability to see the working fishing boats and find fresh, local seafood in Morro Bays markets and restaurants.

Congratulations on preparing a planning document that will guide your city in preserving the cultural, social, and economic contributions of commercial fishing to your community.



Kathy Fosmark Co-Chair



Frank Emerson Co-Chair

**Supporting Associations & Organizations:**

Ventura County Commercial Fishermen's Association

Port San Luis Commercial Fishermen's Association

Morro Bay Commercial Fishermen's Association

Monterey Commercial Fishermen's Association

Fishermen's Association of Moss Landing

Fishermen's Marketing Association

Santa Cruz Commercial Fishermen's Marketing Association

Half Moon Bay Fishermen's Marketing Association

Western Fish boat Owners Association

West Coast Seafood Processors Association

Federation of Independent Seafood Harvesters

Golden Gate Fishermen's Association

California Fisheries Coalition

California Wetfish Producers Association

Recreational Fishing Alliance

Carmel River Steelhead Association

Port San Luis Harbor District

City of Morro Bay Harbor

City of Monterey Harbor

Moss Landing Harbor District

Santa Cruz Port District

Pillar Pt. Harbor, San Mateo County Harbor District





**City of Morro Bay  
Service Retirement Incentive Program Application**

Please submit this Application, as well as your executed Agreement and Release, to Susan Slayton, Administrative Services Director, as soon as possible, but no later than **5:00 pm on Friday, May 30, 2014.**

**Employee Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Department:** \_\_\_\_\_

**Service Retirement Date:** \_\_\_\_\_

I voluntarily choose the following incentive amount based on my voluntary service retirement (Check one box below.)

- One-time Lump-Sum payment in the amount of \$10,000 paid to me.**
  
- One-Time Lump-Sum payment in the amount of \$10,000, paid to my designated Deferred Compensation provider.**
  
- Reimbursement of retiree health insurance premiums up to a total of \$10,000, paid to me, on a monthly basis with proof of premium payment.**

---

EMPLOYEE SIGNATURE

DATE



## **City of Morro Bay Service Retirement Incentive Program Agreement and Release**

This **Agreement and Release** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between \_\_\_\_\_ (“Employee”) and the City of Morro Bay (“City”).

**WHEREAS**, Employee is currently employed by City; and

**WHEREAS**, City is offering a “Service Retirement Incentive Program” (“Program”), Employee’s application for which is attached, to City of Morro Bay employees who are eligible for retirement on or before December 31, 2014; and

**WHEREAS**, employees of City, who are eligible to participate in the Program, may choose to participate in the Program where the application period begins April 14, 2014, and ends May 30, 2014; and

**WHEREAS**, Employee is currently employed by City, is eligible to participate in the Program, and voluntarily chooses to participate in the Program; and

**WHEREAS**, Employee agrees to retire from employment with City no later than December 31, 2014,

**THEREFORE**, Employee and City enter into the following agreement:

(1) **Employee’s Voluntary Service Retirement.** Employee acknowledges that participation in the Program is entirely voluntary, and hereby knowingly and voluntarily, requests retirement from employment with City, no later than the close of business on December 31, 2014.

(2) **Incentive.** Based on the Employee’s designated date of retirement, the City of Morro Bay will provide a one-time lump-sum payment in the amount of \$10,000 for employees who retire by December 31, 2014 by election in one of the following ways:

- one-time lump-sum payment in the amount of \$10,000 paid to Employee
- one-time lump-sum payment of \$10,000 made to employee’s designated deferred compensation provider
- retiree health insurance reimbursement per month up to \$10,000

Employee acknowledges that City has provided no advice and made no representations as to the tax consequences of Employee’s participation in the Program, and affirms that Employee will be responsible for all tax liability resulting from the acceptance of this incentive.

(3) Employee’s group health insurance benefits will terminate effective the last day of the second month after his/her retirement date. Employee’s vision and dental benefits will terminate

effective the last day of the month after his/her retirement date. Following the voluntary service retirement, Employee may continue City group insurance benefits to the extent allowed under PERS (health), COBRA (dental and vision) or other applicable law.

(4) On the Retirement Date, City will pay to Employee all compensable time earned and unused as of the retirement date. Thereafter, Employee will not be entitled to or accrue any additional leave time, and will not be eligible for any fringe benefits following the retirement date, except as expressly set forth in this Agreement.

(5) **WAIVER AND RELEASE BY EMPLOYEE.** In consideration of the Incentive Program payments and other consideration, as set out in this Agreement, to which Employee would not otherwise be entitled, Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby knowingly and voluntarily waives, releases, acquits and forever discharges City, its agents, officers and employees from any liability, action, suit, claim, damages, judgment, known or unknown, liquidated or un-liquidated, fixed or contingent which Employee has ever had or ever may have, arising out of or in conjunction with Employee's employment with City or the termination thereof, including, without limitation, claims under federal, state or local common law or statute, as well as any form of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964, the Older Workers Benefit Protection Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, ERISA, the Rehabilitation Act of 1973, and any other local, state or federal anti-discrimination law or ordinance, any applicable collective bargaining agreement, any applicable wage and hour or workers' compensation laws (to the extent allowed by law), including, but not limited to any claim or damages for wrongful discharge, severance pay, breach of contract, breach of any express or implied promise, retaliation, breach of public policy, defamation, negligence or other tortious conduct, or any other theory, whether legal or equitable.

Employee covenants that this Agreement, and the Release contained in it, constitutes a waiver and release of any and all claims, including existing or subsequently discovered claims that are not known or suspected by Employee to exist as of the date of execution of this Agreement, which otherwise would be preserved by operation of **Section 1542 of the California Civil Code**. Section 1542 provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her, must have materially affected his/her settlement with the debtor.**

(6) Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee acknowledges that if he/she executes this Agreement and foregoes the advice of an attorney, he/she does so freely and knowingly, and waives any and all future claims that such action or actions would affect the validity of this Agreement.

Employee may revoke this Agreement within seven (7) calendar days after signing it. Notice of revocation must be received by Susan Slayton, Administrative Services Director, at the City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442. If Employee revokes this Agreement, then City will be immediately released of any further obligation under this Agreement,

(7) Employee covenants that he/she has not commenced, and will not commence, legal proceedings of any type, whether on his/her own behalf or on behalf of any other person or entity, against City or individuals or entities released in this Agreement, or any of their respective successors or assigns, and further covenants not to maintain, join or assist in any such legal proceeding, suit, charge, or action, except as may be required by law.

(8) To the extent allowed by applicable law, the parties agree to keep the terms of this Agreement confidential and not disclose those terms to anyone, except a spouse, attorney, or tax adviser.

(9) If Employee breaches the promise in paragraphs five (5) and/or seven (7) and files a lawsuit based on legal claims that Employee has released, then Employee shall immediately return all sums which were paid to Employee pursuant to this Agreement.

(10) This Agreement shall be construed under the Laws of the State of California, and any dispute arising hereunder shall be conducted under the jurisdiction of the County of San Luis Obispo Superior Court.

(11) Each party hereto agrees that in the event of any dispute concerning this Agreement or claims, demands, liabilities or causes of action included within its scope, the prevailing party shall be entitled to recover attorney's fees and costs. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

(12) If any portion of this Agreement shall be held invalid by a court of competent jurisdiction, then the validity of the remainder of this Agreement shall not be affected.

(13) This Agreement supersedes any previous understandings, agreements or correspondence of the parties on this subject, and is binding on the parties, their heirs, executors, administrators, and successors in interest.

(14) This document is the entire Agreement and Release between Employee and City. City has made no promises to Employee other than those in this Agreement. This Agreement may not be changed orally, only in a written document signed by both parties. For purposes of this Agreement, the parties shall be deemed to have participated equally in its drafting.

(15) Employee understands that if he/she dies prior to his/her effective retirement date, then this "Agreement and Release," as well as the incentive payment, is void and neither City nor Employee's heirs shall have any right or obligation defined hereunder.

**IN WITNESS WHEREOF**, City and Employee have executed the Agreement on the day and year first set forth above.

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Employee Signature

Date

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Edward Kreins, Interim City Manager

Date

APPROVED AS TO FORM:

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Joseph W. Pannone, City Attorney

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