

# 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, DECEMBER 8, 2015  
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.

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 SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON OCTOBER 21, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON OCTOBER 27, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE SPECIAL JOINT MEETING OF THE CITY COUNCIL AND TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) ADVISORY BOARD HELD ON OCTOBER 27, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON OCTOBER 27, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-5 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON NOVEMBER 10, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-6 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON NOVEMBER 10, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-7 STATUS REPORT OF A MAJOR MAINTENANCE AND REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-8 WATER RECLAMATION FACILITY PROJECT UPDATE; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-9 RESOLUTION NO. 71-15 ESTABLISHING AN ANNUAL DATE CERTAIN TO REVIEW ALL CITY RATES AND FEES; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Approve as submitted.**

A-10 RESOLUTION NO. 72-15 ESTABLISHING THE STRATEGIC PLANNING FRAMEWORK POLICY; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-11 RESOLUTION NO. 73-15 ESTABLISHING AN ANNUAL CITY MANAGER EVALUATION POLICY; (CITY COUNCIL)

**RECOMMENDATION: Approve as submitted.**

A-12 RESOLUTION NO. 74-15 AMENDING THE COUNCIL POLICIES AND PROCEDURES REGARDING THE ORDER OF BUSINESS; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-13 AUTHORIZATION TO AMEND CONTRACT WITH RINCON CONSULTING INC. FOR PROJECT NO. MB-2013-S2: MORRO CREEK MULTI-USE TRAIL AND BRIDGE; (PUBLIC WORKS)

**RECOMMENDATION: Approve as submitted.**

A-14 ADOPTION OF RESOLUTION NO. 76-15 DECLARING THE EXISTENCE OF GULLS AT BAYSHORE VILLAGE EXEMPT FROM MORRO BAY MUNICIPAL CODE SECTION 7.16.025 AND AUTHORIZING THE HOMEOWNERS ASSOCIATION TO REMOVE GULL NESTS FROM THEIR PROPERTY; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Approve as submitted.**

A-15 RECONSIDERATION OF APPROVAL OF TWO NEW LICENSE AGREEMENTS BETWEEN THE CITY OF MORRO BAY AND GAFCO, INC. (GEORGE LEAGE, GREAT AMERICAN FISH COMPANY) FOR LEASE SITE 110W-112W & 111.5W, AND THMT, INC. (TROY LEAGE, HARBOR HUT) FOR LEASE SITE 122-123/122W-123W FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (HARBOR DEPARTMENT)

**RECOMMENDATION: Approve as submitted.**

A-16 RESOLUTION NO. 78-15 AUTHORIZING THE CITY TO ENTER INTO A DEPOSIT AND ENDORSEMENT AUTHORIZATION WITH UNION BANK, N.A. FOR THE PROCESSING OF ADMINISTRATIVE AND PARKING CITATIONS; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Approve as submitted.**

A-17 STATE REVOLVING FUND PLANNING LOAN FROM STATE WATER RESOURCES CONTROL BOARD; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolutions No. 80-15 and 81-15 related to State Revolving Fund Planning Loans from the State Water Resources Control Board.**

A-18 ADOPTION OF THE 2016 CITY COUNCIL MEETING CALENDAR; (ADMINISTRATION)

**RECOMMENDATION: Adopt Resolution No. 79-15 approving the 2016 meeting calendar.**

A-19 APPROVAL OF RESOLUTION NO. 82-15 FOR THE ASSIGNMENT AND ASSUMPTION OF LEASE SITE 65-66/65W-66W (SALT BUILDING) LOCATED AT 571 EMBARCADERO FROM ABBA IMANI TO RICK AND TERI GAMBRIL; (HARBOR DEPARTMENT)

**RECOMMENDATION: Approve as submitted.**

**B. PUBLIC HEARINGS**

B-1 APPEALS OF THE PLANNING COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT #CP0-419 AND CONDITIONAL USE PERMIT #UP0-383 FOR CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE ON A VACANT COASTAL LOT AT 3420 TORO LANE (APPELLANTS: LINDA STEDJEE AND BARRY BRANIN) (APPLICANTS: JEANNE AND GREG FRYE); (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Adopt Resolution No. 77-15 denying the appeals and upholding Planning Commission approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383 for 3420 Toro Lane.**

B-2 REVIEW AND ADOPT DRAFT FUNDING RECOMMENDATIONS FOR THE 2016 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Adopt Resolution No. 75-15 approving Community Development Block Grant Projects for 2016.**

**C. UNFINISHED BUSINESS/SECOND READING AND ADOPTION OF ORDINANCES**

C-1 DETERMINATION REGARDING THE SALE OF CITY PROPERTY ON MINDORO STREET (APN 065-113-066); (ADMINISTRATION)

**RECOMMENDATION: Discuss and provide direction to staff.**

D. NEW BUSINESS

D-1 DISCUSSION AND DIRECTION ON COMMUNITY CHOICE AGGREGATION;  
(PUBLIC WORKS)

**RECOMMENDATION: Discuss and provide direction to staff.**

D-2 CONSIDERATION AND APPROVAL OF AGREEMENT WITH MORRO BAY  
SENIOR CITIZENS INC. FOR VOLUNTEER SENIOR VAN SERVICES; (PUBLIC  
WORKS)

**RECOMMENDATION: Approve the proposed agreement with Morro Bay Senior  
Citizens Inc.**

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

The Regular Meeting of December 22, 2015 was previously canceled. Consequently, the next Regular Meeting will be held on **Tuesday, January 12, 2016 at 6:00 pm** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

**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  
SPECIAL CLOSED SESSION MEETING –  
OCTOBER 21, 2015  
CITY HALL CONFERENCE ROOM – 8:00 A.M.

AGENDA NO: A-1

MEETING DATE: December 8, 2015

PRESENT: Jamie Irons Mayor  
John Headding Councilmember  
Christine Johnson Councilmember  
Noah Smukler Councilmember

ABSENT: Matt Makowetski Councilmember

STAFF PRESENT: Dave Buckingham City Manager  
John Fox Assistant City Attorney *via teleconference*  
Sam Taylor Deputy City Manager  
Rob Livick Public Works Director

CONTRACT STAFF PRESENT:  
Mike Nunley WRF Program Manager *via teleconference*  
John Rickenbach WRF Deputy Program Manager  
John Hanlin Michael K. Nunley & Associates  
Debbie Rudd RRM Design Group

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 8:07 a.m.

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comments for items only on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager

**CS-2 GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**

Property: A portion of APN 073-085-027 located near 1235 Atascadero Road, Morro Bay CA 93442 (Outside Morro Bay City Limits)

Agency Negotiators: David Buckingham, City Manager

Under Negotiation: Price and Terms of Payment

The City Council reconvened to Open Session.

The Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 1:20 p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES – MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
OCTOBER 27, 2015  
CITY HALL CONFERENCE ROOM – 3:30 P.M.

AGENDA NO: A-2  
MEETING DATE: December 8, 2015

PRESENT: Jamie Irons Mayor  
John Headding Councilmember  
Christine Johnson Councilmember  
Noah Smukler Councilmember

ABSENT: Matt Makowetski Councilmember

STAFF PRESENT: Dave Buckingham City Manager  
Joe Pannone City Attorney  
Scot Graham Community Development Manager

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 3:30 p.m.

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comment for items only on the agenda.

Nattalia Merzoyan spoke on behalf of the Grillis who were not available to attend the meeting. She read a statement prepared by the Grillis and submitted a petition demanding the criminal charges be dropped.

The Public Comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Deciding to initiate litigation pursuant to Government Code Section 54956.9(d)(4): One Matter

- City of Morro Bay v. Carl and Judy Grilli

The City Council reconvened to Open Session.

City Attorney Pannone reported that with regard to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 4:30 p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES – OCTOBER 27, 2015  
JOINT MEETING OF THE MORRO BAY  
CITY COUNCIL AND THE TOURISM BUSINESS  
IMPROVEMENT DISTRICT (TBID) ADVISORY BOARD  
MORRO BAY VETERAN’S HALL  
209 SURF STREET – 4:30 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	John Headding	Councilmember
	Noah Smukler	Councilmember
	Michele Jacquez	TBID Advisory Board Chair
	Taylor Newton	TBID Advisory Board Member
	Jack Smith	TBID Advisory Board Member
	Joan Solu	TBID Advisory Board Member
ABSENT:	Matt Makowetski	Councilmember
STAFF:	David Buckingham	City Manager
	Sam Taylor	Deputy City Manager
	Dana Swanson	City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established by the City Council with all members, but Member Makowetski, present.

A quorum was established by the Tourism Business Improvement District Advisory Board with all members present.

The City Council and Advisory Board Members made opening comments.

<https://youtu.be/CB-05BcQUuA?t=1m7s>

The Public Comment period was opened.

<https://youtu.be/CB-05BcQUuA?t=11m9s>

Robert Davis, Morro Bay, encouraged collaboration between staff and the hoteliers to rewrite a recommendation to Council they all support. He also encouraged hoteliers to step up and fill the remaining advisory board positions.

Homer Alexander, Morro Bay, spoke in support of the current tourism model noting it is working well for Morro Bay businesses and the City treasury.

Chuck Davison, President and CEO of Visit San Luis Obispo County, encouraged the Board and Council to maintain a professional tourism director and establish a detailed plan on how the business structure will advance tourism moving forward.

Ashlee Akers, Verdin Marketing, shared there has been a lot to celebrate this past year and a big part of that success is the current business model that allows quick response to opportunities. She encouraged the Council to continue that momentum with the current model.

The Public Comment period was closed.

Councilmembers explained the goal to review the tourism structure was intended to be a healthy analysis of something very dynamic and important to the City's financial health and consider ways it can be improved, particularly with regard to events, economic development and infrastructure. They also discussed the importance of clearly defined roles of the TBID and Tourism Bureau, and a strong relationship between the City and the TBID with the City committed to improving infrastructure while the TBID is focused on marketing, branding and getting a better return on investment.

Advisory Board Members appreciated the opportunity to have a joint meeting with the Council and agreed working together and building trust is important. They requested one year to work with a full board and new staff to further develop the relationship. They noted TOT recorded an all-time high of \$2.9m; they are proud of City and all the partners that went into that. Finally, the City has spent \$600k inviting guests here every year -- their experience and what the City does with the increased TOT is very important.

The joint meeting of the City Council and Tourism Business Improvement District Advisory Board was adjourned at 5:53 p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – OCTOBER 27, 2015  
VETERAN’S MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	John Headding	Councilmember
	Christine Johnson	Councilmember
ABSENT:	Matt Makowetski	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Sam Taylor	Deputy City Manager
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	John Rickenbach	WRF Deputy Program Manager
	Scot Graham	Community Development Manager
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:04p.m.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT

City Attorney Pannone reported that with regard to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/t9oNcQMvIDo?t=2m22s>

PUBLIC PRESENTATIONS

Chamber of Commerce Quarterly Update

<https://youtu.be/t9oNcQMvIDo?t=13m40s>

Jennifer Redman, President of the Chamber of Commerce, provided the quarterly update for the Chamber of Commerce as well as month-to-date information on the new Visitor Center which opened at 695 Harbor Street October 1, 2015.

Tourism Bureau Quarterly Update

<https://youtu.be/t9oNcQMvIDo?t=25m45s>

Brent Haugen, Executive Director for Morro Bay Tourism Bureau, provided the quarterly report for July - September, 2015.

#### PUBLIC COMMENT

<https://youtu.be/t9oNcQMvIDo?t=44m44s>

Ben Greenhaw, spokesman for the Morro Bay Salvation Army, provided the business spot. The Salvation Army has been located in Morro Bay for over 20 years serving the Morro Bay, Cayucos and Los Osos communities. They have recently remodeled their office at 540 Quintana Avenue and invite the community to stop by and see the improvements. The Salvation Army is looking for assistance in the following areas: financial support, non-perishable food items, and volunteers to assist with office hours and the Christmas kettle event. For more information, please call 772-7062.

Robert Davis, speaking on behalf of the Chamber of Commerce, announced nomination forms for the Morro Bay Citizen of the Year and Living Treasure are available at City Hall, Recreation Services, Chamber of Commerce and the Morro Bay Library. Information will also be in the Bay News and at local Chamber businesses. Awards will be presented at the installation dinner on January 8, 2016.

Marla Jo Bruton-Sadowski, Morro Bay, took issue with the opinion of the City that proper public notification was given prior to the Fugro CSLOGPP permitting for geophysical surveys and plans to follow up at the State level.

Linda Fidell, Morro Bay, co-coordinator of food group and community dinners spoke to honor Greg Miller who died last week. Every Monday evening, Greg assisted with set up and take-down for community dinners and, like many others, was an unsung hero. To date 4,341 guests have been served at community dinners; it would have been extremely difficult to do this without Greg's assistance.

Jon Elliott, Morro Bay, reminded the community about the Downtown Trick-or-Treat event on Saturday, October 31<sup>st</sup> from 2-5pm. Maps will be available at 1:45 at Grandma's Frozen Yogurt.

Lynda Merrill, Morro Bay, suggested everyone visit the new marina walk that skirts the estuary to see the amazing amount of birds that have arrived from the north. She also announced online registration is available for the Morro Bay Winter Bird Festival.

Taylor Newton, Morro Bay resident, business owner and supervisor for the Gorilla Garden Club, announced a Soupabration to be held on Sunday, November 1<sup>st</sup> to benefit Pacific Wildlife. Tickets are available at [soupabration.org](http://soupabration.org). Regarding Item A-3, he reminded staff a good functioning Tree Committee is a free resource with expertise related to not just street trees, but all public plantings. Also, he is proud of Morro Bay's tourism industry for supporting the LGBTQIA community.

Nancy Castle, Morro Bay, announced the Thanksgiving Community Dinner to be held on Thanksgiving Day, November 27<sup>th</sup> from 1-3pm at the Morro Bay Community Center. They are

looking for volunteers to assist with publicity, food, entertainment, decorations and serving. If you'd like to help or need a meal delivered, please call Morro Bay Senior Center at 772-4421.

The public comment period was closed.

Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/t9oNcQMvIDo?t=1h6m50s>

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 OCTOBER 13, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON OCTOBER 13, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) DRAFT STREAMBED ALTERATION AGREEMENT; (PUBLIC WORKS)

**RECOMMENDATION: Approve as submitted.**

A-4 RESOLUTION NO. 68-15 DELEGATING AUTHORITY TO EXECUTE DOCUMENTS FOR CALTRANS AND FHWA GRANT FUNDED PROJECT 05-5391R, STATE ROUTE 1/STATE ROUTE 41 INTERCHANGE IMPROVEMENTS; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution No. 68-15 Authorizing the Public Works Director to Execute the California Department of Transportation (Caltrans) Certifications and Agreements Related to the Subject State and Federal Funded Project.**

A-5 RESOLUTION NO. 69-15 AUTHORIZING THE COMMUNITY DEVELOPMENT MANAGER TO EXECUTE DOCUMENTS FOR CALTRANS SUSTAINABLE TRANSPORTATION PLANNING GRANT APPLICATION; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Adopt Resolution No. 69-15 Authorizing Staff to Submit a Grant Application to the California Department of Transportation (Caltrans) for a Sustainable Communities Grant (FY 16-17) in the Amount of \$50,000 for the Update of the City's 2012 Bicycle and Pedestrian Master Plan.**

The public comment period for the Consent agenda was opened; seeing none, the public comment period was closed.

Mayor Irons pulled Item A-3.

Councilmember Johnson pulled Item A-2.

MOTION: Councilmember Heading moved the Council approve Items A-1, A-4 and A-5 of the Consent Agenda. The motion was seconded by Councilmember Smukler and carried unanimously, 4-0.

A-2 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON OCTOBER 13, 2015; (ADMINISTRATION)  
<https://youtu.be/t9oNcQMvIDo?t=1h7m14s>

Councilmember Johnson pulled this item request the following correction on page 8 under Item D-2: “Councilmember Johnson disclosed ex parte communications. She met once with Alla Weinstein ~~individually and also with Alla~~ and Erik Markell before bringing the item to the City Council.”

MOTION: Councilmember Johnson moved the Council approve Item A-2, as amended. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

Mayor Irons asked for Council consensus to discuss Item A-3 at the end of the meeting; Council concurred.

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 DISCUSSION OF UNWARRANTED TRAFFIC CONTROL DEVICES, RESCISSION OF RESOLUTION NO. 38-15 REGARDING PLACEMENT OF STOP SIGN AT THE INTERSECTION OF PACIFIC AND MAIN STREETS AND CONSIDERATION OF ALTERNATIVE TRAFFIC CALMING MEASURES; (PUBLIC WORKS)  
<https://youtu.be/t9oNcQMvIDo?t=1h8m23s>

Public Works Director Livick presented the staff report and responded to Council inquiries.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

Councilmember Smukler noted he previously voted for the stop sign based on strength of citizen petition. He is thankful there’s an alternative that would protect the City, supported rescinding the previous resolution, and would like to see alternatives implemented as soon as possible, not only in this location but other areas of the city as well.

Councilmember Headding wanted to see speeds reduced as much reduction as possible, and but doesn't support a stop sign.

Councilmember Johnson was disappointed not to have the latitude to add stop signs based on compelling resident input, but was not willing to put city at more risk when we've received expert advice otherwise. She supported low cost traffic calming solutions to raise awareness, in this location and other areas, such as San Jacinto corridor and Easter Street.

Mayor Irons noted he did not support the installation of a stop sign at that location; he lives in the area and didn't perceive there was a need. He supported staff recommendation for painted bulb-outs, supports high visibility crosswalks, and asked for feedback on radar signs.

**MOTION:** Councilmember Smukler moved the Council rescind Resolution No. 38-15 and direct staff to install high visibility crosswalk and painted bulb-outs at the intersection of Main and Pacific Streets, and continue to work toward other traffic calming measures identified in the City's adopted goals and objectives. The motion was seconded by Councilmember Headding and carried unanimously, 4-0.

**MOTION:** Councilmember Smukler moved the Council adopt Resolution No. 67-15. The motion was seconded by Councilmember Headding and carried unanimously, 4-0.

**C-2 ADOPTION OF ORDINANCE NO. 597 AMENDING SUBSECTION 5.08.220 C. OF THE MORRO MUNICIPAL CODE RELATING TO THE \$4,000 EXCEPTION; (ADMINISTRATIVE SERVICES)**  
<https://youtu.be/t9oNcQMvIDo?t=1h43m39s>

Administrative Services Director Slayton presented the staff report and responded to Council inquiries.

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

**MOTION:** Mayor Irons moved for adoption of Ordinance No. 597 by number and title only, waiving further reading. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

**C-3 DISCUSSION AND DIRECTION ON EXPIRING LEASE AT LEASE SITE 62/62W (KRUEGER/KAYAK HORIZONS) LOCATED AT 551 EMBARCADERO; (HARBOR)**  
<https://youtu.be/t9oNcQMvIDo?t=1h47m9s>

Harbor Director Endersby presented the staff report, introduced a new and recommended alternative for the City assume the lease site upon current lease expiration and use the site to develop a public restroom while continuing to operate a kayak rental service.

City Manager Buckingham provided another option for Council consideration was to go out for RFP and see what projects others might propose while the City develops a proposal for retaining the site as a City facility.

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

Todd Baston, leaseholder at Gray's Inn located 561 Embarcadero, stated they had tried without success to work with the current leaseholder at 551 Embarcadero and move a project forward. He sees a unique opportunity to retain the historical integrity and add two small hotel rooms to compliment his business next door. The plans he prepared included enlarging the water dock to retain water sport activity at Kayak Horizons and a bathroom for staff and customers.

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

There was Council concurrence to explore all options, including going out for RFP to see what proposals are received. Councilmember Headding suggested the following RFP criteria: return on investment, improved viewshed, improved facade, improved overall tourism draw, minimal or no impact on the environment, and enhanced safety in the area. Councilmember Johnson encouraged further consideration of improving public restroom facilities in the area.

**MOTION:** Councilmember Smukler moved the Council direct staff to conduct an RFP process for the site as soon as feasible and concurrently perform an analysis to consider alternatives and bring back to Council for decision. The motion was seconded by Councilmember Johnson.

**AMENDED MOTION:** Councilmember Headding requested Councilmember Smukler consider amending the motion to include his suggested RFP criteria. Councilmember Smukler accepted the amendment, if modified to include "restore and enhance the environment". The amended motion carried unanimously, 4-0.

A brief recess was called at 8:15 and the meeting reconvened at 8:25pm.

Mayor Irons asked to hear Item D-4 next; the Council concurred.

**D. NEW BUSINESS**

**D-4 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 596 ADDING CHAPTER 14.42 TO THE MORRO BAY MUNICIPAL CODE, PROVIDING A STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; (COMMUNITY DEVELOPMENT)**  
<https://youtu.be/PbAqEETXbDo?t=14s>

Community Development Graham presented the staff report and responded to Council inquiries.

The public comment period for Item D-4 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved for introduction and first reading of Ordinance 596 by number and title only, waiving further reading and finding the amendment exempt from CEQA. The motion was seconded by Councilmember Headding and carried unanimously, 4-0.

D-1 STATUS UPDATE OF THE MEMORANDUM OF UNDERSTANDING FOR POTENTIAL PURCHASE OF THE RANCHO COLINA PROPERTY AS THE CITY'S PREFERRED WATER RECLAMATION FACILITY SITE; (ADMINISTRATION)  
<https://youtu.be/PbAqEETXbDo?t=5m16s>

City Manager Buckingham presented the staff report and along with WRF Deputy Program Manager, John Rickenbach, responded to Council inquiries.

The public comment period for Item D-1 was opened; seeing none, the public comment period was closed.

Councilmember Johnson reminded everyone it is challenging to hold property negotiations in a public process. Rancho Colina has been a preferred site, partly because of the willing seller. Her intention moving forward is for the City to continue good faith negotiations with the MacElvaine family.

Councilmember Headding reinforced it must be an absolute priority to determine if this is the site and not spend more than necessary on alternative sites. In the interest of the community, the City must be transparent with regard to costs and come back with an answer as quickly as possible. If a reprioritization of other priorities is needed, bring that to Council.

Councilmember Smukler looks forward to making final decisions on location and having an MOU the City can depend on. He pointed out that throughout the process there were strong shared interests and benefits to this location and encouraged staff to move forward as quickly as possible.

Mayor Irons hoped to reach consensus that will bring a strong MOU with clear parameters that addresses City Council goals and is fair to both sides. He trusts staff and the MacElvaine family will work expeditiously and diligently.

No formal action was taken by the City Council.

D-2 CONSIDERATION OF A FEE REFUND REQUEST, IN THE AMOUNT OF \$3,298.00, FOR A RESIDENTIAL REMODEL/ADDITION LOCATED AT 938 ANCHOR (SHERROD); (COMMUNITY DEVELOPMENT)  
<https://youtu.be/PbAqEETXbDo?t=44m9s>

Community Development Graham presented the staff report and responded to Council inquiries.

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

Mike Sherrod, Morro Bay, provided a timeline of events in support of his refund request. He presented the project at a pre-application meeting where the Planning Director represented the project would be approved. All project costs were based on the outcome of that meeting. If they had been advised the project was non-conforming, they would have modified the project. City planners reviewed plans three times and all three times were told they met requirements. In 2013, after clearing the recession, he obtained financing, lined up builder, returned to City with the same project and was told the rear yard setback was non-conforming, requiring a variance and CUP. The Planning Director and staff in 2008-2010 interpreted rear yard setback to be a range. In 2013, Planning staff interpreted rear yard setback as a fixed number of 10'. Staff found the rear yard setback language to be difficult and reached out to local planners and found different interpretations. The Planning Commission also ruled the rear set back language was ambiguous and directed staff to provide a memo clarifying the language. The only option that preserved the investment and allowed them to develop property was to move forward with the variance. Given the unique set of facts in this case, he believes it's fair and reasonable to request reimbursement of fees paid.

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

Mayor Irons clarified there wasn't an inconsistent interpretation, it was incorrect for this project. Staff agreed this was the only project they can find that was interpreted this way. He supported the staff recommendation

Councilmember Johnson disclosed her ex parte communications with the applicant onsite approximately 1 - 1 ½ years ago. She noted that within the life of the permit for original project, staff was consistent in the interpretation with that project. Eventually, the project was approved and she would be uncomfortable making the determination to refund a project that received a variance and conditional use permit.

Councilmembers Headding and Smukler supported the staff recommendation.

**MOTION:** Councilmember Headding moved the Council support staff recommendation to deny the refund request. The motion as seconded by Councilmember Smukler and carried unanimously, 4-0.

D-3 AUTHORIZATION TO CONSENT TO THE BANKRUPTCY ESTATE IN THE MATTER OF CHARLOTTE ELLEN SALWASSER OR GEORGE SALWASSER TO SELL PROPERTY LOCATED AT 781 MARKET AVENUE (INCLUDING THE PARKING LOT) TO THE CITY OF MORRO BAY AND TO PARTICIPATE IN THE BIDDING PROCESS AS AUTHORIZED BY COUNCIL (APNs NO. 066-321-027 AND 066-112-007); (ADMINISTRATION)  
<https://youtu.be/PbAqEETXbDo?t=1h32m54s>

City Manager Buckingham presented the staff report and, along with City Attorney Pannone, responded to Council inquiries.

The public comment period for Item D-3 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved the Council authorize staff to consent to the Bankruptcy Estate of either George or Charlotte Salwasser for moving forward with the motion to sell the 781 Market Ave. and adjacent parking lot to the City, and for staff to participate in the sale and bidding process as authorized by Council for APNs No. 066-321-027 and 066-112-007. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

A-3 APPROVAL OF CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) DRAFT STREAMBED ALTERATION AGREEMENT; (PUBLIC WORKS)  
<https://youtu.be/PbAqEETXbDo?t=1h51m34s>

Public Works Director Livick presented the staff report and responded to Council inquiries.

Mayor Irons reinforced the importance of good relationships with other regulating agencies.

The public comment period for Item A-3 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved to approve the draft streambed alteration agreement with the California Department of Fish and Wildlife (CDFW). The motion was seconded by Councilmember Smukler and carried unanimously, 4-0.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<https://youtu.be/PbAqEETXbDo?t=2h7m40s>

Councilmember Smukler requested an update and review of the volunteer senior transportation project. A draft agreement will be presented to Senior Citizens, Inc. in November and he requests the item be agendaized for Council on December 8<sup>th</sup>, if possible. Mayor Irons and Councilmembers Johnson and Heading supported the item coming to Council, when appropriate.

#### ADJOURNMENT

The meeting adjourned at 10:43pm to a regular City Council meeting to be held on **Tuesday, November 10, 2015** at 6:00 p.m. at the Veteran's Memorial Hall, 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson  
City Clerk

MINUTES – MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
NOVEMBER 10, 2015  
CITY HALL CONFERENCE ROOM – 4:30 P.M.

AGENDA NO: A-5  
MEETING DATE: December 8, 2015

PRESENT:            Jamie Irons                            Mayor  
                         John Headding                        Councilmember  
                         Christine Johnson                     Councilmember  
                         Noah Smukler                         Councilmember

ABSENT:            Matt Makowetski                     Councilmember

STAFF PRESENT:    Dave Buckingham                    City Manager  
                         Joe Pannone                            City Attorney  
                         Scot Graham                            Community Development Manager

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 4:30 p.m.

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comment for items only on the agenda.

Cliff Branch stated he had provided a written proposal to the City regarding his concerns about the condition of the seawall and necessary emergency repairs. He also provided background information related to the condition of the seawall at the time he assumed the lease. He requested the City enter into a new lease agreement based on the anticipated cost for repairs and also assist with timely processing of emergency permits.

The Public Comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**

Property: Lease Site 89/89W, The Boatyard, 845 Embarcadero

Property Negotiators: Cliff Branch, Trustee of Branch Family Trust and James and Beverly Smith, Trustee of Smith Family Trust

Agency Negotiators: Eric Endersby, Harbor Director and David Buckingham, City Manager

Under Negotiation: Price and Terms of Payment

The City Council reconvened to Open Session.

City Attorney Pannone reported that with regard to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 5:34 p.m.

Recorded by:

Dana Swanson, City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – NOVEMBER 10, 2015  
VETERANS MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	Christine Johnson	Councilmember
ABSENT:	John Headding	Councilmember
	Matt Makowetski	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Sam Taylor	Deputy City Manager
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established with Mayor Irons, Councilmember Johnson and Councilmember Smukler present. The meeting was called to order at 6:02p.m.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

Employee Recognition

<https://youtu.be/58xBsHEDlNk?t=2m31s>

The City Council and staff recognized the following employees for their service to the City by presenting service pins:

15 years – Bonnie Johnson, Brandon Kato, Becka Kelly, and Bryan Millard

20 years – Bruce Keogh

The City Council and staff recognized the recent promotions of Fire Captain Michael Talmadge and Police Sergeant Tony Mosqueda.

CLOSED SESSION REPORT

City Attorney Pannone reported that with regard to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/58xBsHEDlNk?t=7m11s>

Councilmember Johnson shared information from a presentation to the Economic Vitality Corporation regarding a fund raising campaign for a new homeless center to be located at 40 Prado Road. She also provided a verbal report following her attendance at the Central Coast Economic Forecast event Friday, November 6, 2015 at the Madonna Inn Event Center.

Councilmember Smukler announced a public forum regarding the proposed wind energy project will be hosted by Trident Winds, LLC on Thursday, December 10, 2015 at the Morro Bay Veterans Hall.

Mayor Irons attended a California Coastal Commission coastal issues group workshop in Half Moon Bay on Friday, November 6, 2015. Agenda items included the need for continued funding and support at the State level for LCP updates, and sea level rise guidelines.

#### PUBLIC PRESENTATIONS

<https://youtu.be/58xBsHEDlNk?t=24m55s>

#### League of Women Voters Civil Discourse Presentation

Marguerite Bader and Sharon Kimball, speaking on behalf of the San Luis Obispo County League of Women Voters, presented information and recommended best practices for elected officials, citizens and staff to follow in order to promote civility and civil discourse in the public arena. Civil discourse is courteous, constructive communication characterized by mutual respect, fairness, and attentive listening.

#### PUBLIC COMMENT

<https://youtu.be/58xBsHEDlNk?t=45m49s>

Ric Deschler, representing the Morro Bay Friends of the Library, announced the Friends of the Library book sale to be held Saturday, November 14<sup>th</sup> at the Community Center beginning at 9:00am for Friends of the Library members, and open to general public at 10:00am.

Trina Dougherty, representing Morro Bay Friends of the Library, added that thousands of used books, DVDs and CDs will be available at low prices Saturday, November 14<sup>th</sup> at Community Center. The book sale is open to members only 9:00-10:00am, the general public 10:00am-12:30pm, and a bag sale 1:00-2:00pm.

Jon Elliott, Morro Bay resident and owner of Mike's and Tiny Mike's Barber Shops, announced a ribbon cutting ceremony at Tiny Mike's Barber Shop located at 2300 North Main Street on Thursday, November 19<sup>th</sup> at 5:30 pm. In addition, free men's haircuts will be offered for needy and first-time customers.

John Gajdos, Morro Bay resident and local coordinator for Operation Holiday Wreaths, announced the organization's goal to place a wreath on every veteran headstone in SLO County. Orders can be placed until November 23<sup>rd</sup> online at [www.wreathscrossamerica.org](http://www.wreathscrossamerica.org). A wreath laying ceremony will be held on December 12<sup>th</sup> at 9:00am at local cemeteries to coincide with the event held at noon at Arlington National Cemetery in Washington DC. Please contact Mr. Gajdos at (805) 441-4384 or [johngaj3@gmail.com](mailto:johngaj3@gmail.com) for more information.

Nancy Castle, Morro Bay, announced the Community Thanksgiving Dinner will be held on Thanksgiving Day, November 26<sup>th</sup> from 1:00 - 3:00pm.

The public comment period was closed.

A. CONSENT AGENDA

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

- A-1 RESOLUTION NO. 70-15 PLEDGING TO FOLLOW BEST PRACTICES OF CIVILITY AND CIVIL DISCOURSE IN ALL OF ITS MEETINGS; (CITY COUNCIL)  
<https://youtu.be/58xBsHEDlNk?t=53m9s>

**RECOMMENDATION: Approve as submitted.**

The public comment period for the Consent agenda was opened; seeing none, the public comment period was closed.

Mayor Irons pulled Item A-1 to read the proposed resolution into the record.

MOTION: Mayor Irons moved the Council adopt Resolution No. 70-15. The motion was seconded by Councilmember Johnson and carried unanimously, 3-0-2.

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

- C-1 ADOPTION OF ORDINANCE NO. 596 AMENDING TITLE 14 TO ADD CHAPTER 14.42 TO THE MORRO BAY MUNICIPAL CODE ESTABLISHING AN EXPEDITED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/58xBsHEDlNk?t=56m17s>

Community Development Manager Scot Graham provided the staff report.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved for adoption of Ordinance 596 amending Title 14 to add Chapter 14.42 to the Morro Bay Municipal Code establishing an expedited permitting process for small residential rooftop solar systems, and waive further reading. The motion was seconded by Councilmember Smukler and carried unanimously, 3-0-2.

D. NEW BUSINESS

D-1 FY 15/16 CITY GOALS UPDATE; (ADMINISTRATION)  
<https://youtu.be/58xBsHEDINk?t=57m48s>

Mayor Irons provided a “State of the City” overview.

City Manager Buckingham, along with staff, presented the FY 15/16 City Goals Update and responded to Council inquiries. [FY 15/16 Goals Update Presentation](#)

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

Ric Deschler, Morro Bay, suggested wayfinding signs should be called directional signs. Regarding Goal 6.d, he suggested the City should not be promoting development of the Tri-W property.

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

Mayor Irons suggested staff recommendations #4 and #7 be left in place for potential funding during mid-year budget adjustments. Councilmembers Johnson and Smukler concurred.

Councilmember Smukler suggested the Tri-W discussion is an important one to have during the General Plan update.

**MOTION:** Mayor Irons moved the Council adopt staff recommendations with the exception of recommendations #4 and #7 which will remain for consideration of potential funding during mid-year budget review. The motion was seconded by Councilmember Smukler and carried unanimously, 3-0-2.

#### ADJOURNMENT

The meeting was adjourned at 10:15 pm.

The Regular Meeting of November 24, 2015 was previously canceled. Consequently, the next Regular Meeting will be held on **Tuesday, December 8, 2015** at **6:00 pm** at the Veteran’s Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson  
City Clerk



Adopted MMRP Projects by Fiscal Year	Adopted Budget	Actual Cost	Project Status
<u>FY13/14</u>			
Influent Screening Project	500,000	0	Carried Over to FY14/15
Clean, Coat, and Repair Digester #2	250,000	253,312	Completed July 2014
Chlorine Contact Tank Improvements	200,000	0	Carried Over to FY 14/15
Interstage Pump and Valve Project	50,000	46,759	Completed April 2014
Reconditioning of the Chlorine Building	40,000	28,459	Completed June 2014
Total for FY 13/14	1,040,000	328,530	
<u>FY 14/15</u>			
Influent Screening Project Carryover from FY13/14	550,000	502,106	Completed October 2014
Clean, Coat, and Repair Digester #1	331,000	301,946	Completed July 2015
Primary Clarifier Rehabilitation	50,000	35,551	Completed June 2015
Biofilter Arms and Biofilter Improvements	215,000	0	Carried Over to FY 15/16
Chlorine Contact Tank Improvements – scope reduced from FY13/14	75,000	57,144	Completed April 2015
Total for FY14/15	1,221,000	896,747	
<u>FY 15/16</u>			
Clean, Coat, and Repair Digester #1 Carryover	50,000	0	
Metering Vault and Valve Replacement	125,000	0	Planning Process
Secondary Clarifier Rehabilitation	75,000	0	Planning process
Biofilter Arms and Biofilter Improvements Carryover	215,000	0	Planning process
Total for FY 15/16	465,000	0	
Total MMRP Project Expenses		1,225,277	

**BACKGROUND**

This staff report is intended to provide an update on the development and implementation of the MMRP for the WWTP since the October 13, 2015 City Council meeting.

Development of an MMRP has and will continue to assist the City and District in projecting the budgeting of expenditures required to keep the current plant operational and in compliance with regulatory requirements.

Staff’s focus has been on developing and implementing work plans for the MMRP projects approved for the FY15/16 budget. The FY 15/16 budget for MMRP projects was adopted by the City and District at their regular meetings on June 9 and 18, respectively. The goal in developing the budget for the MMRP

is to recognize the goal to have the new WRF operational during the life of the next NPDES operational permit. This goal will insure prudent spending on this facility and still maintain the high quality effluent that is discharged to the Estero Bay.

## **DISCUSSION**

The following discussion provides an update of the FY 15/16 MMRP projects that are currently on-going or have been recently completed.

### **Digester #1 Repair**

The coating and repair project for Digester #1 was successfully completed in August. The digester is currently back on-line as an operational secondary digester. The City Council and Cayucos Sanitary District Board approved the Notice of Completion (NOC) for the Digester #1 coating project at their respective regular meetings of October 13 and 15. City staff filed the NOC with the SLO County Clerk-Recorder's office.

### **Metering Vault Removal and Blending Valve Replacement Project**

City staff worked with staff at Michael K Nunley & Associates, Inc. (MKN) to develop and public notice a bid package for this project on September 20. Bids were opened on October 6, bids were received from eight contractors, and all bids were deemed responsive. The City Council and Sanitary District Board awarded the contract to the lowest responsible bidder, Pacific Coast Excavation, Inc. of Santa Maria, in the amount of \$90,238.00 at their respective regularly meetings of October 13 and 15. Staff anticipates a Notice to Proceed in early-November and completion of the project by January 2016.

### **Rehabilitation of the Secondary Clarifier #2**

Staff is in the process of developing a work plan for the needed repairs. Plant staff drained, cleaned, and inspected the secondary clarifier on October 14. Overall, the tank looked to be in satisfactory condition, with areas of corrosion observed at the air water interface on the equipment located within the tank. MKN staff was on-site and provided a memo on their observations and recommendations. This will assist staff with prioritizing the work plan for correcting any problem areas. Plant staff has also begun the repair process for the catwalk. These repairs include chipping away corroded areas and repairing and coating these areas to prevent or minimize corrosion. Ultimately, this project could include repairs to the catwalk, repairs to the metal framework on the flights and skimmer cage assembly, repair and replacement of piping and valving, and other associated work. Staff will rely on their recent experience performing similar repairs on the primary clarifiers to refine the work schedule and process. It should be noted, draining the secondary clarifier required numerous operational changes to ensure adequate time to drain, inspect, and perform any critical repairs while ensuring the plant stayed in compliance with the requirements of the NPDES permit.

### **Chlorine Contact Basin Improvements**

The repairs to the chlorine contact basin were completed on Wednesday, April 15. A detailed description of the work was included in the May 12, 2015 MMRP Update. To date, staff has not received any feedback from the RWQCB staff concerning the violation of the total chlorine residual limit. Staff has noted an issue with the chlorine contact tank and an increased accumulation of solids on the floor of the two contact chambers. Staff drained the tank in June, July, and September to wash down the tank and is continuing to investigate potential solutions to the issues noted.

Purchase and Installation of New Distributor Arms and Biofilter Improvement Project

Staff will continue to work with City Public Works Engineering staff and MKN for the purchase and installation of new distributor arms on biofilter #2 and replacement of the main bearing on the turntable. These units are a critical component of the secondary treatment system.

Flood Control Measures at the Biofilters and Interstage Pumping Station

Staff is working with City Public Works Engineering staff and MKN staff on the design and installation of cost effective flood control measures around the periphery of the two biofilters and interstage pumps to prevent inundation during a flooding event in accordance with the requirements of the existing and anticipated NPDES permits.

**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-8

MEETING DATE: December 8, 2015

## Staff Report

**DATE:** November 25, 2015

**TO:** Water Reclamation Facility Citizens Advisory Committee (WRFCAC) Members  
Honorable Mayor and City Council

**FROM:** Mike Nunley, PE – Water Reclamation Facility (WRF) Program Manager

**SUBJECT:** Water Reclamation Facility Project Update

### **RECOMMENDATION**

Staff recommends WRFCAC and Council review the information regarding the current status and the proposed next steps regarding the development of a WRF program.

### **ALTERNATIVES**

No alternatives are recommended.

### **FISCAL IMPACT**

Attachment 1 is a summary of the preliminary budget for Phase I and various program-level efforts, including existing contracts with consultants currently assisting with the WRF project. Budget for design and construction for Phase I of the program will be provided after the Facility Master Plan is completed. Phase II budget will be established after the Master Reclamation Plan is completed.

### **DISCUSSION**

With the denial of the permit for the WWTP project in its current location, the City has embarked on a process for development of a new WRF. Staff provides this report as a monthly update to the progress made to date on the project. This staff report provides the following:

1. Review of all WRF Program actions to date. See the list of major milestones or accomplishments since the last update to City Council below. See Attachment 1 for a summary of project expenses to date. Customer rates and fees are the current revenue source for the program budget.
2. Updated schedule

Prepared By:    MN   

Dept Review:    RL   

City Manager Review:    DWB   

City Attorney Review:

## **MAJOR MILESTONES AND ACCOMPLISHMENTS**

The City's Program Management team and technical consultants performed the following tasks since the last program update:

- Negotiated scope and fee, selected, and began implementation of Program Management software system.
- Completed topographic and boundary survey of the Highway 41 corridor from the existing wastewater treatment plant to the MacElvaine property.
- Continued to facilitate processing of Clean Water State Revolving Fund (SRF) Planning Grant application submittal.
- Continued preparation of the application for a Clean Water State Revolving Fund (SRF) Planning Loan.
- Conducted stakeholder interviews on October 14 and 15, 2015.
- Hosted a Technical Workshop presenting project delivery options on October 17, 2015.
- Participated in conference calls and meetings with the Facility Master Plan (FMP) team and reviewed progress reports. Provided City comments to FMP team on technical memorandum drafts.
- Provided review and final comments for completion of base mapping and survey along Highway 41/Atascadero Road including the Rancho Colina site.
- Completed a draft Technical Memorandum that identified sources of salinity in the City's wastewater collection system.
- Continued property negotiation with the owner of the top-ranked site (MacElvaine property) from the Options Report.
- Continued evaluation of other Morro Valley properties to allow the City some flexibility in siting the WRF and other City facilities.
- Presented Technical Memoranda 2 (Flows and Loading), 3 (WWTP Decommissioning), 6 (Solids Treatment Evaluation), and 7 (Liquid Treatment Evaluation) to WRFCAC and received comments on Memoranda 2, 3, 6, and 7.
- Conducted Community Workshop #1 on October 29, 2015.

## **UPDATED SCHEDULE**

Attachment 2 depicts the current detailed program schedule, including a detailed view of all current planning activities. Attachment 3 identifies the major program efforts (planning, design, and construction) at a very high level. All tasks on the "critical path" are on or ahead of schedule per the last schedule update (March, 2015).

## **ATTACHMENTS**

1. Program Budget
2. Detailed Program Schedule – November 2015
3. Schedule Overview – November 2015

# Attachment 1 - Program Budget

MORRO BAY WRF PROGRAM BUDGET STATUS

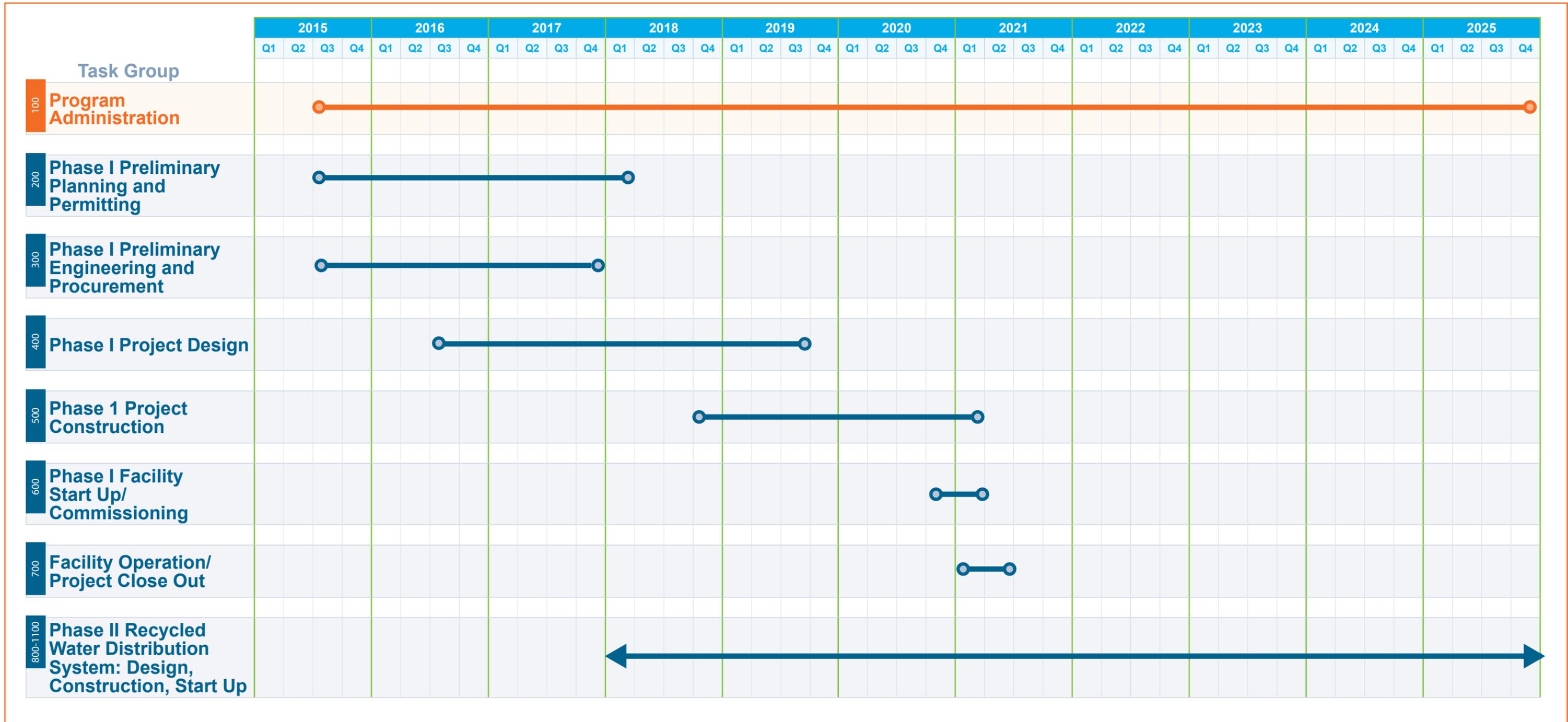
As of: 10/28/2015

Budget Item	Contractor/ Agency	Budgeted	Allocated	Spent
<b>SITE ALTERNATIVE ANALYSIS</b>				
<b>Past Costs</b>		<b>\$534,418</b>	<b>\$448,057</b>	<b>\$448,057</b>
<b>PHASE I</b>				
<b>Property Acquisition/ROW Allowance</b>		<b>\$2,400,000</b>		
MacElvaine Property				
Fatal Flaw - Biological Resources	KMA		\$12,835	\$9,395
Fatal Flaw - Geotechnical				
Phase II - Task 5	Fugro		\$26,000	
Fatal Flaw - Cultural Resources	Far Western		\$12,000	\$3,725
Property Cost				
Righetti Property				
Survey	Head Surveys		\$15,644	
Fatal Flaw - Cultural Resources	Far Western		\$6,485	
Fatal Flaw - Biological Resources (in PM budget)	MKN			
<b>Facility Master Plan</b>		<b>\$781,135</b>		
Facility Master Plan	B&V		\$710,123	\$116,384
<b>SUBTOTAL - PHASE I (ROUNDED)</b>		<b>\$3,200,000</b>	<b>\$783,087</b>	<b>\$129,504</b>
<b>PROGRAM</b>				
<b>2015 - 2017 Program Management</b>		<b>\$2,000,000</b>		
2015 Program Management	MKN		\$920,808	\$41,489
<b>Master Reclamation Plan</b>		<b>\$150,000</b>		
Master Reclamation Plan Development	MKN		\$140,000	
<b>Salinity Identification/ Control</b>		<b>\$60,000</b>		
Task 1 Salinity Identification	LWA		\$23,640	\$11,300
Task 2 Salinity Control	LWA		\$22,600	
<b>Hydrogeology</b>		<b>\$300,000</b>		
Phase I Investigation	Fugro		\$38,600	\$28,094
Amendment 1 - Phase II Investigation	Fugro		\$24,000	
<b>Survey</b>		<b>\$60,000</b>		
Highway 41 and Rancho Colina	Head Surveys		\$45,050	
<b>Grant and Loan Funding</b>		<b>\$175,000</b>		
Tracking and SRF Support	Kestrel		\$65,752	
<b>Permitting</b>		<b>\$500,000</b>		
CEQA/NEPA Documentation and Consulting	ESA		\$346,578	
<b>SUBTOTAL - PROGRAM (ROUNDED)</b>		<b>\$3,300,000</b>	<b>\$1,627,028</b>	<b>\$80,883</b>
<b>PHASE I BUDGET (DESIGN AND CONSTRUCTION) TBD</b>				
<b>PHASE II BUDGET (DESIGN AND CONSTRUCTION) TBD</b>				





## New Water Reclamation Facility Program Schedule Overview



**RESOLUTION NO. 71-15**

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA,  
ESTABLISHING AN ANNUAL DATE CERTAIN TO  
REVIEW ALL CITY RATES AND FEES**

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

**WHEREAS**, the City of Morro Bay (the “City”) currently reviews its adjustable fees every June or July with the adoption of the Master Fee Schedule; and

**WHEREAS**, in full accordance with the voter-approved authority to approve increases based on the March Consumer Price Index, the City reviews and adopts the Business License Tax Rate schedule annually in June or July; and

**WHEREAS**, the City has not reviewed its monthly rental fees for its residential rental properties, for potential increases, since 2011; and

**WHEREAS**, the City did adjust its wastewater rates, beginning July 1, 2008, based on a revenue plan prepared by Carollo Engineering, after conducting a public hearing and notice process to provide for a protest vote, pursuant to Proposition 218, and received protests from fewer than 50%, plus one, protest votes from the affected property; and

**WHEREAS**, the wastewater rates adjustment schedule ended with its final increase effective July 1, 2014; and

**WHEREAS**, the City has neither reviewed nor adjusted its water rates since 1996; and

**WHEREAS**, for the Fiscal Years ended 2011 through 2015, the City has failed to meet its Central Coast Water Authority (“CCWA”) bond coverage ratios; and

**WHEREAS**, on April 21, 2014, the City received notices from the CCWA and the County of San Luis Obispo, strongly encouraging the City to take action to correct the deficient debt coverage obligations; and

**WHEREAS**, in 2014, the City engaged Bartle Wells to conduct a sewer and water rate study, which was approved by City Council at a regular meeting held March 26, 2015, and memorialized in Resolution No. 30-15; and

**WHEREAS**, the City Council desires to establish review standards for all rates and fees, to ensure all rates and fees are reviewed on a recurring, annual basis.

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

1. The above recitations are true and correct, and incorporated herein by reference.
2. The City Council has set the first regular meeting in the month of May as the time and place for all City rates and fees to be presented to the City Council for review.

**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 December, 2015, by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

---

DANA SWANSON, City Clerk

**RESOLUTION NO. 72-15**

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA,  
ESTABLISHING THE STRATEGIC PLANNING FRAMEWORK POLICY**

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

**WHEREAS**, at the August 11, 2015, City of Morro Bay regular City Council meeting, the Council unanimously approved the Strategic Planning and Budgeting Framework concept presented and directed staff to develop a Strategic Planning Framework policy to be adopted at a future meeting; and

**WHEREAS**, in accordance with City Council direction, staff has prepared a Strategic Planning Framework White Paper which is attached as Exhibit A.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Morro Bay, the Strategic Planning Framework Policy is named and established as defined in the attached Exhibit A.

**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 December, 2015, by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

---

DANA SWANSON, City Clerk



## WHITE PAPER

### Strategic Planning Framework

November 5, 2015

#### I. PURPOSE

The purpose of this paper is to describe the City of Morro Bay Strategic Planning framework. This framework, to be adopted by the City Council, provides direction on annual, biennial and quadrennial planning and budgeting tasks and processes the City will follow.

#### II. OVERVIEW

The City has many plans, including a General Plan (GP), Local Coastal Plan (LCP), Economic Development Strategic Plan (EDSP - under development in 2015/16), Parking Management Plan and other particular plans. Those plans are essential to provide long-term guidance for the City. And, in particular, the GP/LCP provides strategic direction not only in land-use but in many other areas.

However, the City also needs a regular process to set more general goals, and to identify specific, measurable objectives to reach those goals. This process must also ensure those objectives are considered in the annual budgeting process.

This Strategic Planning Framework does that. In general, the City Council will set / refine broad goals every four years. Every two years the Council will identify specific objectives associated with each goal for staff to complete. Every year during the budget process, those objectives will be budgeted against.

In addition to this Strategic Planning Framework, the City is developing fresh Vision, Values and Mission statements that should inform all of our planning efforts, and goal / objective setting in particular.

#### III. DEFINITIONS

The following definitions are important to understand the City's Strategic Planning Process:

- **City Mission Statement** – The Mission Statement is a Council-approved statement that describes the basic / essential tasks the City must provide, and a statement toward the purpose of executing these tasks. The mission statement is focused on the purpose of the City Government, not the broader community. The City mission statement might begin something like: "The City of Morro Bay provides Public Safety, Recreation, and other key municipal services in order to . . . ."
- **Community Vision and Values Statements.** Community vision and values are also Council-approved, semi-permanent statements, developed with significant community

input, that describe what we want our community to be (Vision) and what ideals our community considers of essential importance (values).

- **City Core Tasks.** Core tasks are functions that we should always be doing well and they should be addressed in our City mission statement. A core task might be: “Maintain City Infrastructure”, or “Provide Public Safety”.
- **City Goals.** Goals are broad projects we want to accomplish over a long-term (4-6 year) period, usually because they are big enough and broad enough they can’t be accomplished in a year or two. An example of a goal is: “Improve Streets”.
- **City Objectives.** Biennial objectives are specific, discreet, medium-term (1-2 year) projects that support a more general goal, are feasible and achievable if appropriately resourced, and can be directly budgeted against. An example of an Objective related to the Goal “Improve Streets” could be: “Repave 10% of streets in FY16/17 and FY 17/18”.

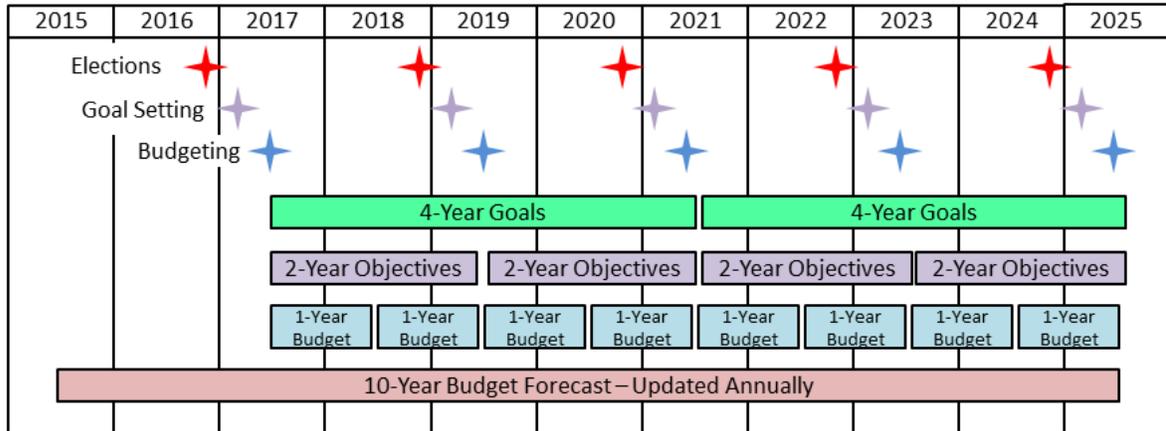
#### IV. PROCESS

Following is a written description of the City’s Strategic Planning Framework depicted below in figure 1.

- The process begins in December of each election year with the seating of a new Council.
- The new Council begins a planning process to set biennial budget objectives for the upcoming two budget years.
- This objective-setting planning process normally occurs in January and February with two-year objectives set by the last Council meeting in February.
- Council-approved objectives are then used by staff and Council to develop the annual budget in March – May of each year.
- Every four years (Presidential election years) the new Council also reviews and updates the City’s Goals. The City should work to ensure goals are items in which real improvement is needed and achievable. Generally, goals should not be “maintain”, but should be “improve”. Any new Council could, of course, resolve to deviate from this Strategic Planning Framework and modify City goals outside of the specified four-year window. However, for organizational efficiency and community stability, the City should strive to keep goals for at least four years, using biennial objective setting and annual budgeting to affect change and adjust priorities.
- On a semi-annual basis, normally in the fall of each year, staff updates the Council on the status of the two-year budget objectives in an Annual Goals Update report and special Council Meeting.
- In March – May each year, the staff and Council develop a 1-year budget for the upcoming fiscal year: July 1 to June 30 of the following year. The two 1-year budgets every 2-year goal/objective period provide the Council ample opportunity to reallocate resources to achieve, or “weight” specific City Goals and Objectives.
- This entire process is underpinned and informed by a continuing 10-year budget forecast process that is updated annually in Jan – Feb. Every other year the 10-year forecast is

updated by an external professional consultant. In the off years it is updated internally by staff.

### Transition Plan for the Morro Bay *Strategic Planning and Budgeting Framework*



Elections – Nov of even years, new Council seated in early January



Biennial Planning – Every other year in Jan and Feb Council updates 2-year objectives. every 4<sup>th</sup> year Council also updates 4-year goals.



Annual Budgeting – Every year in May and Jun Council updates approves a 1-year budget.

**Overview.** Beginning in December 2016 the City of Morro Bay executes a 4-2-1 Strategic Planning and Budgeting process.

- Following each election, the new council meets in Jan / Feb to establish 2-year objectives supporting each existing City Goal.
- Every four years this process begins in December and includes renewal of the City’s goals.
- The staff then uses the new objectives to inform creation of the City’s annual budget.
- The entire process is underpinned by a 10-year budget forecast that is professionally (externally) updated every other year and internally updated every year.

Figure 1 – Strategic Planning and Budgeting Framework

## V. SUMMARY

This Strategic Planning and Budgeting Framework is intended to complement the City’s broader and more specific plans, including the General Plan, Local Coastal Plan, Economic Development Strategic Plan and other land-use and issue-specific plans.

The above mentioned plans coupled with this Goals and Objectives process should serve, taken as a whole, as the City’s strategic plan. Following full implementation of the ongoing GP/LCP rewrites in 2017, and 10-year Economic Development Strategic Plan in 2016, the City could consider if an additional, formal, 10-year strategic plan is required.

*David W. Buckingham  
City Manager  
November 5, 2015*

**RESOLUTION NO. 73-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ESTABLISHING AN ANNUAL CITY MANAGER EVALUATION POLICY**

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

**WHEREAS**, the Morro Bay City Council is responsible for hiring a City Manager and adopting goals and objectives to direct the affairs of City government; and

**WHEREAS**, the City Manager is empowered to perform a number of broadly defined duties in order to implement City policies, goals and objectives established and adopted by the City Council; and

**WHEREAS**, it is appropriate the City Manager's performance in accomplishing his/her assigned duties be evaluated by the City Council at minimum on an annual basis.

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

Section 1. The attached City Manager Performance Evaluation form (Exhibit A hereinafter referred to as "form") shall be used for the annual evaluation of the City Manager. The form will be distributed to each Council Member and City Manager by the City Attorney or Council designee during the first week of December. The City Manager will complete a self-evaluation using the same form. Each Council Councilmember and the City Manager will individually complete the form and return it to the City Attorney or Council designee by January first. The City Attorney or Council designee will prepare a Summary of the City Manager Performance Evaluations (hereinafter referred to as "Evaluation Summary") submitted by the individual Council Members and provide the Evaluation Summary to the City Council for its review and approval.

Section 2. After the City Council has approved the Evaluation Summary, the City Attorney or Council designee shall give a copy of the Evaluation Summary and the City Manager self-evaluation to each Council Member and the City Manager. As soon thereafter as possible, the Council shall meet with the City Manager in closed session and review in detail the Evaluation Summary, including stated goals, and the City Manager self-evaluation. Following the closed session meeting, the City Manager will prepare a written response, which shall be given to each Council Member. At its discretion, the City Council may meet in one or more closed sessions to consider the response and whether to modify any part of the Evaluation Summary and the nature and extent of any modifications. If amended, then the amended Evaluation Summary will be presented to the City Manager. A final copy of the Evaluation Summary, reflecting the vote and signed by each Council Member, and the City Manager's self-evaluation shall be given to

the City Manager and a copy shall be placed in the City Manager's personnel file. Council Member's individual evaluation forms will be placed in a sealed envelope and retained by the Personnel Department accessible only to seated Council Members for the tenure of the City Manager's employment.

Section 3. In February of each year, the City Manager shall submit a written report to the City Council outlining initiatives and priorities to be accomplished during the next fiscal year in accordance with the City's adopted Strategic Planning Framework Policy (current policy is attached as Exhibit B). He/she may include both long and short range goals. The City Manager, in preparing his/her recommendations, shall give consideration to goals outlined or directed by the City Council during the recent evaluation process.

Section 4. The provisions of this resolution shall be incorporated into the City's Administrative Policy Manual.

Section 5. The Mayor shall sign and the City Clerk shall attest to the passage and adoption of this resolution, and the same shall thereupon take effect

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 on the following vote:

AYES:

NOES:

ABSENT:

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

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

CITY OF MORRO BAY  
CITY MANAGER PERFORMANCE EVALUATION

EVALUATION PERIOD: \_\_\_\_\_ TO \_\_\_\_\_

\_\_\_\_\_  
City Council Member's Name

Each Member of the City Council should complete this evaluation form, sign it in the space below, and return it to \_\_\_\_\_. The deadline for submitting this performance evaluation is \_\_\_\_\_. Evaluations will be summarized and included on the agenda for discussion at the work session on \_\_\_\_\_.

\_\_\_\_\_  
City Council Member's Signature

\_\_\_\_\_  
Date Submitted

CITY OF MORRO BAY

CITY MANAGER PERFORMANCE EVALUATION SUMMARY

EVALUATION PERIOD: \_\_\_\_\_ TO \_\_\_\_\_

Based on the City Manager Performance Evaluations submitted by each City Council Member, this City Manager Performance Evaluation Summary (“Evaluation Summary”) was prepared by:

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

The Morro Bay City Council approved the Summary Evaluation and presented it to the City Manager at a Closed Session Meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mayor’s signature

## INSTRUCTIONS

This evaluation form contains ten categories of evaluation criteria. Each category contains a statement to describe a behavior standard in that category. For each statement, use the following scale to indicate your rating of the City Manager's performance.

- 5 = Excellent** (almost always exceeds the performance standard)
- 4 = Above average** (generally exceeds the performance standard)
- 3 = Average** (generally meets the performance standard)
- 2 = Below average** (usually does not meet the performance standard)
- 1 = Poor** (rarely meets the performance standard)

Any item left blank will be interpreted as a score of "3 = Average"

This evaluation form also contains a provision for entering narrative comments, including an opportunity to list any comments you believe appropriate and pertinent to the rating period. Please write legibly.

Leave all pages of this evaluation form attached. Initial each page. Sign and date the cover page. On the date space of the cover page, enter the date the evaluation form was submitted. All evaluations presented prior to the deadline identified on the cover page will be summarized into a summary report to be presented by the governing body to the City Manager as part of the agenda for the meeting indicated on the cover page.

### PERFORMANCE CATEGORY SCORING

#### 1. INDIVIDUAL CHARACTERISTICS

- \_\_\_ Diligent and thorough in the discharge of duties, "self-starter"
- \_\_\_ Exercises good judgment
- \_\_\_ Displays enthusiasm, cooperation, and will to adapt
- \_\_\_ Mental and physical stamina appropriate for the position
- \_\_\_ Exhibits composure, appearance and attitude appropriate for executive position

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

2. PROFESSIONAL SKILLS AND STATUS

- \_\_\_ Maintains knowledge of current developments affecting the practice of local government management
- \_\_\_ Demonstrates a capacity for innovation and creativity
- \_\_\_ Anticipates and analyzes problems to develop effective approaches for solving them
- \_\_\_ Willing to try new ideas proposed by the Council and/or staff
- \_\_\_ Sets a professional example by handling affairs of the public office in a fair and impartial manner

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷5 = \_\_\_\_\_ score for this category

3. RELATIONS WITH ELECTED MEMBERS OF THE CITY COUNCIL

- \_\_\_ Carries out Council directives as a whole as opposed to those of any one Member or minority group
- \_\_\_ Sets meeting agendas that reflect the guidance of the Council and avoids unnecessary involvement in administrative actions
- \_\_\_ Disseminates complete and accurate information equally to all Members in a timely manner
- \_\_\_ Assists by facilitating decision making without usurping authority
- \_\_\_ Responds well to requests, advice, and constructive criticism

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷5 = \_\_\_\_\_ score for this category

4. POLICY EXECUTION

- \_\_\_ Implements Council actions in accordance with the intent of Council
- \_\_\_ Supports the actions of the Council after a decision has been reached, both inside and outside the organization
- \_\_\_ Understands, supports, and enforces local government's laws, policies, and ordinances

\_\_\_\_ Reviews ordinance and policy procedures periodically to suggest improvements to their effectiveness

\_\_\_\_ Offers workable alternatives to the governing body for changes in law or policy when an existing policy or ordinance is no longer practical

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷5 = \_\_\_\_\_ score for this category

## 5. REPORTING

\_\_\_\_ Provides regular information and reports to the Council concerning matters of importance to the local government, using the Morro Bay Municipal Code and adopted policies as a guide

\_\_\_\_ Responds in a timely manner to requests from the Council for special reports

\_\_\_\_ Takes the initiative to provide information, advice, and recommendations to the Council on matters that are non-routine and not administrative in nature

\_\_\_\_ Reports produced by the City Manager are accurate, comprehensive, concise and written to their intended audience

\_\_\_\_ Produces and handles reports in a way to convey the message that affairs of the organization are open to public scrutiny

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷5 = \_\_\_\_\_ score for this category

## 6. CITIZEN RELATIONS

\_\_\_\_ Responsive to requests from residents

\_\_\_\_ Demonstrates a dedication to service to the community and its residents

\_\_\_\_ Maintains a nonpartisan approach in dealing with the news media

\_\_\_\_ Meets with and listens to members of the community to discuss their concerns and strives to understand their interests

\_\_\_\_ Gives an appropriate effort to maintain resident satisfaction with City services

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷5 = \_\_\_\_\_ score for this category

7. STAFFING

- \_\_\_ Recruits and retains competent personnel for staff positions
- \_\_\_ Applies an appropriate level of supervision to improve any areas of substandard performance
- \_\_\_ Stays accurately informed and appropriately concerned about employee relations
- \_\_\_ Professionally manages the compensation and benefits
- \_\_\_ Promotes training and development opportunities for employees at all levels of the organization

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

8. SUPERVISION

- \_\_\_ Encourages head of departments to make decisions within their jurisdictions with minimal City Manager involvement, yet maintains general control of operations by providing the right amount of communication to the staff
- \_\_\_ Instills confidence and promotes initiative in subordinates through supportive rather than restrictive controls for their programs while still monitoring operations at the department level
- \_\_\_ Develops and maintains a friendly and informal relationship with the staff and work force in general, yet maintains the professional dignity of the City Manager's office.
- \_\_\_ Sustains or improves staff performance by evaluating the performance of staff members at least annually, setting goals and objectives for them, periodically assessing their progress, and providing appropriate feedback
- \_\_\_ Encourages teamwork, innovation, and effective problem-solving among the staff members

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

9. FISCAL MANAGEMENT

- \_\_\_ Prepares a balanced budget to provide services at a level directed by Council
- \_\_\_ Makes the best possible use of available funds, conscious of the need to operate the City efficiently and effectively
- \_\_\_ Prepares a budget and budgetary recommendations in an intelligent and accessible format
- \_\_\_ Ensures actions and decisions reflect an appropriate level of responsibility for financial planning and accountability
- \_\_\_ Appropriately monitors and manages fiscal activities of the organization

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

10. COMMUNITY

- \_\_\_ Shares responsibility for addressing the difficult issues facing the City of Morro Bay
- \_\_\_ Avoids unnecessary controversy
- \_\_\_ Cooperates with neighboring communities and the County
- \_\_\_ Helps the Council address future needs and develop adequate plans to address long term trends
- \_\_\_ Cooperates with other regional, State and Federal government agencies

Add the values from above and enter the subtotal of \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**TOTAL PERFORMANCE CATEGORY SCORE:**

**Add the score for categories 1 – 10 and enter the subtotal of \_\_\_\_\_ ÷ 10 = \_\_\_\_\_**

## **NARRATIVE EVALUATION**

1. Strengths

2. Weaknesses

3. Opportunities

4. Threats

## **PERFORMANCE OBJECTIVES FOR COMING YEAR**

What does the Manager do that you would like him/her to continue, or is there anything you would like him/her to do differently? In what areas should the Manager focus his/her attention in the coming year?

**RESOLUTION NO. 72-15**

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA,  
ESTABLISHING THE STRATEGIC PLANNING FRAMEWORK POLICY**

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

**WHEREAS**, at the August 11, 2015, City of Morro Bay regular City Council meeting, the Council unanimously approved the Strategic Planning and Budgeting Framework concept presented and directed staff to develop a Strategic Planning Framework policy to be adopted at a future meeting; and

**WHEREAS**, in accordance with City Council direction, staff has prepared a Strategic Planning Framework White Paper which is attached as Exhibit A.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Morro Bay, the Strategic Planning Framework Policy is named and established as defined in the attached Exhibit A.

**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 December, 2015, by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

---

DANA SWANSON, City Clerk



## WHITE PAPER

### Strategic Planning Framework

November 5, 2015

#### I. PURPOSE

The purpose of this paper is to describe the City of Morro Bay Strategic Planning framework. This framework, to be adopted by the City Council, provides direction on annual, biennial and quadrennial planning and budgeting tasks and processes the City will follow.

#### II. OVERVIEW

The City has many plans, including a General Plan (GP), Local Coastal Plan (LCP), Economic Development Strategic Plan (EDSP - under development in 2015/16), Parking Management Plan and other particular plans. Those plans are essential to provide long-term guidance for the City. And, in particular, the GP/LCP provides strategic direction not only in land-use but in many other areas.

However, the City also needs a regular process to set more general goals, and to identify specific, measurable objectives to reach those goals. This process must also ensure those objectives are considered in the annual budgeting process.

This Strategic Planning Framework does that. In general, the City Council will set / refine broad goals every four years. Every two years the Council will identify specific objectives associated with each goal for staff to complete. Every year during the budget process, those objectives will be budgeted against.

In addition to this Strategic Planning Framework, the City is developing fresh Vision, Values and Mission statements that should inform all of our planning efforts, and goal / objective setting in particular.

#### III. DEFINITIONS

The following definitions are important to understand the City's Strategic Planning Process:

- **City Mission Statement** – The Mission Statement is a Council-approved statement that describes the basic / essential tasks the City must provide, and a statement toward the purpose of executing these tasks. The mission statement is focused on the purpose of the City Government, not the broader community. The City mission statement might begin something like: "The City of Morro Bay provides Public Safety, Recreation, and other key municipal services in order to . . . ."
- **Community Vision and Values Statements.** Community vision and values are also Council-approved, semi-permanent statements, developed with significant community

input, that describe what we want our community to be (Vision) and what ideals our community considers of essential importance (values).

- **City Core Tasks.** Core tasks are functions that we should always be doing well and they should be addressed in our City mission statement. A core task might be: “Maintain City Infrastructure”, or “Provide Public Safety”.
- **City Goals.** Goals are broad projects we want to accomplish over a long-term (4-6 year) period, usually because they are big enough and broad enough they can’t be accomplished in a year or two. An example of a goal is: “Improve Streets”.
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#### IV. PROCESS

Following is a written description of the City’s Strategic Planning Framework depicted below in figure 1.

- The process begins in December of each election year with the seating of a new Council.
- The new Council begins a planning process to set biennial budget objectives for the upcoming two budget years.
- This objective-setting planning process normally occurs in January and February with two-year objectives set by the last Council meeting in February.
- Council-approved objectives are then used by staff and Council to develop the annual budget in March – May of each year.
- Every four years (Presidential election years) the new Council also reviews and updates the City’s Goals. The City should work to ensure goals are items in which real improvement is needed and achievable. Generally, goals should not be “maintain”, but should be “improve”. Any new Council could, of course, resolve to deviate from this Strategic Planning Framework and modify City goals outside of the specified four-year window. However, for organizational efficiency and community stability, the City should strive to keep goals for at least four years, using biennial objective setting and annual budgeting to affect change and adjust priorities.
- On a semi-annual basis, normally in the fall of each year, staff updates the Council on the status of the two-year budget objectives in an Annual Goals Update report and special Council Meeting.
- In March – May each year, the staff and Council develop a 1-year budget for the upcoming fiscal year: July 1 to June 30 of the following year. The two 1-year budgets every 2-year goal/objective period provide the Council ample opportunity to reallocate resources to achieve, or “weight” specific City Goals and Objectives.
- This entire process is underpinned and informed by a continuing 10-year budget forecast process that is updated annually in Jan – Feb. Every other year the 10-year forecast is





AGENDA NO: A-12

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 6, 2015

**FROM:** Dana Swanson, City Clerk

**SUBJECT:** Resolution No. 74-15 Amending the Council Policies and Procedures regarding the Order of Business

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 74-15 amending the Council Policies and Procedures regarding the Order of Business to combine Unfinished Business and New Business into one agenda item titled "Business Items."

### ALTERNATIVES

1. The Council may choose not to adopt Resolution No. 74-15 and leave the Order of Business as is.
2. The Council may choose to adopt Resolution No. 74-15 choosing a title other than "Business Items."

### FISCAL IMPACT

There is no fiscal impact to this decision.

### BACKGROUND/DISCUSSION

The Council and staff have a strong interest in improving communication to and with the public and also facilitating public participation at City Council Meetings. Recently, the Council has taken agenda items out of order in response to public interest and desire to speak on a particular item that otherwise may be heard late in the meeting. That is a practice that led staff to research potential changes that might improve the meeting format. Staff found most local cities (five out of six) have one section on their agenda for business items, rather than Unfinished Business and New Business sections. That section may be called "Discussion," "Regular Business" or "Business Items." Staff suggests merging the Unfinished Business and New Business sections of the agenda would allow the Mayor and City Manager greater flexibility to set the agenda with high interest items first to further encourage public participation.

### CONCLUSION

Staff recommends the City Council adopt Resolution No. 74-15 amending the Council Policies and Procedures regarding the Order of Business.

Prepared By: DS

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

City Manager Review: DWB

City Attorney Review: JWP

**RESOLUTION NO. 74-15**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AMENDING COUNCIL POLICIES AND PROCEDURES MANUAL  
REGARDING MEETING GUIDELINES & PROCEDURES**

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

**WHEREAS**, the Council Policies and Procedures Manual for the City of Morro Bay is a combination of City Council actions, policies, references, and information regarding the City Council; and

**WHEREAS**, to ensure all Councilmembers are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on the City Council, the City Council adopted its Council Policies and Procedures Manual, which have been amended on various occasions; and

**WHEREAS**, the City again desires to amend certain Sections of the Council Policies and Procedures Manual related to Meeting Guidelines & Procedures.

**NOW, THEREFORE**, be it resolved, the City Council of the City of Morro Bay does hereby amend Section 1.2.7.10 and renumber Sections 1.2.7.11, 1.2.7.12 and 1.2.13 of the Council Policies and Procedures Manual as follows:

**1.2.7 ORDER OF BUSINESS** shall be as follows:

- 1.2.7.1 Establish Quorum and Call to Order
- 1.2.7.2 Moment of Silence
- 1.2.7.3 Pledge of Allegiance
- 1.2.7.4 Closed Session Report
- 1.2.7.5 Mayor and Council Members Reports, Announcements and Presentations
- 1.2.7.6 Public Presentations
- 1.2.7.7 Public Comment
- 1.2.7.8 Consent Agenda
- 1.2.7.9 Public Hearings (shall start no sooner than 7:00 p.m.)
- ~~1.2.7.10 Unfinished Business / Second Reading and Adoption of Ordinances~~
- 1.2.7.1~~0~~<sup>1</sup> New Business Items
- 1.2.7.1~~2~~<sup>1</sup> Council Declaration of Future Agenda Items
- 1.2.7.1~~3~~<sup>2</sup> Adjournment

**PASSED AND ADOPTED** by the City Council, City of Morro Bay at a regular meeting thereof held on the 8th day of December, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

JAMIE L. IRONS, Mayor

ATTEST:

---

DANA SWANSON, City Clerk



AGENDA NO: A-13

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council **DATE:** October 28, 2015

**FROM:** Rob Livick, PE/PLS – Public Services Director/City Engineer  
Rick Sauerwein, PE – Capital Projects Manager

**SUBJECT:** Authorization to Amend Contract with Rincon Consulting Inc. for Project No. MB-2013-S2: Morro Creek Multi-Use Trail and Bridge

### RECOMMENDATION

Staff recommends the City Council approve Amendment #1 to the consulting agreement with Rincon Consulting Inc. of San Luis Obispo, CA in the amount of \$5,051.

### ALTERNATIVES

No alternatives are recommended.

### FISCAL IMPACT

The construction phase of the project, including construction management services, is partially funded by a grant from Federal and State funds for \$1,268,000. The funding application committed the City to a match of \$168,670. Total available funds are \$1,436,670. The project contingency budget is sufficient to cover this unforeseen project condition. The final amount of this agreement is \$15,051.

### SUMMARY

The City entered into this agreement as of February 4, 2015, for Cultural Resources Monitoring services in an amount not-to-exceed \$10,000 based on the estimate that \$4,544 would be needed for Native American Monitoring of the project excavations. The actual cost of this work was \$9,936 based on the actual amount of time required to complete this essential construction oversight. Council approval of this amendment is required since it exceeds the 10% contingency approved in the original contract. The amendment also officially documents the no-cost time extension of the contract which was needed to obtain appropriate documentation for the additional charges.

### BACKGROUND

The Morro Creek Multi-Use Trail and Bridge was opened for public use on July 4, 2015. Project closeout is in progress and will be completed as soon as favorable weather is forecast to enable seeding that will complete mitigation measures to restore dune habitat.

Prepared By: RS

Dept Review: RL

City Manager Review: DWB

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

**DISCUSSION**

The original invoice was received on April 3 without the appropriate documentation need to support payment. The consultant was immediately advised of this discrepancy but did not respond with the required Final Monitoring Report until July 29, 2015. Daily Inspection Reports were received on October 19, 2015.

**CONCLUSION**

Staff recommends approval of this amendment which will allow final payment for appropriate services rendered.

**ATTACHMENT**

Amendment #1 Agreement

**AMENDMENT #1 TO THE  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE CITY OF MORRO BAY AND RINCON CONSULTING, INC.**

This Amendment is entered into by and between the City of Morro Bay, a municipal corporation ("City") and Rincon Consultants, Inc., a California corporation, ("Consultant").

**RECITALS**

WHEREAS, City and Consultant entered into an agreement as of February 4, 2015, for Cultural Resources Monitoring services in an amount not-to-exceed \$10,000 (the "Agreement"); and

WHEREAS, City and Consultant verbally approved a no-cost time extension to the Agreement on September 30; and

WHEREAS, City has requested Consultant to perform additional Native American monitoring services not foreseen within the original contract scope; and

WHEREAS, the net increase of the not-to-exceed amount is \$5,051 which increases the contract value to \$15,051; and

WHEREAS, this increase exceeds 10% of the not-to-exceed amount of the original contract value and, therefore, must be approved by the City Council.

NOW THEREFORE, the City Council of the City of Morro Bay and Consultant hereby mutually agree to amend the Agreement as follows:

1. Consultant shall perform additional Native American monitoring services to adequately oversee excavations on-sight.
2. The agreement value shall be increased to \$15,051.
3. The effective date of this Amendment is deemed to be September 30, 2015.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their duly authorized representatives as of September 30, 2015.

**City of Morro Bay**

**Rincon Consultants, Inc.**

By: \_\_\_\_\_  
*David Buckingham, City Manager*

By:   
*Michael P. Gialketsis, President*

Attest:



\_\_\_\_\_  
*Dana Swanson, City Clerk*

By: \_\_\_\_\_  
*John F. Dreher, Vice- President*



Council to approve measures to mitigate the issue. That section is provided below:

***7.16.025 - Molesting wild birds—Nuisance remedies.***

*No person shall trap, shoot, hunt, molest, injure or kill any wild birds, or tamper, damage or destroy the nests or eggs of any wild birds within the city. Should the city council determine by resolution that birds protected under this chapter have become so numerous or destructive in any particular location or area as to constitute a menace and danger to the public health, safety or property, the council may provide for such remedies appropriate under the circumstances.*

In addition to obtaining authorization from the City for removal of the Gull nests, the HOA is also required to obtain a predation permit from the U.S. Department of Fish and Wildlife. The HOA has obtained such approvals in the past, most recently on October 21, 2014. The predation permits are typically good for one year, meaning the 2014 permit has expired. The HOA has indicated the U.S. Department of Fish and Wildlife has extended their 2014/2015 permit for an additional year; however, the HOA has yet to receive the actual permit extension. A condition has been added to Resolution No. 76-15 requiring the HOA to provide proof to the City the predation permit has been extended to October 2016 (See Attachment 1 for the condition). Also, a copy of the 2014 predation permit, supporting application materials and follow up documentation has been provided in Attachment 3.

**CONCLUSION**

The Gull issue at the Bayshore Village complex has persisted for over ten years and without City authorization, the HOA will have no ability to mitigate the adverse impacts from the large number of Gulls that nest in the area. Staff, therefore, recommends the Council adopt Resolution No. 76-15 declaring the existence of the Gulls at the Bayshore Village development exempt from MBMC section 7.16.025 and authorizing the HOA to remove Gull nests from that property.

**ATTACHMENTS**

1. Resolution No. 76-15
2. Resolution No. 51-10 (October 2010)
3. 2014 Predation Permit and Supporting Documentation

**RESOLUTION NO. 76-15**

**RESOLUTION OF THE MORRO BAY CITY COUNCIL  
DECLARING THE EXISTENCE OF GULLS AT BAYSHORE VILLAGE  
EXEMPT FROM MORRO BAY MUNICIPAL CODE SECTION 7.16.025 AND  
AUTHORIZING THE HOMEOWNERS ASSOCIATION TO  
REMOVE GULL NESTS FROM THEIR PROPERTY**

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

**WHEREAS**, Morro Bay Municipal Code section 7.16.025 states it is unlawful to damage or destroy the nests or eggs of any wild birds within the City unless the City Council determines by resolution the birds protected by that Section have become so numerous or destructive as to constitute a menace and danger to the public health, safety or property; and

**WHEREAS** on August 17, 2015, the City received correspondence from Bayshore Village Homeowners Association requesting the Gulls located within their complex be declared a public nuisance and requesting an exemption to allow for the removal of Gull nests from their roofs be granted by the City Council pursuant to Morro Bay Municipal Code 7.16.025; and

**WHEREAS**, on December 8, 2015, the public was given the opportunity to appear and provide comment on the item; and

**WHEREAS**, the City Council has duly considered all evidence and determined the presence of Gulls and their nests at Bayshore Village development are hazardous, unsafe, unsightly, unsanitary and constitute a nuisance detrimental to the public health, safety, and welfare and the property of others.

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

**Section 1. Exemption Granted.** The City Council hereby conditionally grants the Bayshore Village Homeowners Association an exemption from Morro Bay Municipal Code section 7.16.025 and allows them to remove Gull nests from their roofs in a safe and humane manner for a period of five full calendar years after the effective date of this Resolution; provided, that this exemption applies only to Morro Bay Municipal Code section 7.16.025 and does not relieve the Bayshore Village Homeowners Association from complying with all other local, state and federal laws.

**Section 2. Conditions.** The City Council does hereby condition the foregoing authorization for Bayshore Village to remove Gull nests from the property roofs as follows:

1. Prior to harassing Gulls or removing any Gull nests, the Bayshore Village Homeowners Association shall provide evidence, satisfactory to the City's Community Development Manager, the U.S. Department of Fish and Wildlife has reissued/extended the Gull

predation permit for the Bayshore Village complex to 2016 and to each calendar year thereafter while that grant is in effect.

2. The foregoing grant is effective only through December 31, 2020.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, at a regular meeting thereof held on this 8<sup>th</sup> day of December, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

JAMIE L. IRONS, Mayor

ATTEST

---

DANA SWANSON, City Clerk

## RESOLUTION NO. 51-10

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DECLARING THE EXISTENCE OF GULLS AT BAYSHORE VILLAGE  
EXEMPT FROM MORRO BAY MUNICIPAL CODE 7.16.025 AND  
AUTHORIZING THE HOMEOWNERS ASSOCIATION TO  
REMOVE GULL NESTS FROM THEIR PROPERTY**

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

**WHEREAS**, Morro Bay Municipal Code Section 7.16.025 states that it is unlawful to damage or destroy the nests or eggs of any wild birds within the City unless the City Council determines by resolution that the birds protected have become so numerous or destructive as to constitute a menace and danger to the public health, safety or property; and,

**WHEREAS**, On September 25, 2010, the City received a correspondence from Bayshore Village Homeowners Association requesting that the Gulls located within their complex be declared a public nuisance and requesting an exemption to allow for the removal of Gull nests from their roofs be granted by the City Council pursuant to Morro Bay Municipal Code Section 7.16.025; and,

**WHEREAS**, on October 11, 2010, the public was given an opportunity to appear and object to the City Council declaring the Gulls within the Bayshore Village a public nuisance and the granting of an exemption pursuant to Morro Bay Municipal Code Section 7.16.025; and,

**WHEREAS**, after hearing the evidence and testimony, the City Council determined that the presences of Gulls and their nests at the Bayshore Village Homeowners Association property are hazardous, unsafe, unsightly, unsanitary and constitute a nuisance detrimental to the public health, safety and welfare and the property of others.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California hereby grants Bayshore Village Homeowners Association an exemption from Morro Bay Municipal Code Section 7.16.025 and allows them to remove the Gull nests from their roofs for a period of 5 years. This exemption applies only to Morro Bay Municipal Code Section 7.16.025 and does not relieve the Bayshore Village Homeowners Association from complying with all other local, state and federal laws.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 11<sup>th</sup> day of October 2010 on the following vote:

AYES: Borchard, Grantham, Smukler, Peters  
NOES: Winholtz  
ABSENT: None

  
\_\_\_\_\_  
JANICE PETERS, Mayor

Attest:

  
\_\_\_\_\_  
BRIDGETT KESSLING, City Clerk

**Included in this information to the City of Morro  
Bay**

1. Property inspection from Federal Wildlife Services and their recommendation.
2. Copy of Federal Fish and Wildlife depredation Permit # MB20289A-0 issued to Bayshore Village 2015. No nests will be removed and no birds harmed.
3. Procedure for adding the Seagull Eggs.
4. Plot map of the Bayshore Village complex.
5. Letter to the Board justifying the need to renew our city Resolution.
6. Pictures of our roofs with Seagulls, the reason for control.

OPERATOR NAME, ADDRESS, AND TELEPHONE NUMBER (Include  
ess/agency name if appropriate)

Jayshore Village HOA, Attn: Bill Albrecht  
168 Bayshore Dr.  
Morro Bay, CA 93442  
TELEPHONE  Home (661) 588-3397

2. LOCATION OF DAMAGE  
72 units on Bayshore Sandpiper Circle, Morro Bay, CA

3. COUNTY  
San Luis Obispo

4. STATE  
California

5. RESOURCE

A. RESOURCE CATEGORY

- Agricultural  Natural Resource  
 Property  Human Health/ Safety

B. SPECIFIC RESOURCE(S) DAMAGED  
Residence getting sick from feces

C. NATURE OF DAMAGE  
droppings

6. DAMAGE ESTIMATE

A. QUANTITY OF LOSS AND UNIT OF MEASURE (Pounds, acres, each, etc.)

29 condos with nests built on roofs

B. DOLLAR LOSS (if available)

- Per Unit  
 Total \$ 4,000

C. LOSS CONFIRMED BY WS

- Yes  No

D. DURATION /TIME PERIOD OF DAMAGE

April through August

E. DATE ASSISTANCE  
REQUEST RECEIVED  
August 29, 2014

F. DATE OF INVESTIGATION

August 29, 2014

G. INVESTIGATION TYPE

- Site Visit  Telephone  
 Letter  Other

7. MIGRATORY BIRD SPECIES

A. DEPREDATING SPECIES

B. NUMBER INVOLVED

C. COMMENTS

1. Western Gull nests

50

2. Western Gulls

200

Renewal permit # MB20289A-0

Contact person: Bill Albrecht

3.

4.

8. WS ASSISTANCE PROVIDED

A. TYPE OF ASSISTANCE PROVIDED

- Direct Control  Equipment Loan  Other (specify)  
 Technical Assistance  Supplies

B. RECOMMENDED ACTION(S)

- Harassment or hazing techniques  Lethal trapping  Trap and relocate  
 Habitat alteration and/or barriers  Shooting  Other -- remove nests before inhabited

C. METHODS ATTEMPTED, RESULTS, COMMENTS

Whirly birds, spiders, spikes on chimney caps, pokey wires on ridge lines of building, mylar tape, coiled wire in behind sky lights, excluded sky lights, wires above swimming pool, distress calls. Residences became sick from inhaling feces partials (ornithosis).

9. DEPREDATION PERMIT

WS RECOMMENDS PERMIT BE ISSUED:  Yes  No If "YES" suggested conditions of permit:

Wildlife Service's recommends egg addling of all Western Gull nests present

10. WS INVESTIGATOR NAME AND ADDRESS (Print)

Valerie Burton  
PO Box 957  
Taft, CA 93268  
TELEPHONE (AC) (661)765-2511

12. FOR USE BY DEPREDATION PERMIT AGENCY

11. WS INVESTIGATOR'S SIGNATURE:





# FEDERAL FISH AND WILDLIFE PERMIT

16 USC 703-712

ATTACHMENT 3

REGULATIONS  
50 CFR Part 13  
50 CFR 21.41

### 1. PERMITTEE

BAYSHORE VILLAGE HOMEOWNERS ASSOCIATION  
168 BAYSHORE DR.  
MORRO BAY, CA 93442  
U.S.A.

3. NUMBER  
**MB20289A-0**

4. RENEWABLE  
 YES  
 NO

5. MAY COPY  
 YES  
 NO

6. EFFECTIVE  
11/01/2014

7. EXPIRES  
10/31/2015

### 8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

WILLIAM ALBRECHT  
PRESIDENT

### 9. TYPE OF PERMIT

DEPREDATION

### 10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

72 Units: 150-188 Bayshore Dr., 154-190 Sandpiper Lane, 117-148 Sandpiper Circle  
Morro Bay, CA 93442  
San Luis Obispo County

### 11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. You are authorized to treat up to 50 Western Gull nests and the eggs contained within using 100% Corn Oil.

Lethal take is not to be the primary means of control. You are authorized to haze and harass birds throughout the year and remove active and inactive nests and nesting material. Active hazing, harassment or other non-lethal techniques must continue in conjunction with any lethal take of migratory birds. Demonstration of new and continued hazing, harassment, and exclusion construction during the term of this permit will be necessary to renew. An effective outreach program for residents and neighbors strongly recommended.

E. Any person who is (1) employed by or under contract to you for the activities specified in this permit, or (2) otherwise designated a subpermittee by you in writing, may exercise the authority of this permit. You are legally responsible to ensure that any yourself and any subpermittee correctly identify Western Gulls and do not take any other Migratory Bird Species.

F. You and any subpermittees must comply with the attached Standard Conditions for Migratory Bird Depredation Permits.

For suspected illegal activity, immediately contact USFWS Law Enforcement at: 310-328-1516

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

### 12. REPORTING REQUIREMENTS

ANNUAL REPORT DUE: 11/10

You must submit a report to your Regional Migratory Bird Permit Office, even if you had no activity. Report form is at: [www.fws.gov/forms/3-202-9.pdf](http://www.fws.gov/forms/3-202-9.pdf).

ISSUED BY

TITLE

DATE

WILDLIFE BIOLOGIST, REGION 8

10/21/2014

few days before disposal. Eggs must be disposed of; it is illegal to trap, consume, or trade eggs. You can remove or scatter the nesting material to discourage the geese from reusing the nest for a second clutch. The nest material and eggs from several nests may be bulkier and heavier than you expect. Be prepared with plenty of sturdy containers. If using trash bags, we suggest you double the bags and close securely.

This method is simple and used extensively in some states. Some pairs build new nests and lay additional eggs. How many geese renest is not known, but there is some information suggesting that if eggs have been incubated for a week the tendency to renest may be significantly diminished.

You will need to make repeated visits to find and remove new nests to be highly successful. Given this consideration, nest destruction may be a good choice where addlers will be frequently on-site for other duties and the number of pairs to keep track of is not very large. It may also be the method of choice for a site with a very large number of nests. The time needed to oil many nests may simply be impractical and acquiring an adequate number of replacement eggs difficult and expensive.

Visit nest sites no more than 14 days apart due to the 14-day limit on humanely addling eggs. If visits are longer apart than 14 days, it is much more likely addlers will find some eggs too old to disturb. The ideal timing would be to remove nests between 7 and 14 days of incubation, long enough incubation to reduce renesting but not so long that eggs are too old to remove.

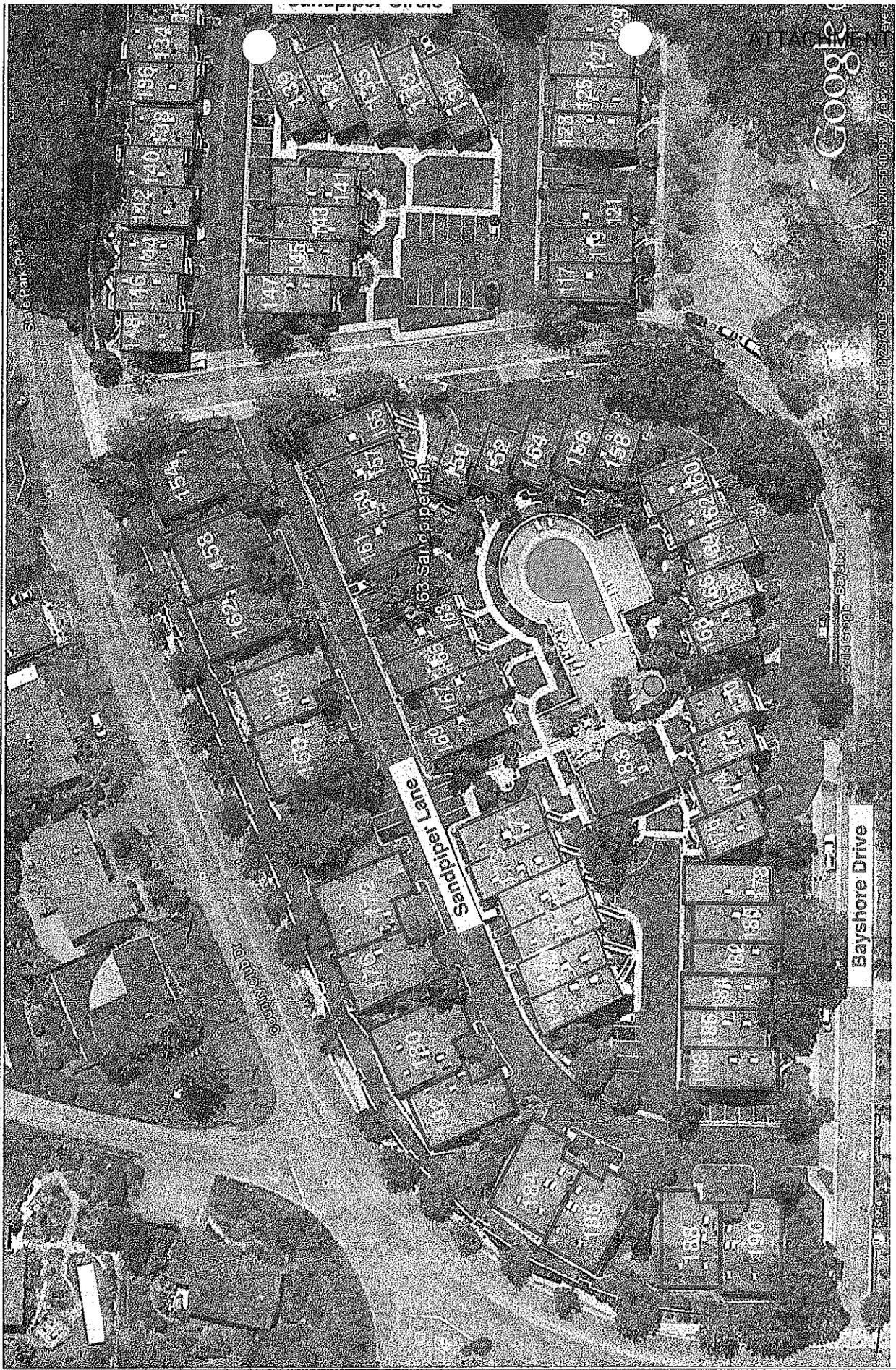
In addition to the supplies needed for all addling methods, teams will need:

- o containers for the eggs.

*Oiling Method.* Oiling is a widely used addling method with a long record of success. Coat eggs that are young enough to addle humanely with corn oil. This keeps air from passing through the shell so the embryo cannot develop. Oiling is reported to be highly effective (between 95 and 100 percent) in studies. However, in field use oiled nests have hatched goslings on rare occasions.

**Only use 100-percent food-grade corn oil to oil eggs.** This is a USFWS regulation. Although they may seem more convenient, do not use aerosol spray cooking oil, even corn oil. These products have other ingredients added so the oil will not clog the spray head and will spread over the cooking surface. These additional ingredients may interfere with the oil's effectiveness in blocking air movement through the shell. Since these spray products are not 100 percent corn oil, they do not comply with USFWS regulation.

Addlers can rub oil onto eggs, dip eggs in a container of oil, or spray oil from pump-type (non-aerosol) containers. If spraying, be sure to oil all surfaces of each egg, not just the exposed surface as the egg lies in the nest. You will need to turn each egg to expose and spray the entire surface. Disposable gloves are very useful to keep hands clean when applying oil. **Change them between nests to prevent spreading disease between birds.** Whatever coating method you use, the goal is an even coat with a light to moderate amount of oil over the entire egg.



Google

ATTACHED

3

Imagery Date: 8/25/2005 352043726

Saratoga Park Rd

Sandpiper Lane

Bayshore Drive

148 146 144 142 140 138 136 134  
147 145 143 141  
139 137 135 133 131  
117 119 121 123 125 127 129  
154 152 150 148 146 144 142 140 138 136 134  
163 161 159 157 155 153 151 149 147 145 143 141 139 137 135 133 131 129 127 125 123 121 119 117  
183 181 179 177 175 173 171 169 167 165 163 161 159 157 155 153 151 149 147 145 143 141 139 137 135 133 131 129 127 125 123 121 119 117  
199 197 195 193 191 189 187 185 183 181 179 177 175 173 171 169 167 165 163 161 159 157 155 153 151 149 147 145 143 141 139 137 135 133 131 129 127 125 123 121 119 117  
186 184 182 180 178 176 174 172 170 168 166 164 162 160 158 156 154 152 150 148 146 144 142 140 138 136 134 132 130 128 126 124 122 120 118 116 114 112 110 108 106 104 102 100 98 96 94 92 90 88 86 84 82 80 78 76 74 72 70 68 66 64 62 60 58 56 54 52 50 48 46 44 42 40 38 36 34 32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2  
198 196 194 192 190 188 186 184 182 180 178 176 174 172 170 168 166 164 162 160 158 156 154 152 150 148 146 144 142 140 138 136 134 132 130 128 126 124 122 120 118 116 114 112 110 108 106 104 102 100 98 96 94 92 90 88 86 84 82 80 78 76 74 72 70 68 66 64 62 60 58 56 54 52 50 48 46 44 42 40 38 36 34 32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2  
188 186 184 182 180 178 176 174 172 170 168 166 164 162 160 158 156 154 152 150 148 146 144 142 140 138 136 134 132 130 128 126 124 122 120 118 116 114 112 110 108 106 104 102 100 98 96 94 92 90 88 86 84 82 80 78 76 74 72 70 68 66 64 62 60 58 56 54 52 50 48 46 44 42 40 38 36 34 32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2  
188 186 184 182 180 178 176 174 172 170 168 166 164 162 160 158 156 154 152 150 148 146 144 142 140 138 136 134 132 130 128 126 124 122 120 118 116 114 112 110 108 106 104 102 100 98 96 94 92 90 88 86 84 82 80 78 76 74 72 70 68 66 64 62 60 58 56 54 52 50 48 46 44 42 40 38 36 34 32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2

**To the city of Morro Bay Board members:**

1. Western Gull is the species causing the depredation problem with approximately 200 Gulls on our roofs.
2. The exact location where control activity will be conducted is 150-188 Bayshore Dr., 117-148 Sandpiper Cir., 154-190 Sandpiper Lane, Morro Bay, California, a total of 72 units.
3. Description of damage
  - (a) We have damage to our property, property values and Health Hazards. The property roofs are being damaged by the Gull nests and Guano hurting and damaging the shingles. The property values are lower to all our units due to the amount of Guano on the roofs. The Health Hazard comes from the Guano in the form of Parrot like flu, which is a hazard to all the homeowners.
  - (b) The problem has been occurring for the last 10+ years. Each year is getting worst.
  - (c) Our nesting problems occur between the months of April/May - August. The roosting problem lasts longer.
  - (d) The Human Health Hazard is from the amount of Guano on and around our complex causing Parrot flu like symptoms and contaminating our pool.
  - (e) As stated above, the damage is to our roofs/shingles and pool area due to the Gulls nesting and roosting. The Property values have had an adverse effect because of the same reason. The Human Health Hazard is obvious by the amount of Gulls and Guano we have on our roofs and the surrounding property which can cause Parrot like flu.
4. The damage to our property is on-going, the exact amount of loss is unknown. This year we spent over \$10,000 on control issues.
5. This year we incorporated the same non-lethal legal tactics as last year. We used Wind driven whirly birds, solar powered whirly birds, metal spiders, spikes, bird wire, mylar tape, coiled wires around the chimney and skylight areas, distress calls, plastic owls and green laser lights with limited success, and finally electric training tape.

6. Proposed actions.

(a) As required by our last federal permit we plan on addling the eggs in 100% corn oil and returning the eggs to the nest. No harm to the Gulls.

(b) We plan on addling approx. 75 Western Gull eggs.

(c) We will addle the eggs in 100% corn oil and return them to the nest. These guidelines are contained in the "Humane Society's Canada Goose Egg Addling Protocol", which we will follow.

(d) We will not trap any Western Gulls.

7. Our long term measures are the same as last year, keep addling the eggs and harass the birds to keep them off our roofs. The electrical training tape seems to be working better than other methods so will increase our use of the tape.

We contacted the local Audubon Society and the Pacific Bird Rescue for any help and suggestions also we are applying for a federal depredation permit for 2016.

In the past we have not had any adverse effect on the overall Western Gull population in the area, but have prevented a lot of damage to our property, not to mention eliminating the Health hazards..

The California Dept. of Fish and Game has said as long as we have a Federal Fish and Wildlife permit it is OK with the State.

# 2015 Record

Date	Start	Finish	Total Time	# nests	# Eggs	Recorder	
05/01/15	9:00	11:00	2	14	0	B & G	
05/15/15	9:00	11:00	2	21	15	Bill	
05/29/15	9:00	11:00	2	22	49	Jim	
06/12/15	9:40	10:50	1 hr. 10 min.	26	42	Kathy	
06/26/15	9:00	11:00	2	27	24	Bill	
07/10/15	9:00	11:00	2	26	5	Bill	
07/24/15	9:00	11:00	2	25	0	Bills	
08/07/15	9:00	11:00	2	25	0	Bill	CLEARED NEST OFF ROOF

Work Being done by Santos painting. Phone # 1-805-757-7351 \* Cell

Owner : Miguel Santos 1-805-922-0795 \* Home

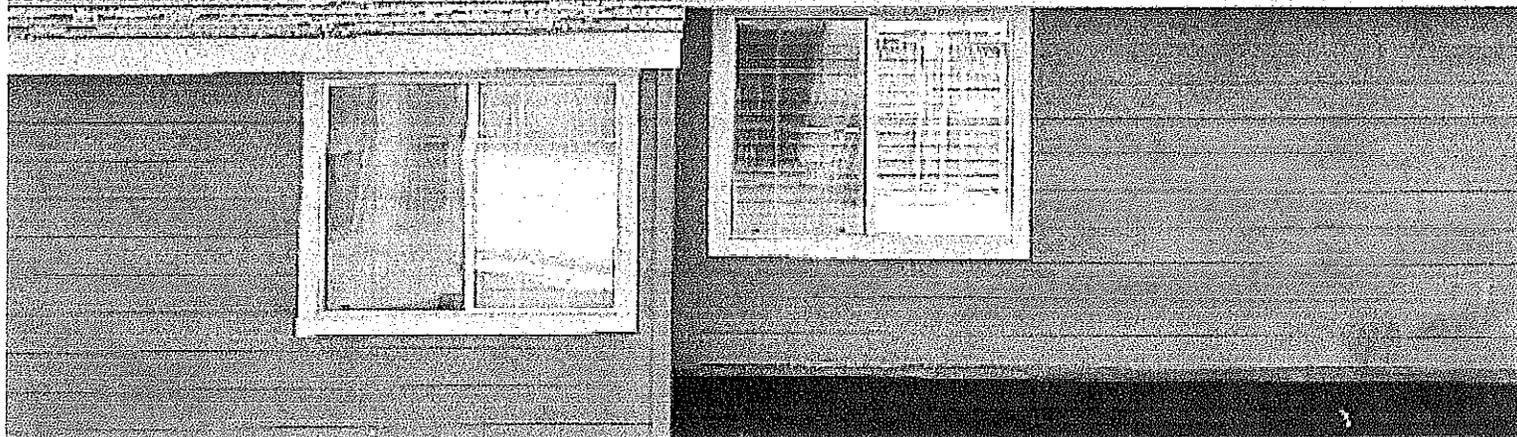
Start @ 9:00 am

WORKER : SALVADOR - JOE - ALDAR (SON) - MIGUEL (SON)

City Resolution # 51-10

Cal Dept. Fish & Game, OK with Federal permit (Dispatch # 831-649-22810)

Fed Permit # MB20289A-O



JUNE 2014



June 2014



AGENDA NO: A-15

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 18, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Reconsideration of Approval of Two New License Agreements between the City of Morro Bay and GAFCO, Inc. (George Leage, Great American Fish Company) for Lease Site 110W-112W & 111.5W, and THMT, Inc. (Troy Leage, Harbor Hut) for Lease Site 122-123/122W-123W for Use of Public Property in the Front Street Parking Lot Area for Trash Enclosures

### RECOMMENDATION

Staff recommends the City Council reconsider approval of the two license agreements for use of public property for trash enclosures at 1196 Front Street.

### ALTERNATIVES

Council may elect not to approve the proposed license agreements, and direct staff accordingly.

### FISCAL IMPACT

No change from the previous staff report on this item.

### BACKGROUND

Council first considered approval of these license agreements at the September 22, 2015 meeting on the Consent agenda, however, the item was pulled for discussion regarding the unkempt state of the dumpster enclosure area under consideration. The Council voted to continue the item to such a time as the enclosure area is adequately cleaned up and maintained as per the stipulations in the license agreements. The staff report and approved minutes from the September 22 meeting on this item are included as Attachment 1.

### DISCUSSION/CONCLUSION

Subsequent to the September 22 meeting, staff contacted the licensees and advised them of the City's expectations and Council direction regarding the housekeeping and maintenance requirements of the enclosure area and its contents as stipulated in the license agreements. The licensees were also advised that failure to adequately comply with the housekeeping and maintenance requirements would result in the City not approving the enclosure use, or revoking it in the future if it is approved now.

Prepared By: EE

Dept Review: EE

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

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

In recent weeks, licensees have notified staff they have removed one of the used cooking oil containers, cleaned the area of all loose materials and trash, cleaned up any spilled cooking oil and have directed their employees to better police and maintain the area.

In addition, the Planning Division is requiring Troy Leage to comply with the 2012 approved amendment to Conditional Use Permit #CUP 02-01 for the upstairs office/storage construction, Planning condition 22 which states, "The trash receptacle area and receptacles as designated on the original plan for CUP-02-01 shall be restored on-site, or the applicant shall provide an alternative location to the satisfaction of the Public Services Director and Harbor Director." The license agreement as-proposed would provide that satisfaction.

Staff is now bringing this item forward for reconsideration of approval by the Council.

**ATTACHMENTS**

1. Staff report and approved minutes from the September 22, 2015 City Council meeting regarding this item.
2. Draft License Agreement (one sample agreement presented; both will be identical)



AGENDA NO: A-5

MEETING DATE: September 22, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** September 16, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of Two New License Agreements Between the City of Morro Bay and GAFCO, Inc. (George Leage, Great American Fish Company) for Lease Site 110W-112W & 111.5W, and THMT, Inc (Troy Leage, Harbor Hut) for Lease Site 122-123/122W-123W for Use of Public Property in the Front Street Parking Lot Area for Trash Enclosures

### RECOMMENDATION

Staff recommends the Council approve the two license agreements for use of public property for trash enclosures at 1196 Front Street, as proposed.

### ALTERNATIVES

Council may elect not to approve the proposed license agreements, and direct staff accordingly.

### FISCAL IMPACT

If approved, then there will be a small increase in revenue to the Harbor Fund of \$30 per month (\$15/month for each License Agreement) with the license fees.

### BACKGROUND

Historically, both the Great American Fish Company (GAFCO) and Harbor Hut (HH) lease sites had an agreement with the power plant to house their trash dumpsters and grease containers adjacent to their lease sites along the top of the revetment in the parking lot between GAFCO and HH. That area is power plant-owned property.

The City's project of building the boardwalk along that stretch of waterfront in the early 2000's eliminated the enclosure location, and the leaseholders (George Leage and Troy Leage) negotiated with the City staff, at the time, for a satisfactory resolution. That solution consisted of GAFCO and HH being issued a Temporary Encroachment Permit for a location abutting the Harbor Department storage yard fence at the time in the Front Street Parking Lot, prior to reconstruction of the City's Lift Station #2, with the stipulation the permit would expire when the lift station was rebuilt and the area reconfigured.

01181.0001/268489.1

Prepared By: EE

Dept Review: EE

City Manager Review: DWB

City Attorney Review: JWP

Current staff can find no written evidence of what the post-construction intent or plan was for continued housing of the dumpsters; however, a new dumpster enclosure was built adjacent to the reconfigured Harbor/Lift Station yard at the City's expense. As currently configured, neither GAFCO nor HH lease sites can adequately house their waste storage/disposal needs.

### **DISCUSSION**

Staff has determined a license agreement is necessary to continue to allow these leaseholders to use public property for their private business use. Staff has negotiated the attached license agreements with the following highlights:

- Fair market license fee of 8% of the appraised value of the property, akin to the City's standard waterfront leasing policy and based on the recent property value appraisal of the Triangle Parking Lot.
- Separate metering and payment for water for quenching hot barbeque ashes produced by the restaurants.
- Initial term of one year, with provision for administrative (Harbor Director) renewal for the second and subsequent years at the discretion of the City.
- Use is considered "temporary" in nature until a better, more permanent long-term location for the use be investigated and implemented.
- If the City determines it in the best interest of the public (such as if the Maritime Museum or other potential projects move forward in the area), then the City may move the enclosure to an alternate location in the area or reconfigure the enclosure at Licensee's expense.
- The use is subject to the City's standard insurance requirements for lease sites.
- Provision the City or Licensee may terminate the license, with or without cause, on 30-days' notice.

### **CONCLUSION**

Staff is recommending approval of the attached temporary license agreement to allow GAFCO and HH to continue to utilize public property off-site of their leases to house their trash, recycling, used fry oil and barbeque ash storage needs. The agreements proposed provide adequate flexibility for the City and Licensees to investigate other potential locations for the use, including on the Licensee's own lease sites, or reconfiguration or relocation of the enclosure to best serve the public good. A small amount of revenue will be realized and the use will be covered by the Licensee's insurance with the City named as additionally insured.

### **ATTACHMENTS**

1. Draft License Agreement (one sample agreement presented; both will be identical)
2. Overhead view of the dumpster enclosure area as currently configured.

- A-5 APPROVAL OF TWO NEW LICENSE AGREEMENTS BETWEEN THE CITY OF MORRO BAY AND GAFCO, INC. (GEORGE LEAGE, GREAT AMERICAN FISH COMPANY) FOR LEASE SITE 110W-112W & 111.5W, AND THMT, INC. (TROY LEAGE, HARBOR HUT) FOR LEASE SITE 122-123/122W-123W FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (HARBOR)  
<https://youtu.be/2YxJTLshRRs?t=40m18s>

Mayor Irons suggested this item be continued as the properties have not been cleaned up as required by the License Agreement.

MOTION: Mayor Irons moved to continue Item A-5 until the site is cleaned up. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

~~B. PUBLIC HEARINGS - NONE~~

~~There was Council consensus to move Item D-3 to the front of the agenda.~~

~~D. NEW BUSINESS~~

- ~~D-3 CONSIDERATION OF HARBOR ADVISORY BOARD RECOMMENDATION ON CHUMASH HERITAGE NATIONAL MARINE SANCTUARY NOMINATION, AND POSSIBLE CITY COUNCIL POSITION; (HARBOR)  
<https://youtu.be/2YxJTLshRRs?t=42m15s>~~

~~Harbor Director Endersby provided the staff report and responded to Council inquiries.~~

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

~~David Georgie, Shell Beach, spoke in support of the National Marine Sanctuary, noting the oil drilling moratorium ends in 2017. He provided a list of over 600 individuals, businesses, and elected officials who support marine sanctuaries.~~

~~Carol Georgie, Pismo Beach/Shell Beach, spoke representing the San Luis Obispo Chapter of the Surfrider Foundation in support of a National Marine Sanctuary. The Surfrider Foundation worked with other local groups to ensure the proposed sanctuary will not include harbors, nor will it include additional fishing restrictions.~~

~~Liz Gilson, Morro Bay Chamber of Commerce Director of Operations, asked the Council to consider how their vote will affect local businesses and continue its opposition to National Marine Sanctuary designation.~~

~~Lori French, Morro Bay, spoke in opposition to National Marine Sanctuary and provided recent weather reports by NOAA stating the temperature in Morro Bay -328 degrees. She doesn't trust NOAA to be on-task and up to speed and feels local control is better.~~

TEMPORARY LICENSE AGREEMENT  
FOR USE OF PUBLIC PROPERTY

The City of Morro Bay, a municipal corporation, (“Licensor”) hereby grants to **GAFCO, Inc** (“Licensee”) a license (“this License”) for use of the real property located on the Front Street Parking Lot at 1196 Front Street, Morro Bay, CA, illustrated on the attached Exhibit A (the “Premises”), subject to all the following terms and conditions:

1. USE: Subject to all the provisions of this License and only in recognition of the purpose set forth in this Paragraph, Licensee shall have permission to non-exclusive use of one half of the 410 square-foot trash enclosure on the Premises (the “Licensed Area”) solely for temporary and proper storage of ash/trash/recycling/cooking oil until properly disposed of on behalf of Licensee by a qualified hauling company. The Licenses Area is also noted on Exhibit A.

Only ash/trash/recycling/cooking oil derived from Lease Site **110W-112W & 111.5W** will be allowed to be temporarily and properly stored in the Licensed Area.

Licensee acknowledges Lease Site **122-123/122W-123W** will also be allowed use of the Licensed Area pursuant to a separate license agreement.

Licensee is allowed to have a new water meter and hose bib installed for sole purpose of ash extinguishment in the Licensed Area. Licensee is responsible for all costs of installation and maintenance of any, and all utilities or services associated with, the water meter.

No storage of hazardous materials of any sort will be allowed on the Premises,, including, but not limited to, such materials as fuels, chemicals, paints and oils.

The foregoing shall be defined as the “Permitted Uses.”

Licensee understands and agrees it is Licensor’s desire Licensee determine a long-term permanent solution for storing Licensee’s garbage, recycling, ash and used cooking oil on Licensee’s Lease Site, if feasible. Licensor and Licensee also understand the importance to Licensee to have a reasonable location for storing Licensee’s garbage, recycling, ash and used cooking oil and with that understanding in mind Licensor and Licensee agree to work together to find a reasonable relocation site, as each may determine necessary. for that storage, as each may determine feasible.

2. LICENSOR REQUIREMENTS: In connection with the Permitted Uses, Licensee shall comply with all applicable Federal, State and local laws rules and regulations, including payment of local business taxes, if applicable.

3. EFFECTIVE DATE OF LICENSE: This License shall be effective upon the date it is signed on behalf of Licensor, as long as it has also been signed on behalf of Licensee (the "Effective Date").
4. TERM: The term of this License shall be for 365 days from the Effective Date (the "Term") or termination pursuant to Paragraph 16, below.
5. RENEWAL: Licensor's Harbor Director may, at his/her sole discretion, administratively execute successive one-year renewals of this License (the "Extended Term"). The Extended Term shall be effective only if an amendment to this License is signed by Licensor's Harbor Director, or designee and Licensee.
6. FEES: Licensee shall pay to Licensor Fifteen Dollars and No cents (\$15.00) per month payable on the first of each month commencing on the first full calendar month after the date of this License (the "License Fee").

On each July 1, commencing with July, 2016, the License Fee shall be increased in an amount equal to the increase in the Consumer Price Index (the "CPI") for the 12-month Index average of the immediate preceding calendar year. The CPI referred to herein is the CPI (all items indexes, all urban consumers) for Los Angeles - Riverside - Orange County, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100. A decrease in the CPI shall have no effect on the License Fee. If the CPI is discontinued, then another similar established method for determining increases in costs shall be used instead.

7. MAINTENANCE: Licensee shall be responsible to maintain the Premises in a clean and presentable manner and keep the area abutting the Premises free from waste, debris, trash and other rubbish. Upon termination this License for any reason, Licensee shall leave the Premises free from waste, debris, trash, pollution/spills and other rubbish and in a good condition, subject to normal wear and tear.
8. SIGNS: Licensee shall not allow any signs to be posted on the Premises unless required by law and not without the prior written approval of Licensor's Harbor Director, and subject to all applicable Licensor zoning laws, rules and regulations and all required land use Licensor approvals and permits shall be obtained.
9. IMPROVEMENTS: Licensee shall not make any improvements to the Premises without prior approval from Licensor's Harbor Director. Upon termination of this License for any reason, any improvements of any kind installed by or on behalf of Licensee and left on Premises shall become the property of Licensor at no cost whatsoever, including any damages for condemnation, inverse condemnation or relocation benefits or loss of goodwill, however, Licensee and Licensor further agree that Licensor has the option and right to require Licensee to remove any improvements of any kind installed by or on behalf of Licensee upon the Premises at the termination of this License, however

occurring, providing Licensor gives Licensee notice, in writing, no later than thirty days prior to termination of License. If Licensor exercises such option and Licensee fails to remove such improvements within sixty days after termination of License, Licensor shall have the right to have such improvements removed at expense of Licensee.

10. LICENSEE OBLIGATIONS: Termination of this License shall not terminate Licensee's obligations pursuant to Paragraphs 11, 12, 13, 14, 15, 16 and 17.
11. TAXABLE INTEREST: This License is not intended to create any interest in real property. If it is determined, by a governmental agency dually authorized to make such decision, this License creates any taxable interest, including, but not limited to, a possessory interest, then Licensee shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.
12. HOLD HARMLESS: Licensee agrees to and hereby does hold harmless, indemnify and defend Licensor and its officers, agents and employees ("Indemnitees") from any claim, judgment, liability, award, damages, loss or expense, including reasonable attorney's fees and court costs, arising out of or related to the use of the Premises by Licensee, including, but not limited to, any hazardous materials releases; provided, that Licensee's obligation to indemnify and hold harmless shall apply only to the extent Licensee, its officers, employees or agents caused the claim, loss or expense. For purposes of this License, hazardous materials shall mean any materials as defined by State or Federal laws.
13. INSURANCE: Without limiting the obligation set forth in the immediately preceding sentence, during the term of this License Licensee shall provide evidence of insurance as provided in Exhibit B.
14. NO LIENS ON PREMISES: Licensee shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of Licensee; and Licensee agrees to indemnify and hold harmless Licensor and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with Licensee's use of the Premises.
15. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either party shall have the right to terminate this License, with or without cause, upon thirty-days' (30-days') written notice to the non-terminating party. Licensor shall not be liable (i) for any displacement or relocation benefits or expenses experienced by Licensee, (ii) for reimbursement for any improvements installed by Licensee or (iii) for any damages in condemnation, inverse condemnation, loss of goodwill or other legal or equitable bases resulting, directly or indirectly, from any action or inaction of or on behalf of Licensor that may be in any way connected with any termination of this License for any reason or any relocation of Licensee from the Premises for any reason. Upon termination of this License, Licensee shall no longer be responsible for any fees under this License, as specified in Paragraph 6 of this License.

16. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If arises out of this License, then venue shall be in the Superior Court of San Luis Obispo County.
17. LITIGATION FEES: If either party commences action against the other party arising out of or in connection with this License, then the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit.
18. LICENSOR USE OF PREMISES: Licensor may use the Premises for ash/trash/recycling/cooking oil storage; provided, that such use shall not unreasonably interference with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposes set forth herein. In addition, without any implied or expressed limitation on Licensor's authority and right to access and inspect the Premises in its governmental capacity, Licensor shall have the right to access at any time to the Premises for inspections.

At any time during the Term or any Extended Term, Licensor reserves the right to have Licensee relocate its ash/trash/recycling/cooking oil storage to an alternate location at sole discretion of Licensor. The costs for that relocation and any repairs required on the Premises due to Licensee's use of the Premises shall be borne solely by Licensee.

19. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by Licensee without the written consent of Licensor.
20. NOTICES: All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Licensor:

City of Morro Bay  
Attn: Harbor Director  
1275 Embarcadero  
Morro Bay, CA 93442

With Copy to:

Joseph W. Pannone  
Aleshire & Wynder, LLP  
2361 Rosecrans Avenue, Suite 475  
El Segundo, CA 90245

To Licensee:

GAFCO, Inc.  
George Leage  
PO Box 1739  
Morro Bay, CA 93442

21. ENTIRE AGREEMENT: This License (i) constitutes the entire agreement of the parties hereto relating to the use, operation and maintenance of the Premises and (ii) shall supersede prospectively from the date it is entered into any and all prior written or oral negotiations or agreements of the parties relating to the Premises. This License shall not be modified in any particular except by a written amendment duly executed by the parties.

LICENSEE

Dated: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

LICENSOR

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
David Buckingham, City Manager

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Joseph W. Pannone, City Attorney

EXHIBIT A

AERIAL OF PREMISES

(Immediately behind this page)



Exhibit A

1196 Front Street

**CITY OF MORRO BAY  
EXHIBIT B**

**INSURANCE REQUIREMENTS**

*Prior to the beginning of and throughout the duration of the Agreement, Licensee will maintain insurance in conformance with the requirements set forth below. Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Licensee agrees to amend, supplement or endorse the existing coverage to do so. Licensee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Licensor in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to Licensor.*

*Licensee shall provide the following types and amounts of insurance:*

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Licensee owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee’s employees will use personal autos in any way on this project, then Licensee shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits, if required.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Licensor for injury to employees of Licensee, subcontractors or others involved in the Work. The scope of coverage provided is

subject to approval of Licensor following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

*Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Best's rating of A- or better and a minimum financial size VII.*

General conditions pertaining to provision of insurance coverage by Licensee. Licensee and Licensor agree to the following with respect to insurance provided by Licensee:

1. Licensee agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Licensor, and its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Licensee also agrees to require all Licensees, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Licensee, or Licensee's employees, or agents, from waiving the right of subrogation prior to a loss. Licensee agrees to waive subrogation rights against Licensor regardless of the applicability of any insurance proceeds, and to require all Licensees and subcontractors to do likewise.
3. All insurance coverage and limits provided by Licensee and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Licensor or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Licensor and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Licensee or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by Licensor, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Licensor's protection without Licensor's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Licensee's general liability policy, shall be delivered to Licensor at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Licensor has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Licensor shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at Licensor's option.
8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Licensee or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to Licensor.
9. Licensee agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Licensee agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to Licensor for review.
10. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Licensee, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to Licensor. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Licensor. At the time Licensor shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. Licensor reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, Licensor will negotiate additional compensation proportional to the increase benefit to Licensor.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Licensee acknowledges and agrees that any actual or alleged failure on the part of Licensor to inform Licensee of non-compliance with any insurance requirements in no way

imposes any additional obligations on Licensor nor does it waive any rights hereunder in this or any other regard.

14. Licensee will renew the required coverage annually as long as Licensor, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Licensor executes a written statement to that effect.
15. Licensee shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Licensee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Licensor within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Licensee under this agreement. Licensee expressly agrees not to use any statutory immunity defenses under such laws with respect to Licensor, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Licensor or Licensee for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to Licensor. It is not the intent of Licensor to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Licensor for payment of premiums or other amounts with respect thereto.

21. Licensee agrees to provide immediate notice to Licensor of any claim or loss against Licensee arising out of the work performed under this agreement. Licensor assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Licensor.



AGENDA NO: A-16

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 24, 2015

**FROM:** Susan Slayton, Administrative Services Director and  
Brooke Austin, Legal Assistant/Deputy City Clerk

**SUBJECT:** Resolution No. 78-15 Authorizing the City to enter into a Deposit and Endorsement Authorization with Union Bank, N.A. for the processing of Administrative and Parking Citations

### **RECOMMENDATION**

Staff recommends Council approve Resolution No. 78-15 Authorizing the City to enter into a Deposit and Endorsement Authorization with Union Bank, N.A. for the processing of Administrative and Parking Citations

### **BACKGROUND**

The City has contracted with Phoenix Group Information Systems for the processing of administrative and parking citations issued by all City departments. This will include payment of fines being sent directly to Phoenix Group on behalf of the City. In order to receive and process these payments through Union Bank, Phoenix Group must be authorized to accept payments on the City's behalf.

### **DISCUSSION**

The attached Resolution No. 78-15 has been prepared to authorize Phoenix Group to receive payments on behalf of the City.

### **CONCLUSION**

Staff recommends Council approve Resolution No. 78-15.

Prepared By: BRA

Dept Review: SS

City Manager Review: DWB

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

**RESOLUTION NO. 78-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING THE CITY TO ENTER INTO A DEPOSIT AND  
ENDORSEMENT AUTHORIZATION WITH UNION BANK, N.A. FOR  
THE PROCESSING OF ADMINISTRATIVE AND PARKING CITATIONS**

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

**WHEREAS**, the City of Morro Bay has entered into an Agreement with Phoenix Group Information Systems to process administrative and parking citations on behalf of the City; and

**WHEREAS**, to accomplish this task, Phoenix Group has set up an account with Union Bank, N.A.; and

**WHEREAS**, in order to deposit checks, drafts and other payments made payable to the City of Morro Bay, Phoenix Group must be authorized by the City to do so.

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

1. The City of Morro Bay is authorized to enter into a Deposit and Endorsement Authorization with Union Bank, N.A.
2. Susan Slayton, Administrative Services Director, is authorized to execute the Deposit and Endorsement Authorization on behalf of the City.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on this 8th day of December, 2015 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

JAMIE L. IRONS, Mayor

ATTEST:

---

DANA SWANSON, City Clerk



AGENDA NO: A-17

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** November 24, 2015  
**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer  
**SUBJECT:** State Revolving Fund Planning Loan from State Water Resources Control Board

### RECOMMENDATION

Staff recommends the City Council receive information regarding the current status and the proposed next steps related to the application to the State Water Resources Control Board (SWRCB) for a planning loan of up to \$10,400,000 to fund planning phase work for the new Water Reclamation Facility (WRF) through the Clean Water State Revolving Fund (SRF).

Staff also recommends the City Council adopt:

- a) The attached Resolution No. 80-15 authorizing the Public Works Director/City Engineer to sign the SRF loan application after it is completed and the loan agreement if approved by SWRCB.
- b) The attached Resolution No. 81-15 Pledge of Revenues and Funds for the SRF Recycled Water Planning Loan, required as part of the loan application package to SWRCB.

### ALTERNATIVES

No alternatives are recommended.

### FISCAL IMPACT

Potential to receive low-interest loan funding of up to \$0,400,000 to finance planning, permitting and design of the new WRF.

### BACKGROUND/DISCUSSION

Kestrel Consulting is completing an application on behalf of the City for a SRF Planning Loan to fund planning, permitting and design tasks for the WRF. SRF Planning Loan funding can cover various planning-related costs, including Program Management, outreach, master planning, CEQA/NEPA consultant costs, permitting, and project design, which occur after the loan is approved. The Program Management team anticipates submitting the completed application package by December 30, 2015.

If the application is approved, then acceptance of the loan agreement will obligate the City repayment of loan funding for the term of such financing, unless modification or change is approved in writing by SWRCB. Resolution No. 80-15 also authorizes the Public Works Director/City Engineer to sign the loan agreement, subject to approval by the City Attorney, and take other actions required by that agreement.

01181.0001/276630.1

Prepared By:     MN    

Dept Review:                     

City Manager Review:                     

City Attorney Review:     JWP

**RESOLUTION NO. 80-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO APPLY FOR A  
STATE REVOLVING FUND PLANNING LOAN FOR THE WATER RECLAMATION FACILITY  
FROM THE STATE WATER QUALITY CONTROL BOARD AND AUTHORIZING THE  
EXECUTION OF A LOAN AGREEMENT, AND ANY OTHER ACTION REQUIRED,  
FOR THE PURPOSES OF THE LOAN**

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

**WHEREAS**, the City of Morro Bay (“City”) is actively pursuing development of a Water Reclamation Facility (the “Project”) that will provide treated disinfected recycled water to supplement the City’s water portfolio; and

**WHEREAS**, the State of California State Water Resources Control Board (SWRCB) has State Revolving Fund (SRF) loan funding available for the planning, permitting, and design of the Project; and

**WHEREAS**, it is in the public interest to pursue planning loan funding for the Project; and

**WHEREAS**, the SWRCB requires the City to authorize a designated representative to sign and file on behalf of the City an SRF Loan Application to obtain a loan to fund planning and design efforts for the Water Reclamation Facility; and

**WHEREAS**, the authorized representative is designated to provide the assurances, certifications and commitments required for the SRF Loan Application, including executing an SRF Loan Agreement with the SWRCB and any amendment or changes thereto; and

**WHEREAS**, the authorized representative is designated to represent the City in carrying out the City’s responsibilities under the Loan Agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

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

1. The Public Works Director/City Engineer is hereby authorized and directed to sign and file, for and on behalf of the City, an SRF Loan Application with the State Water Resources Control Board to obtain loan funding for the planning and design of the Water Reclamation Facility; and
2. If funding is approved, the Public Works Director/City Engineer is hereby authorized to sign the loan agreement, subject to approval by the City attorney, and take other actions as required by the agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of December, 2015 by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

ATTEST:

---

DANA SWANSON, City Clerk

**RESOLUTION NO. 81-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
PLEDGE OF REVENUES AND FUNDS FOR A STATE REVOLVING FUND  
PLANNING LOAN FOR THE WATER RECLAMATION FACILITY  
FROM THE STATE WATER QUALITY CONTROL BOARD**

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

**WHEREAS**, the City of Morro Bay (“City”) is actively pursuing development of a Water Reclamation Facility (the “Project”) that will provide treated disinfected recycled water to supplement the City’s water portfolio; and

**WHEREAS**, the State of California State Water Resources Control Board (SWRCB) has State Revolving Fund (SRF) loan funding available for the planning, procurement, and design of the Project; and

**WHEREAS**, it is in the public interest to pursue planning loan funding for the Project; and

**WHEREAS**, the City’s authorized representative is submitting an SRF Loan Application to the SWRCB to request such funding as necessary to fund planning and design efforts for the Water Reclamation Facility, resulting in a planning loan agreement with the SWRCB for project financing; and

**WHEREAS**, the SWRCB requires the City to provide commitment to maintain revenues and funds to satisfy the repayment obligation for such planning loan agreement to fund planning and design efforts for the Project.

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

1. The City of Morro Bay hereby dedicates and pledges Net Revenues of the Sewer Enterprise Fund and the Sewer Enterprise Fund to payment of any and all Clean Water State Revolving Fund and/or Water Recycling Funding Program financing for the Morro Bay Water Reclamation Facility, CWSRF #3329.
2. The City of Morro Bay commits to collecting such revenues and maintaining such fund(s) throughout the term of such financing and until the City of Morro Bay has satisfied its repayment obligation thereunder unless modification or change is approved in writing by the State Water Resources Control Board.
3. So long as the financing agreement(s) are outstanding, the City of Morro Bay’s pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board on the foregoing fund(s) and revenues(s) without any further action necessary. So long as the financing agreement(s) are outstanding, the City of Morro Bay commits to maintaining the fund(s) and revenues(s) at levels sufficient to meet its obligations under the financing agreement(s).

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of December, 2015 by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

ATTEST:

---

DANA SWANSON, City Clerk



AGENDA NO: A-18

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 24, 2015

**FROM:** Sam Taylor, Deputy City Manager

**SUBJECT:** Adoption of the 2016 City Council Meeting Calendar

### **RECOMMENDATION**

Staff recommends the City Council adopt Resolution No. 79-15 approving the 2016 meeting calendar.

### **ALTERNATIVES**

The Council could alter the schedule.

### **FISCAL IMPACT**

None

### **BACKGROUND**

In order to provide for the orderly course of business (both for the City Council and staff), and to enhance public transparency and accountability, staff has prepared Resolution No. 79-15 adopting the 2016 meeting calendar. This calendar includes regular meetings, anticipated study sessions or workshops, closed sessions, and joint meetings with advisory bodies. Other special meetings may be called to address City business, as needed.

In addition to the calendar, staff is proposing the creation of adopted staff and advisory body work plans, which will provide for guidance related to the work done on behalf of the community. The work plans will be informed by the City Council's annual adoption of objectives (under each four-year goal). The annual objectives and work plans will inform adoption of the annual budget.

### **DISCUSSION**

The calendar is adopted annually and provides for the necessary structure of the City Council's work throughout the year. Adoption of a calendar by resolution allows the community to also understand the planned dates for important work on the City's goals and objectives, advisory body/staff work plans, joint meetings with advisory bodies, adoption of the budget, and more.

Prepared By: ST

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

City Manager Review: DWB

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

In this calendar, times for various types of meetings are as follows (note – these types of sessions or meetings are not necessarily on the same day):

Study Sessions and Joint Meetings – 4 p.m.

Closed Sessions – 4:30 p.m.

Regular Meetings – 6 p.m.

Regular meetings are the second and fourth Tuesdays of the month, unless a break is scheduled for one of those times (three breaks are scheduled on the calendar).

Of note in the structure of the calendar is the staggering of study sessions and closed sessions. Generally, a closed session is scheduled before the first regular meeting of the month, and a study session is scheduled for the second meeting of the month. If a study session is before the first meeting of the month, there is a placeholder for a closed session on the Wednesday following the regular meeting.

Staff also believes that adoption of work plans for advisory bodies will cut down on confusion and provide important direction from the Council to its volunteer recommending groups.

It is important to note that the City Council's advisory bodies are just that – advisory. That is, they make recommendations to the Council on issues, and aren't typically the body that would decide what it should be working on in a standalone fashion. Expert staff should develop an annual work plan, bring it to the advisory body for recommendation to the Council, and then the City Council should officially adopt the work plans. This provides necessary structure to staff and advisory bodies. Should, however, there be an issue of such import that it should be added to the work plan, a mechanism is provided for the advisory body to recommend additions to the City Council.

### **CONCLUSION**

Council should adopt Resolution No. 79-15 for the 2016 meeting calendar and Advisory Board Work Plan Process.

### **ATTACHMENTS**

Resolution No. 79-15

Resolution Exhibit A – 2016 Council Calendar

Resolution Exhibit B – Advisory Board Work Plan Process

**RESOLUTION NO. 79-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ADOPTING THE 2016 CITY COUNCIL MEETING CALENDAR  
AND WORK PLAN DEVELOPMENT STRUCTURE**

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

**WHEREAS**, the City Council adopts an annual calendar providing for the orderly course of business and to provide transparency and accountability to the public; and

**WHEREAS**, the City Council adopts annual objectives that aim to meet the adopted four-year goals; and

**WHEREAS**, annual objectives inform the work conducted by the City staff, and what items are generally brought before the City Council's advisory bodies; and

**WHEREAS**, in order to provide for a more orderly and functional system for addressing annual objectives, it is appropriate for staff to prepare annual work plans to meet said objectives; and

**WHEREAS**, it is important for the City Council's advisory bodies to be able to provide input on those annual work plans, as the items that come before those bodies will come directly from the work plans; and

**WHEREAS**, at times, there may be issues that have not been placed on a work plan that are of such import the advisory body may recommend doing so to the City Council; and

**WHEREAS**, it is appropriate for the City Council to provide a structure for the adoption of annual work plans and a mechanism for advisory bodies to recommend additions of items to said work plans.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that the 2016 City Council Meeting Calendar is adopted pursuant to Exhibit A, and the City Work Plan Development Structure is adopted pursuant to Exhibit B.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on this 8<sup>th</sup> day of December, 2015 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

# EXHIBIT A

## 2016 City Council Meeting Calendar

### January 12

Study Session – Goals & Objectives  
Regular Meeting

### January 13

Closed Session

### January 26

Study Session – Goals & Objectives  
Regular Meeting

### February 9

Closed Session  
Regular Meeting

### February 23

Regular Meeting

### March 8

Closed Session  
Regular Meeting

### March 22

Study Session – Budget Forecast  
Regular Meeting

### March 29

Joint Meeting – Advisory Bodies

### April 12

Joint Meeting – Advisory Bodies  
Regular Meeting

### April 13

Closed Session

### April 26

Study Session – Advisory Board Guidance  
Regular Meeting

### May 10

Closed Session  
Regular Meeting

### May 24

Study Session – Budget  
Regular Meeting

### May 31

Study Session – Budget

### June 14

Closed Session  
Regular Meeting

### June 28

Regular Meeting

### July 12

Closed Session  
Regular Meeting

### July 26

BREAK

### August 9

Closed Session  
Regular Meeting

### August 23

Regular Meeting

### September 13

Closed Session  
Regular Meeting

### September 27

Regular Meeting

### October 11

Closed Session  
Regular Meeting

### October 25

Regular Meeting

### November 8

Election Day

### November 15

Regular Meeting – Annual Goals Update

### November 22

BREAK

### December 5

Advisory Body Recognition Event

### December 12

New Council Seated

### December 13

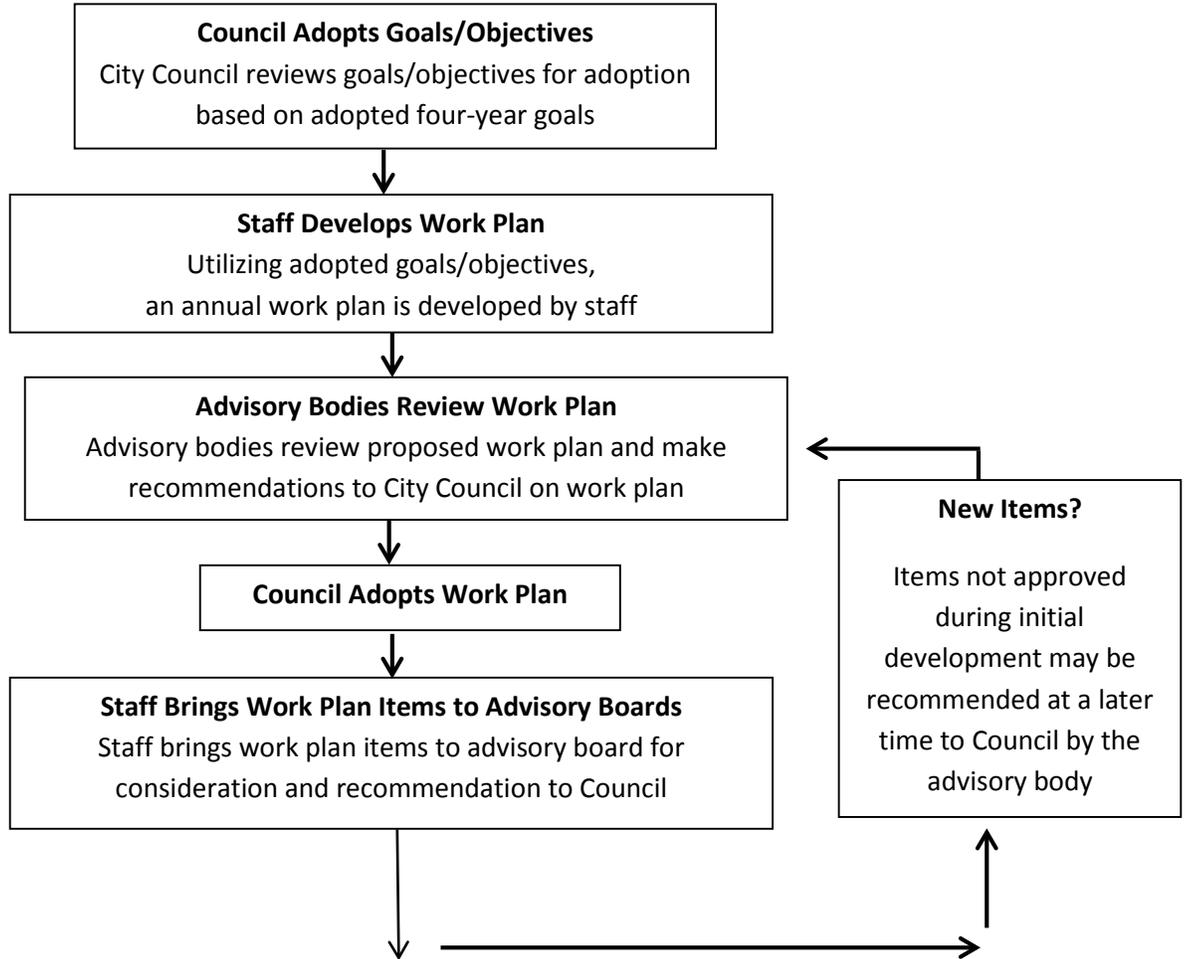
Regular Meeting – Advisory Board Interviews

### December 27

BREAK

# EXHIBIT B

## Advisory Board Work Plan Process





AGENDA NO: A-19 REVISED

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 30, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of Resolution No. 82-15 for the Assignment and Assumption of Lease Site 65-66/65W-66W (Salt Building) Located at 571 Embarcadero from Abba Imani to Rick and Teri Gambril

### **RECOMMENDATION**

Staff recommends the City Council approve Resolution No. 82-15 for the Assignment and Assumption of Lease Site 65-66/65W-66W, located at 571 Embarcadero, as proposed in the Assignment and Assumption documents included with this staff report.

### **ALTERNATIVES**

The Council could choose not to approve the Assignment and Assumption of this lease site.

### **FISCAL IMPACT**

There is no fiscal impact to this action.

### **BACKGROUND**

Lease Site 65-66/65W-66W is currently owned by Abba Imani under a 25-year lease executed in 2011 with Mr. Imani. This lease was negotiated and executed after the tenant agreed to complete major repairs needed on the facility, and site improvements that included lateral access to a new Harborwalk section on the site, upgraded fire sprinkler systems, improved sidewalk frontage, and code-compliant signage for an estimated total of \$600,000. Recently Mr. Imani received his final City sign-offs for the permitted improvements.

Rick and Teri Gambril are both successful business owners and developers with over 10 years of experience. If the lease is assigned to them, their intent is to continue renting to the existing subtenants and use the upstairs as their own site management office space. The Gambrils have also indicated their intent to preserve the building's original historic state and local history with needed repairs and upkeep.

Prepared By: EE

Dept Review: EE

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

City Attorney Review: JWP

## **DISCUSSION**

Mr. Imani has applied for an Assignment and Assumption of his lease agreement to the Gambrils as both parties are currently in escrow for the sale of the site. The application fee and all documents necessary for the assignment are submitted, and staff has deemed all necessary documentation adequate. The current lease agreement for Lease Site 65-66/65W-66W stipulates any assignment of the lease must be by resolution of the City Council.

Aside from the standard City provisions and requirements, the Assignment and Assumption document contains other specific provisions for the City's ultimate approval for execution, including:

1. Acknowledgement by the Gambrils of the historic significance of the building and its proper maintenance and preservation is a priority for the City.
2. Reconveyance (cancelation) of a deed of trust for a loan improperly recorded against the leasehold property in the amount of \$200,000.
3. Satisfaction and reconveyance of a valid deed of trust for a loan recorded against the property in the amount of \$400,000.

## **CONCLUSION**

Staff is recommending approval of Resolution No. 82-15 for the assignment and assumption of Lease Site 65-66/65W-66W from the Mr. Imani to the Gambrils with the conditions stipulated in the Assignment and Assumption document.

## **ATTACHMENTS**

1. Resolution No. 82-15
2. Assignment and Assumption document for Lease Site 65-66/65W-66W
3. Overhead view of the lease site

**RESOLUTION NO. 82-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ASSIGNING LEASE SITE 65-66/65W-66W  
LOCATED AT 571 EMBARCADERO  
TO RICK AND TERI GAMBRIL**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tideland leases and properties; and

**WHEREAS**, since 1997, Abba Imani, has been the lessee of Lease Site 65-66/65W-66W; and

**WHEREAS**, Abba Imani is selling the Master Lease and applied for Assignment and Assumption of the Master Lease for Lease Site 65-66/65W-66W to Rick and Teri Gambril, and both parties are currently in escrow on said property; and

**WHEREAS**, Abba Imani has satisfactorily submitted the necessary documents for Assignment and Assumption of Lease Site 65-66/65W-66W.

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

1. The City Council approves the subject Assignment and Assumption Agreement contingent upon successful closing of escrow between Abba Imani and Rick and Teri Gambril.
2. Recordation of the subject Assignment and Assumption Agreement shall occur only after recordation of the reconveyance of Document #2013060707 and Document #15-44433.
3. The Mayor is hereby authorized to execute said Assignment and Assumption Agreement, as approved by the City Attorney.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of December, 2015 on the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Jamie L. Irons, Mayor

\_\_\_\_\_  
Dana Swanson, City Clerk

<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 style="text-align: center;">Space above reserved for use of County Recorder</p>
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**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement is made and entered into as of this 10th day of November, 2015, by and between Abba Imani (hereinafter referred to as “Assignor”) and Rick and Teri Gambril (hereinafter referred to as “Assignee”).

1. Assignee acknowledges the City of Morro Bay (the “City”) has leased certain premises to Assignor under a Lease dated October 12, 2010, that commenced on January 1, 2011, known as Morro Bay Lease Site 65-66/65W-66W (the “Master Lease”). Assignee acknowledges any assignment of the Master Lease is subject to prior approval by the City’s City Council and is also subject to prior execution of this Agreement between Assignor and Assignee.
2. On the Effective Date (defined below), Assignee agrees (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, in accordance with the terms set forth in 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 offset against the City’s insurance.
3. Assignor hereby assigns to Assignee all rights, title and interest Assignor has in the Master Lease, effective on the Effective Date. The “Effective Date” is the date this instrument is recorded in the Office of the San Luis Obispo County Recorder, if it has been signed on behalf the City, Assignor and Assignee.

4. Assignor confirms to the City Assignor 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 Section 253597.
5. This instrument may be executed in counterparts, each of which shall constitute an original and both of which shall constitute a single instrument.
6. Prior to the recordation of this Assignment and Assumption Agreement, Assignor and Assignee acknowledge the current Deed of Trust recorded against the property improvement for \$400,000 (Doc#2013060707) will be paid off and a reconveyance of same duly recorded.
7. Prior to the recordation of this Assignment and Assumption Agreement, Assignor and Assignee acknowledge the current Deed of Trust recorded against the property improvement for \$200,000 (Doc#15-44433) will be paid off and a reconveyance of same duly recorded.
8. Assignee acknowledges the historic significance of the Salt Building and its proper maintenance and preservation is a priority for the City.

Abba Imani

Dated: \_\_\_\_\_, 2015 \_\_\_\_\_

The undersigned consents to and accepts, on and after the Effective Date, assignment & assumption of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations of tenant as set forth in the Master Lease.

Dated: \_\_\_\_\_, 2015 By: \_\_\_\_\_  
Rick Gambril

Dated: \_\_\_\_\_, 2015 By: \_\_\_\_\_  
Teri Gambril

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

City of Morro Bay

Dated: \_\_\_\_\_, 2015

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

A **notary** public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

A **notary** public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public



Attachment 3



AGENDA NO: B-1

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 30, 2015

**FROM:** Whitney McIlvaine, Contract Planner

**SUBJECT:** Appeals of the Planning Commission approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383 for Construction of a New Single-family Residence on a Vacant Coastal Lot at 3420 Toro Lane (Appellants: Linda Stedjee and Barry Branin) (Applicants: Jeanne and Greg Frye)

### RECOMMENDATION

Staff recommends the City Council deny both appeals and uphold the Planning Commission approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383 for 3420 Toro Lane.

### ALTERNATIVES

1. Uphold the appeals, thereby reversing Planning Commission's approval and denying Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383.
2. Continue review to a date certain with direction to staff and the applicants.

### FISCAL IMPACT

Appeals were filed on a Coastal Development Permit and Conditional Use Permit within the Coastal Commission's appeal jurisdiction and, therefore, there was no fee for filing the appeals. All costs associated with preparing the appeal staff report, public noticing, and attending the City Council meeting will be absorbed by the City.

### SUMMARY

**Planning Commission Action:** On August 18, 2015, the Planning Commission continued review of a proposed project at 3420 Toro Lane with direction to the applicant regarding architectural and grading changes and provision of a coastal access path. On October 6, 2015, on a vote of 4 to 1, the Planning Commission concluded project revisions were consistent with Commission direction and conditionally approved plans for construction of a new single-family dwelling with a re-routed coastal access path.

Prepared By: WM

Dept Review: SG

City Manager Review: DWB

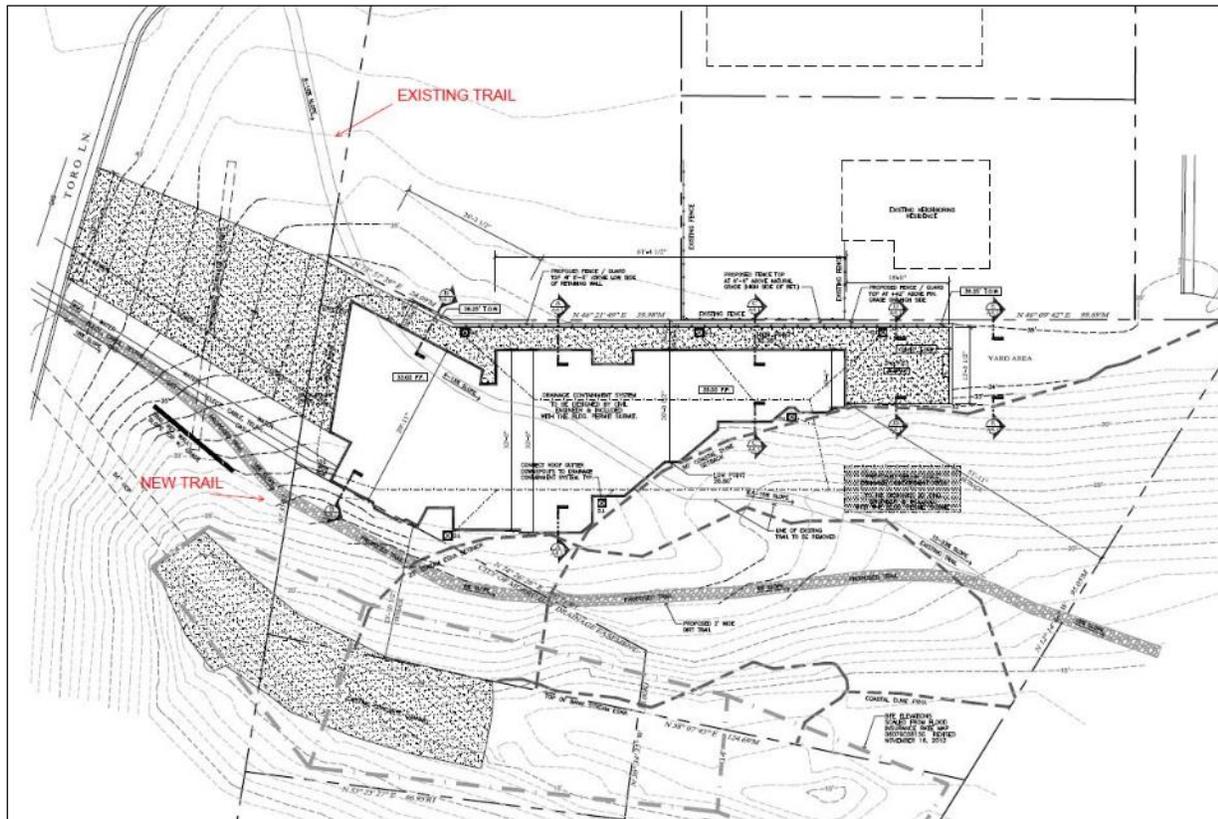
City Attorney Review: JWF

**Appeals:** On October 9, 2015, Linda Stedjee filed an appeal of the Planning Commission action. On October 13, 2015, Barry Branin filed an appeal. (Exhibits B and C). Both appellants expressed concerns regarding coastal access and requested the existing beach access path through the site be retained. This would effectively preclude all site development.

## **BACKGROUND**

**Environmental Review:** The project site is zoned R-2/ S.2A/ESH. The Environmentally Sensitive Habitat (ESH) zoning triggered preparation of a Mitigated Negative Declaration (MND). The full text of the MND is available on line at <http://www.morrobay.ca.us/DocumentCenter/View/7529>. The approved mitigation and monitoring plan is attached to the City Council resolution for approval (Exhibit A).

**Building Footprint and Trail Location:** Project plans show a 1,580 square-foot residence with an attached 552 square-foot garage. The developable area of the lot is constrained by a drainage easement and the requirement for ESH buffer areas from the intermittent coastal stream and coastal dune habitat. Building height is limited to maximum of 17 feet. An existing coastal access trail runs through the lot. The project includes provision of a new trail located on the northern side of the home and driveway as shown on the site plan below.



Project Site Plan Showing trails (from Sheet A1.2)

## **DISCUSSION**

### **Coastal Act Compliance:**

The project is subject to compliance with the public access and recreation policies of the Coastal Act, in addition to the City's Local Coastal Program (LCP) policies and regulations related to coastal access. For development projects between the nearest public road and the sea, approval must include a specific finding that the project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act, which seek to balance the need for public access with the equally important need for protection of coastal environmental resources. Relevant sections include:

#### **Section 30210** *Access; recreational opportunities; posting*

In carrying out the requirements of Section 4 of Article 10 of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resources from overuse.

#### **Section 30212** *New development projects* requires

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development except where:
1. it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources;
  2. adequate access exists nearby, or
  3. agriculture would be adversely affected.

The Planning Commission found the project consistent with the Coastal Act because it includes a beach access trail.

### **Coastal Commission Comments and Staff Analysis:**

Comments from Coastal Commission staff on the June 2015 Mitigated Negative Declaration recommended the City further analyze the feasibility and environmental impact of including a public access trail within the stream buffer.

Staff did analyze the inclusion of a new trail through the project site and concluded that the Coastal Act and the City's LCP encourage maximum protection of coastal access, but also recognize situations where access would not be necessary or would be in conflict with other goals, such as resource conservation, public safety, and the protection of private property rights. Also, Planning Commission Chairman Robert Tefft prepared the Investigation as to Potential Prescriptive Easement (Exhibit G) which provides an in-depth description of nearby access.

Staff concluded that coastal access is not necessary in this location because adequate access exists nearby as allowed under Section 30212 of the Coastal Act, and because an access trail will reduce the area available for habitat restoration. However, given historic use of the existing trail,

interest expressed by some members of the public for continued access through the site, and willingness on the part of the applicants to provide a re-routed trail, the Planning Commission conditionally approved the project with the trail as shown.

Coastal Commission staff members have confirmed that a reasonably comparable on-site trail would satisfy the Coastal Act requirement for protection of access.

**New Trail Design:**

Preserving the trail in its existing location, in combination with the required ESH buffers, would effectively preclude all reasonable site development. Therefore, in order to accommodate site development and continued access through the property, a portion of the existing trail must be re-routed toward the north within the stream corridor buffer area. Approved plans include a re-routed trail to the north of the house and driveway as suggested by Coastal Commission staff. The applicants have been working with members of a local volunteer organization that constructs and maintains trails throughout San Luis Obispo County under the auspices of the California Department of Parks and Recreation to determine the best alignment, method of construction and erosion control. Please see the attached letter from volunteer Bob Mason (Exhibit F). Planning Conditions 18-22 in the resolution for approval address coastal access.

**Prescriptive Rights:**

Staff is aware some members of the public believe the public has acquired a prescriptive right to use the existing trail across the property for access to the beach. Whether or not such right has been acquired is not yet known. Establishment of such a right is a fact-specific determination, ultimately made by a court. For a more in-depth discussion of the prescriptive rights issue related to this project, please see page 4 of the attached October 6, 2015 Planning Commission staff report. Until a public prescriptive easement is determined to exist over the trail crossing the project site, or unless the City Council decides to initiate legal action in pursuit of such a determination, the issue of public prescriptive rights is not within the Council's purview as it considers the project appeals.

The City Council could direct the City Attorney to file legal action to seek a court determination regarding the issue of a public prescriptive right. However, because the applicants have agreed to dedicate and create coastal access across their property, staff believes seeking a court determination would be an unnecessary expenditure of public funds.

**Appellant Positions:**

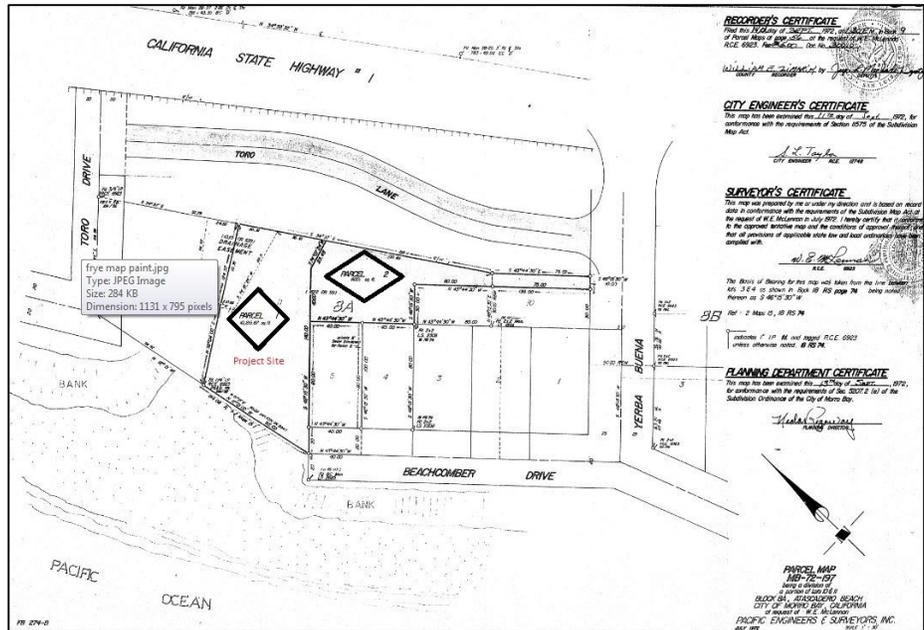
Barry Branin's appeal states the existing trail should be protected by a prescriptive easement. As discussed above, that determination is separate from Council action on the project appeals. He states the City must act in accordance with its Local Coastal Program (LCP). The project has been reviewed in light of applicable LCP policies and regulations and found to be in conformance. Even without the existing or proposed new trail, there is ample coastal access

nearby and the project could be found consistent with the Coastal Act and the City's LCP policies.

Linda Stedjee's appeal states that the project will block a path uniquely suited to the needs of many of its users and that there is no equivalent alternate access in the area. She also states that the new trail will be unsafe and impermanent because it is not proposed to be maintained and it will traverse some steep slopes.

The Coastal Act does not mandate "equivalent" access only that there be adequate nearby access. The existing trail is also unmaintained. The proposed trail will be constructed following trail standards used by the California Department of Parks and Recreation. There is no requirement that trails in this area be accessible using "wheeled conveyances."

Ms. Stedjee's appeal suggests that the applicant should have merged his two lots, left the existing trail in place, and located his house on the lot to the south, essentially forgoing any development of the project site. In 1972, Morro Bay approved a parcel map that created these two legal lots. Parcel Map MB-72-197 is shown to the right.



Zoning ordinance section 17.12.110 defines "lot"

as a "building site... a legal lot of record...to be occupied by a main building and accessory building...together with such open spaces as are required by the terms of this title, and having its principle frontage on a public or private street..." Denying all development of a legal lot could be construed as a regulatory taking and subject the City to costly litigation.

### CONCLUSION

Considerable effort has been made by the applicants to design a project that addresses environmental concerns and physical and regulatory site constraints consistent with the Coastal Act and the City's Local Coastal Plan and Zoning Ordinance. Public comment has been submitted both for and against coastal access through the site. Plans approved by the Planning Commission include a coastal access trail. Conditioning the project to maintain the existing trail would effectively preclude reasonable development of the lot and would raise the issue of taking development rights without compensation.

The appellants are requesting that Council overturn Planning Commission approval and deny the proposed construction of a new single-family dwelling with a re-routed coastal access as presented on revised plans dated September 29, 2015. Staff's recommendation, based on review and analysis of the appeals and of policies within the Coastal Act and the City's General Plan, Coastal Land Use Plan and Zoning Ordinance, is to deny the appeals and uphold the Planning Commission's conditional approval of Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383 as specified by City Council Resolution #77-15.

**EXHIBITS:**

Exhibit A - City Council Resolution #77-15 with Mitigation and Monitoring Attachment

Exhibit B - Appeal filed by Linda Stedjee

Exhibit C - Appeal filed by Barry Branin

Exhibit D - Planning Commission Resolution 28-15 approving CP0-419 and UP0-383

Exhibit E - Minutes of the October 6, 2015 Planning Commission meeting

Exhibit F - Letter from Bob Mason regarding trail design

Exhibit G - October 6, 2014 Planning Commission staff report and selected attachments, including August 18, 2015 meeting minutes, approved project plans and architectural exhibits, and *Investigation as to Potential Prescriptive Easement* assembled by Planning Commission Chairman, Robert Tefft

Full-size plans are included in Council member packets.

Written public comment, including a sample of petition questionnaires in favor of establishing a prescriptive easement over the existing coastal access and letters of project support, are posted on the City website under the following link: <http://www.morro-bay.ca.us/842/Current-Planning-Projects>.

**RESOLUTION NO. 77-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
TO DENY THE APPEALS AND UPHOLD THE PLANNING COMMISSION'S  
ADOPTION OF A MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL  
IMPACT AND APPROVAL OF A COASTAL DEVELOPMENT PERMIT (CP0-419)  
AND CONDITIONAL USE PERMIT (UP0-383) TO CONSTRUCT A NEW SINGLE-  
FAMILY DWELLING ON A VACANT BEACH FRONT PROPERTY  
AT 3420 TORO LANE**

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

**WHEREAS**, the Planning Commission of the City of Morro Bay conducted public hearings at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on August 18 and October 6, 2015, for the purpose of considering Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383; and

**WHEREAS**, on October 6, 2015, the Morro Bay Planning Commission adopted Resolution 28-15 with findings and conditions for approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383; and

**WHEREAS**, on October 9, 2015, an appeal of the Planning Commission action approving Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 was filed by Linda Stedjee, specifically requesting the Council overturn the Planning Commission decision and deny Coastal Development Permit #CP0-417 and Conditional Use Permit UP0-383 because the project would block an existing beach access path; and

**WHEREAS**, on October 13, 2015, an appeal of the Planning Commission action approving Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 was filed by Barry Branin, specifically requesting the Council overturn the Planning Commission decision and deny Coastal Development Permit #CP0-417 and Conditional Use Permit UP0-383 because the project would block an existing beach access path; and

**WHEREAS**, the City Council of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on December 8, 2015, for the purpose of considering appeals of the Planning Commission approval of Coastal Development Permit #CP0-417 and Conditional Use Permit #UP0-383; and

**WHEREAS**, notices of said public hearings were made at the time and in the manner required by law; and

**WHEREAS**, the City Council has duly considered all evidence, whether written or oral, including without limitation, the testimony of the appellants, the applicant, interested parties, City staff and all written and oral evaluations and recommendations by staff, presented at Planning Commission hearings and the City Council hearing.

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

**Section 1: Findings.** Based upon all the evidence, the City Council makes the following findings:

California Environmental Quality Act (CEQA) Finding

1. For purposes of the California Environmental Quality Act, an Initial Study was prepared for the project which resulted in a Mitigated Negative Declaration. The Mitigated Negative Declaration was routed to the State Clearinghouse for the required 30 day review and all other legal noticing and review requirements have been met. The project applicants agreed to all mitigation measures. With the incorporation of these mitigation measures the project will have a less than significant impact on the environment.

Coastal Development Finding

1. As conditioned, the project is consistent with applicable provisions of the Local Coastal Program for construction of a new single-family residence and bluff development in the Atascadero State Beach Bluff Area.

Conditional Use Findings

1. As conditioned, the project is consistent with the General Plan and Local Coastal Program regarding the location of residential uses and development of property in coastal bluff setback review area.
2. As conditioned, the project will not be detrimental to the health, safety and welfare of persons residing or working in the neighborhood.

Reduced Buffer Area Finding

1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area.

Coastal Access Finding

1. The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because it includes a beach access trail through the project site.

**Section 2. Action.** The City Council does hereby deny the appeals, adopt the June, 2015 Mitigated Negative Declaration and approve Coastal Development Permit CP0-419 and Conditional Use Permit UPO-383 for property located at 3420 Toro Lane subject to the following conditions:

**STANDARD CONDITIONS**

1. This permit is granted for the land described in the staff report dated October 6, 2015, for the project at 3420 Toro Lane (the “Property”), as depicted on plans received by the City on September 29, 2015, as part of Coastal Development Permit CP0-419 and Conditional Use Permit UPO-383, on file with the Community Development Department, as modified by these conditions of approval, and more specifically described as follows: Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City’s Community Development Manager (the “Manager”), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the “MBMC”), General Plan and certified Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Manager. Any changes to this approved permit determined, by the Manager, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant’s failure to comply with conditions of approval. Applicant understands and acknowledges the City is under no obligation to defend any legal actions challenging the City’s actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Manager or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Manager, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.
7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

### **PLANNING CONDITIONS**

1. Construction Hours: Pursuant to MBMC subsection 9.28.030.I, Construction or Repairing of Buildings, the erection (including excavating), demolition, alteration or repair of any building or general land grading and contour activity using equipment in such a manner as to be plainly audible at a distance of fifty feet from the building other than between the hours of seven a.m. and seven p.m. on weekdays and eight a.m. and seven p.m. on weekends except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Community Development Department, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues.
2. Dust Control: That prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.
3. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.
4. Exterior Materials: Building color and materials shall be as shown on plans approved by the Planning Commission and specifically called out on the plans submitted for a Building Permit to the satisfaction of the Community Development Manager Manager.
5. Boundaries and Setbacks: The property owner is responsible for verification of lot boundaries. Prior to requesting foundation inspection, a licensed land surveyor shall verify lot boundaries and building setbacks to the satisfaction of the Community Development Manager. A copy of the surveyor's *Form Certification* based on a boundary survey shall be submitted to the Building Inspector with the request for foundation inspection.

6. Building Height Verification: Prior to foundation inspection, a licensed land surveyor shall measure and inspect the forms and submit a letter to the Community Development Manager certifying that the tops of the forms are in compliance with the finish floor elevations as shown on approved plans. Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the Building Inspector certifying that the height of the structures is in accordance with the approved plans.
7. Maximum Building Height: Building height shall comply with the maximum building height standards in the S-2.AOverlay, which are 14 feet for flat roofs and roof deck sills, and 17 feet for roofs with a minimum pitch of 4 in 12. Height shall be measured from the average natural grade beneath the building footprint.
8. Stream Corridor Buffer: The minimum buffer area for the stream corridor shall be 25 feet from the top of bank as delineated on the project site plan.
9. Coastal Dune Buffer: The minimum buffer area for the coastal dune habitat shall be 50 feet as delineated on the project site plan.
10. ESH Easement: Consistent with Land Use Element Policy LU-61, the property owners shall dedicate a permanent easement over portions of the Property determined to be sensitive habitat as defined by the Zoning Ordinance. This will include the stream corridor and the coastal dune area as shown on the project site plan and in the Addendum to Biological Resources Assessment (KMA 2014) together with the approved buffer areas. Easement boundaries shall be clearly delineated to the satisfaction of the Community Development Manager.
11. Geologic Reports: The applicant shall comply with all recommendations contained in the geologic reports, prepared for this property by Earth Systems Pacific (June/September 2002, September, 2013 Update).
12. Slope Stability Analysis: The applicant shall comply with all recommendations contained in the slope stability analysis prepared for this property by Earth Systems Pacific (March 5, 2015).
13. Soils Engineering Report: The applicant shall comply with all recommendations contained in the soils engineering report prepared for this property by GeoSolutions (August, 2014).
14. Utility Undergrounding: Prior to final occupancy clearance, the applicant shall install all utility distribution and service lines to the site underground.
15. Landscaping: Project landscaping shall include native and drought tolerant plants consistent with the Habitat Restoration and Enhancement Plan (as required by Biological mitigation measure 4 in the *Mitigation, Monitoring and Reporting Program* approved by the Community Development Manager). Landscaping shall be designed to minimize

ecological and geological disturbances. Only plant materials recognized for their drought tolerance or erosion controlling properties shall be authorized on bluffs or bluff tops.

16. HVAC Location: Any HVAC system shall be located under the roof lines or on the ground outside of required setbacks and not visible from the public right of way to the satisfaction of the Community Development Manager.
17. Shoreline Protective Structures Prohibited: Shoreline protective structures that protect the approved development (including but not limited to seawalls, revetments, retaining walls, tie backs, caissons other than for structural foundation purposes, piers, groins, etc.) shall be prohibited. Prior to issuance of a building permit, the Applicant shall record acknowledgement of this condition on behalf of itself and all successors and assigns in a manner and form acceptable to the City.
18. Public Access Offer to Dedicate: The Applicant has volunteered to offer to dedicate an area for an unimproved public access trail through the project site to the satisfaction of the City Engineer and the Community Development Manager (the "Public Access Trail"). Prior to issuance of a building permit, the offer of dedication of the Public Access Trail shall be recorded. Upon that recordation, the City will not make nor support any effort to preserve that implied dedication. The Applicant's offer of dedication and any acceptance thereof shall not require the City, the Applicant or other public entity to maintain the Public Access Trail.
19. Public Access Design: To effectuate Condition No. 18 above, prior to issuance of a building permit, the Applicant shall submit a design for the creation of the Public Access Trail through the project site and the adjacent Toro Lane right-of-way to the satisfaction of the City Engineer and the Community Development Manager (the "Design").
20. Preparation of the Public Access: Prior to issuance of final occupancy for the project, the Applicant shall create the Public Access Trail in accordance with the Design.
21. Trail Hours: The Public Access Trail shall be open to the public from one hour before dawn until one hour after sunset.
22. Limitation on Trail Area: Trails through the ESH areas located on the Property, other than the Public Access Trail and a link from the residence to the Public Access Trail shall be prohibited.
23. Retaining Wall: There shall be no retaining wall or fence past the western edge of the patio.
24. Fence Height: The maximum fence height adjacent to the patio shall not exceed the minimum height required by the Building Code.

## **ENVIRONMENTAL CONDITIONS**

1. The applicant shall comply with the environmental mitigation measures as detailed in the Mitigation Monitoring and Reporting Program which is attached hereto as Attachment 1.

## **PUBLIC WORKS CONDITIONS**

1. The project shall provide frontage improvements as noted below and must include Low Impact Development (LID) Performance Requirements as required by the Storm Water Management Guidance- EZ Manual, March 6, 2014 amendment to the City Standard Drawings and Specifications.

The following comments shall be addressed with the building permit submittal:

2. Stormwater: Since the project is  $\geq 2,500$ sf of impervious area provide a Stormwater Performance Requirement #1 Certification, prepared by a Registered Civil Engineer. Since there is no potential for downstream flooding, the project is exempt from the requirements of Performance Measure #5.
3. Erosion and sediment control: Provide a standard erosion and sediment control plan. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area.
4. Frontage improvements:
  - a. City standard driveway approach and a concrete curb and gutter are required. A street tree is required.
  - b. All standard improvements (e.g. driveway approach) in the City right of way per City Engineering Standards require a Standard Encroachment Permit.
  - c. Non-standard improvements in the right of way (e.g. retaining wall) shall require a Special Encroachment Permit.
5. Utilities:
  - a. Include the locations of all proposed utilities, gas, sewer, water etc. Indicate on the plans if the sewer lateral is proposed or existing. If the existing sewer lateral is going to be used the following must be completed:
    - i. Conduct a video inspection of the conditions of existing sewer lateral prior to building permit issuance. Submit a DVD to City Public Services Department. Repair or replace as required to prohibit inflow/infiltration.
  - b. Sewer Backwater Valve: A sewer backwater valve shall be installed on site to prevent a blockage or maintenance of the municipal sewer main from causing damage to the proposed project. (MBMC 14.07.030) Indicate on the plans.

Add the following Notes to the Plans:

1. Any damage to City facilities, i.e. curb/berm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay.

**BUILDING CONDITIONS**

1. Building Permit: Prior to construction, the applicant shall submit a complete Building Permit Application and obtain the required Permit.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on this 8<sup>th</sup> day of December, 2015 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JAMIE L. IRONS, MAYOR

ATTEST:

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DANA SWANSON, City Clerk

## Attachment 1 to Resolution No. 77-15

### Mitigation Monitoring and Reporting Program

#### AESTHETICS:

**AES Impact 1**      **Visibility of night lighting and daytime glare would adversely affect views resulting in a direct long-term impact.**

*AES/mm-1*      *Prior to issuance of a building permit, a comprehensive lighting plan shall be submitted for review and approval by the City. The lighting plan shall be prepared using guidance and best practices endorsed by the International Dark Sky Association. The lighting plan shall address all aspects of the lighting, including but not limited to all buildings, infrastructure, parking and driveways, paths, recreation areas, safety, and signage. The lighting plan shall include the following at minimum:*

- a) The point source of all exterior lighting shall be shielded from offsite views.*
- b) Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields.*
- c) Lumination from exterior lights shall be the lowest level allowed by public safety standards.*
- d) Exterior lighting shall be designed to not focus illumination onto exterior walls.*
- e) Bright white-colored light shall not be used for exterior lighting.*
- f) Any signage visible from offsite shall not be internally illuminated.*

*AES/mm-2*      *Prior to issuance of a building permit, the applicant shall submit building plans and elevations for review and approval consistent with the following conditions:*

- a) No highly reflective glazing or coatings shall be used on windows.*
- b) No highly reflective exterior materials such as chrome, bright stainless steel, or glossy tile shall be used on the portions of the development where visible from off-site locations.*

After implementation of these measures, residual impacts would be less than significant.

#### Monitoring:

The City of Morro Bay would verify implementation of these design details through review and approval of the lighting plan and building plans prior to issuance of building permits for the project.

#### AIR QUALITY

**AQ Impact 1**      **Construction activities associated with development of the proposed project would result in short-term emissions of DPM, potentially affecting sensitive receptors.**

*AQ/mm-1*      *Prior to issuance of grading and construction permits, the applicant shall submit plans including the following notes, and shall comply with the following standard mitigation measures for reducing diesel particulate matter (DPM) emissions from construction equipment:*

- a) Maintain all construction equipment in proper tune according to manufacturer's specifications;*
- b) Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);*

- c) *Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation;*
- d) *Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation;*
- e) *Construction or trucking companies with fleets that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance;*
- f) *All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5-minute idling limit;*
- g) *Excessive diesel idling within 1,000 feet of sensitive receptors is not permitted;*
- h) *Electrify equipment when feasible;*
- i) *Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,*
- j) *Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.*

**AQ Impact 2**

**Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.**

*AQ/mm-2*

*Prior to issuance of grading and construction permits, the applicant shall include the following notes on applicable grading and construction plans, and shall comply with the following standard mitigation measures for reducing fugitive dust emissions such that they do not exceed the APCD's 20 percent opacity limit (APCD Rule 401) and do not impact off-site areas prompting nuisance violations (APCD Rule 402) as follows:*

- a) *Reduce the amount of disturbed area where possible;*
- b) *Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water shall be used whenever possible;*
- c) *All dirt stockpile areas shall be sprayed as needed;*
- d) *Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible, following completion of any soil disturbing activities;*
- e) *All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;*
- f) *All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.*
- g) *Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;*

- h) *All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114;*
- i) *Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;*
- j) *All PM<sub>10</sub> mitigation measures required shall be shown on grading and building plans; and*
- k) *The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. The name and telephone number of such persons shall be provided to the APCD Compliance Division and listed on the approved building plans prior to the start of any grading, earthwork or demolition.*

**AQ Impact 3      Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.**

*AQ/mm-3      Prior to issuance of a grading permit, the applicant shall submit a geologic evaluation that determines if naturally occurring asbestos (NOA) is present within the area that will be disturbed. If NOA is not present, an exemption request shall be filed with the District. If NOA is found at the site, the applicant shall comply with all requirements outlined in the Asbestos ATCM. This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the APCD.*

With implementation of these measures, air quality impacts would be less than significant.

**Monitoring:**

Copies of regulatory forms will be submitted to the APCD for review and approval, consistent with existing regulations. The applicant is required to submit approval documentation from APCD to the City Community Development Director/Planning Manager. Monitoring or inspection shall occur as necessary to ensure all construction activities are conducted in compliance with the above measures. Measures also require that a person be appointed to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. All potential violations, remediation actions, and correspondence with APCD will be documented and on file with the City Community Development Director.

**BIOLOGICAL RESOURCES**

**BIO Impact 1      Development of the project could indirectly affect the natural drainage feature to the north of the site, coastal and shoreline habitat to the west, and special-status species and wildlife in the proximity.**

*BIO/mm-1      Prior to issuance of construction permits, the applicant shall submit documentation verifying designation of a qualified environmental monitor for all biological resources measures to ensure compliance with Conditions of Approval and mitigation measures. The monitor shall be responsible for: (1) ensuring that procedures for verifying compliance with environmental mitigations are followed; (2) lines of communication and reporting methods; (3) compliance reporting; (4) construction crew training regarding environmentally sensitive areas; (5) authority to stop work; and (6) action to be taken in the event of non-compliance. Monitoring shall be at a frequency and duration determined by the affected natural resource agencies, which may include the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, California Coastal Commission, U.S. Fish and Wildlife Service, and the City of Morro Bay.*

*BIO/mm-2      Prior to the initiation of construction, the environmental monitor shall conduct environmental awareness training for construction personnel. The environmental awareness training shall include discussions of*

*sensitive habitats and animal species in the immediate area. Topics of discussion shall include: general provisions and protections afforded by the Endangered Species Act; measures implemented to protect special-status species; review of the project boundaries and special conditions; the monitor's role in project activities; lines of communications; and procedures to be implemented in the event a special-status species is observed in the work area.*

*BIO/mm-3*

*Prior to the initiation of construction, the applicant's contractors and the environmental monitor shall coordinate the placement of project delineation fencing throughout the work areas. The environmental monitor shall field fit the placement of the project delineation fencing to minimize impacts to sensitive resources. The project delineation fencing shall remain in place and functional throughout the duration of the project. During construction, no project related work activities shall occur outside of the delineated work area.*

*BIO/mm-4*

*Prior to issuance of grading and construction permits, the applicant shall submit a Habitat Restoration and Enhancement Plan prepared by a qualified restoration ecologist for the review and approval by the City Community Development Manager. The plan shall be implemented concurrent with or immediately following construction. The plan shall include, but not be limited to the following measures, pursuant to the Biological Resources Assessment (KMA December 2013 and KMA Addendum 2014):*

- a. Prior to any construction activities, a construction buffer shall be demarcated with highly visible construction fencing or staking for the benefit of contractors and equipment operators.*
- b. Restoration of surface contours through minor grading and seeding native vegetation may be required to reduce the erosion potential and provide temporary cover during and after construction.*
- c. Non-native and invasive plant species shall not be permitted in the approved buffer areas. For a list of noxious weeds and appropriate plant materials, please refer to the following sources: the California Invasive Plant Council website at [www.cal-ipc.org](http://www.cal-ipc.org) and the County of San Luis Obispo's approved landscape plant list. Substitutions may be allowed, but shall be approved by a qualified botanist.*
- d. The ESH buffer areas shall utilize native species characteristic of the coastal scrub and coastal grassland habitat. Landscaping around the house and to the east and south shall utilize drought tolerant, non-invasive species.*
- e. As part of any building permit application, a sediment and erosion control plan shall be submitted that specifically seeks to protect the drainage and protected native habitat adjacent to the construction site. Erosion control measures shall be implemented to prevent runoff from the site. Silt fencing, straw bales, and/or sand bags shall be used as well as other methods to prevent erosion and sedimentation of the drainage channel. The plan shall specify locations and types of erosion and sediment control structures and materials that would be used on-site during construction activities. Biotechnical approaches using native vegetation shall be used as feasible. The plan shall also describe how any and all pollutants originating from construction equipment would be collected and disposed.*
- f. Current Best Management Practices (commonly referred to as BMPs) shall be utilized to minimize impacts to the drainage feature and native habitat areas onsite. Washing of concrete, paint, or equipment shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Washing of equipment, tools, roads, etc. shall not be allowed in any location where the tainted water could affect the drainage and adjacent beach's sensitive biological resources.*
- g. Identification of areas to be seeded or planted following weed abatement, planting and weed control methodologies, measures to protect plantings during the establishment period, irrigation methods and timing (which shall not result in erosion or down-gradient sedimentation).*
- h. The plan shall be monitored for two years following initial site preparation, planting, and seeding.*

- i. *Two annual monitoring reports shall be submitted to the City Community Development Manager, and shall include written explanation of adherence to the plan, any necessary remediation or maintenance actions, and photo-documentation.*

**BIO Impact 2      Development of the project could adversely affect nesting birds onsite or in the proximity.**

*BIO/mm-5      Prior to ground disturbance, to minimize impacts to nesting bird species, including special status species and species protected by the Migratory Bird Treaty Act, initial site grading shall be limited to outside the nesting season and focused during the time period between September 1 and February 1 as feasible. If initial site disturbance cannot be conducted during this time period, a pre-construction survey for active bird nests onsite shall be conducted by a qualified biologist. Surveys shall be conducted within two weeks prior to any construction activities. If no active nests are located, ground disturbing/construction activities can proceed. If active nests are located, then all construction work shall be conducted outside a non-disturbance buffer zone to be developed by the qualified biologist based on the species (i.e., 50 feet for common species and upwards of 250 feet for special status species), slope aspect and surrounding vegetation. No direct disturbance to nests shall occur until the young are no longer reliant on the nest site as determined by the project biologist. The biologist shall conduct monitoring of the nest until all young have fledged.*

After implementation of these measures, residual impacts to biological resources would be less than significant.

**Monitoring:**

The City shall verify required elements on plans and compliance in the field. The City shall review and approve plans and monitoring reports.

**CULTURAL RESOURCES**

**CR Impact 1      Ground disturbance associated with the construction of the residence and all associated facilities may result in the inadvertent discovery of previously undocumented archaeological resources.**

*CR/mm-1      A qualified archaeologist and a Salinan or Chumash Native American who is culturally affiliated to the project area, as approved by the City, shall be on site to monitor grading, trenching and related site preparation. The name and contact information of the monitoring archaeologist shall be included on the cover sheet of the building plans. Prior to a request for foundation inspection, the applicant shall submit a report prepared by the monitoring archaeologist summarizing the dates and times of monitoring and observations regarding the presence or absence of cultural material during grading operations.*

*CR/mm-2      In the event that intact and/or unique archaeological artifacts or historic or paleontological resources are encountered during grading, clearing, grubbing, and/or other construction activities associated with the proposed project involving ground disturbance, all work in the immediate vicinity of the find shall be stopped immediately, the onsite archaeological monitor shall be notified, and the resource shall be evaluated to ensure the discovery is adequately recorded, evaluated and, if significant, mitigated.*

*CR/mm-3      Prior to any grading or construction, contractors involved in grading and grubbing activities shall receive training from a City-approved qualified archaeologist knowledgeable in local tribes. At a minimum, the training shall address the following:*

- a) *Review of the types of archaeological artifacts that may be uncovered.*
- b) *Provide examples of common archaeological artifacts to examine.*

- c) *Review what makes an archaeological resource significant to archaeologists and local Native Americans.*
- d) *Describe procedures for notifying involved or interested parties in case of a new discovery.*
- e) *Describe reporting requirements and responsibilities of construction personnel.*
- f) *Review procedures that shall be used to record, evaluate, and mitigate new discoveries.*
- g) *Describe procedures that would be followed in the case of discovery of disturbed or intact human burials and burial-associated artifacts.*

After implementation of these measures, residual impacts would be less than significant.

**Monitoring:**

The City Community Development Director shall verify compliance with this measure.

**GEOLOGY/SOILS**

**GS Impact 1      Development associated with the proposed project places structures and people in an area subject to geologic hazards including seismic groundshaking, and risks associated with slope stability.**

*GS/mm-1      Upon application for grading and construction permits, all mitigation measures identified in the September 13, 2002 Geologic Report and September, 2013 Update prepared by Earth Systems Pacific shall be incorporated into the project. These measures shall be included on all grading and building plans. These include the following:*

- a. *The Certified Engineering Geologist of record shall provide an engineering geologist's written certification of adequacy of the proposed site development for its intended use.*
- b. *A Certified Engineering Geologist shall review, approve and stamp construction plans including all plans for building foundations and excavation.*
- c. *The Certified Engineering Geologist shall inspect work on-site and verify that building construction, including all foundation work, has been performed in a manner consistent with the intent of the plan review and engineering geology report.*
- d. *Before final inspection and/or issuance of occupancy permits, should the services of the Certified Engineering Geologist be terminated the applicant shall submit a transfer of responsibility statement to the Planning Division from the new Certified Engineering Geologist pursuant to the Uniform Building Code.*

*GS/mm-2      Concurrent with submittal of construction plans, the applicant shall submit a Soils Report, prepared by a California Registered Geologist or Soils Engineer, a Geology Report, prepared by a California Registered Geologist, and a Slope Stability Report, prepared by a California Registered Engineering Geologist. The Soils Report shall address soils engineering and compaction requirements, slope stability issues, drainage locations with respect to walls, finish floor elevations, drain materials, and shall contain recommendations regarding foundation design, retaining wall design, and paving sections, where applicable, for the project. The soils report shall be reviewed and approved by the City Engineer.*

*GS/mm-3      Prior to issuance of grading and construction permits, the applicant shall prepare a drainage and erosion control plan to reduce the potential for erosion and down-gradient sedimentation both during construction and for the life of the project. Grading and construction plan shall include measures to*

*prevent and avoid spills or spread of dangerous materials and clean-up procedures in the event of a spill. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with the erosion control plan.*

After implementation of these measures, residual impacts related to geology and soils would be less than significant.

**Monitoring:**

Design plans shall be inspected and approved by the City Engineer to ensure compliance with the requirements of the Geologic Report. Erosion control plans shall be submitted to the City Community Development Department for review and approval, in consultation with the City Engineer. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with design plans and the drainage and erosion control plan.

**HAZARDS AND HAZARDOUS MATERIALS**

**HAZ Impact 1      Development associated with the proposed project has the potential to result in the accidental release of hazardous materials into sensitive areas adjacent to the project site.**

*HAZ/mm-1      Prior to construction, the applicant shall prepare a drainage and erosion control plan which also specifically addresses hazardous materials to be used during construction and operation, and identifies procedures for storage, distribution, and spill response for review and approval by the City Community Development Department. The plan shall identify hazardous materials to be used during construction and operation, and shall identify procedures for storage, distribution, and spill response. Equipment refueling shall be done in non-sensitive areas and such that spills can be easily and quickly contained and cleaned up without entering any existing stormwater drainage system or creek. The plan shall include procedures in the event of accidents or spills, identification of and contact information for immediate response personnel, and means to limit public access and exposure. Any necessary remedial work shall be done immediately to avoid surface or ground water contamination. The plan shall be implemented by the construction contractor, and verified by the City Building Inspector.*

With implementation of this mitigation measure, impacts related to hazards and hazardous materials would be less than significant.

**Monitoring:**

The applicant shall be responsible for implementing the approved drainage and erosion control including spill prevention control and response measures. The City Building Inspector shall conduct periodic inspections to verify compliance.

**HYDROLOGY AND WATER QUALITY**

**HWQ Impact 1      The project would increase impervious surfaces at the project site, which would increase the total volume of storm water runoff and could contribute to erosion, siltation and flooding risks.**

*HWQ/mm-1      Prior to issuance of grading permits, the applicant shall submit a final grading and drainage plan for review and approval by the City Engineer and California Department of Transportation (Caltrans). The drainage plan shall demonstrate that additional runoff resulting from the project would not compromise the existing culvert under Toro Lane, and would avoid scour under the culvert structure and concrete portion of the channel.*

*HWQ/mm-2      Prior to issuance of grading permits, final plans shall clarify if any work will occur within the easement for the culvert and drainage channel and obtain any encroachment permit deemed necessary by the City Engineer.*

*HWQ/mm-3 Prior to issuance of grading and building permits, the applicant shall submit construction plans incorporating Low Impact Development (LID) planning principles, to the maximum extent feasible, consistent with the City of Morro Bay "Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements" to the satisfaction of the Public Works Director.*

After implementation of these measures, residual impacts would be less than significant.

**Monitoring:**

Monitoring shall occur as necessary to ensure development is proceedings consistent with the final grading and drainage plan. The City shall verify receipt of a copy of the Caltrans-issued Encroachment Permit.

**NOISE**

**N Impact 1 The proposed project places structures and people in an area subject to excessive noise levels associated with traffic along State Route 1.**

*N/mm-1 Prior to issuance of building permits, the applicant shall submit plans incorporating noise mitigation measures, including, but not limited to:*

- a. location of all vents and other roof and wall penetrations on walls and roofs facing away from the noise source (on the north, west and east elevations whenever possible)*
- b. use of bends and insulation in ventilation systems*
- c. use of closable dampers*
- d. Sound Transmission Class rated wall, door and window materials*
- e. use of acoustical sealant on all windows and other openings as appropriate.*

With implementation of these construction measures, impacts would be less than significant.

**Monitoring:**

Monitoring shall occur as necessary to ensure development is proceeding consistent with the mitigation measures and that all exterior and interior noise levels are consistent with levels established in the Noise Element prior to occupancy.

**Acceptance of Mitigation Measures by Project Sponsor:**

\_\_\_\_\_

Name

\_\_\_\_\_

Date

RECEIVED

OCT 09 2015

City of Morro Bay  
Community Development Dept.



# CITY OF MORRO BAY

Public Services Department  
Planning Division

955 Shasta Avenue  
Morro Bay, CA 93442  
(805) 772-6577

## APPEAL FORM

*In CCC Appeals Jurisdiction?*

YES - No Fee  
 NO - Fee Paid:  Yes  No

Project Address being appealed: 3420 Toro Lane, Morro Bay	
Appeal from the decision or action of (governing body or City officer): <input type="checkbox"/> Administrative Decision <input checked="" type="checkbox"/> Planning Commission <input type="checkbox"/> City Council	
Appeal of action or specific condition of approval: Appeal of action	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): CP0-419 & UP0-383 coastal and use	
Date decision or action rendered: October 6, 2015	
Grounds for the appeal (attach additional sheets as necessary): This project would block an important beach access path uniquely suited to the needs of many of its users. There is no equivalent alternate access in the vicinity. In addition, the proposed alternate path would not be permanent and would be unsafe for many users of the existing path. See attached documentation for details.	
Requested relief or action: Reverse the Planning Commission action and deny permitting for the project	
Appellant (please print): Linda Stedjee	Phone: 771-9254
Address: 2848 Birch Avenue, Morro Bay 93442	
Appellant Signature:	Date: October 9, 2015

FOR OFFICE USE ONLY	
Accepted by:	Date appeal filed:
Appeal body:	Date of appeal hearing:

## **3420 Toro Lane Project Appeal to City Council**

There are multiple concerns regarding the project proposed for 3420 Toro Lane, including disputed issues in consultant studies that support the CEQA determination, and concerns regarding a public path on the property. This complaint focuses on the public path.

As discussed in detail below, the path is necessary to provide beach access for those who cannot negotiate other area trails, all of which are too steep, and/or hilly, and/or have unstable soil underfoot. The proposed alternate path on the property, proposed only after residents submitted substantial proof that a prescriptive easement had likely been established, is unacceptable because:

- It would not be safe for many users due to its location
- It would not be permanent, also due to its location and because it has been clearly stated that it would not be maintained

Shortly after purchasing his land at 3420 Toro Lane, the applicant chose to change the ownership of one of the two lots in his parcel, and proposes his project for the second lot, the one on which the path is located. The proposed house is sited squarely on top of the path. Had the applicant chosen to merge the two lots, he would have had an ideal site for a good-sized home in a beautiful location - without blocking a public beach access route uniquely suited to the needs of older residents and visitors, others who are not agile and strong, and those who require the use of wheeled conveyances.

Please do not ask the public to suffer the negative consequences of a personal property ownership decision over which the public had no control. I ask that the Council reverse the Planning Commission decision and deny the permit for the proposed project at 3420 Toro Lane, as it is currently sited.

Following are details of some critical issues and concerns regarding the existing public path at 3420 Toro Lane, and the proposed alternate path at the site:

### **1. The Current Path Provides Unique, Safe Beach Access for Seniors and Others**

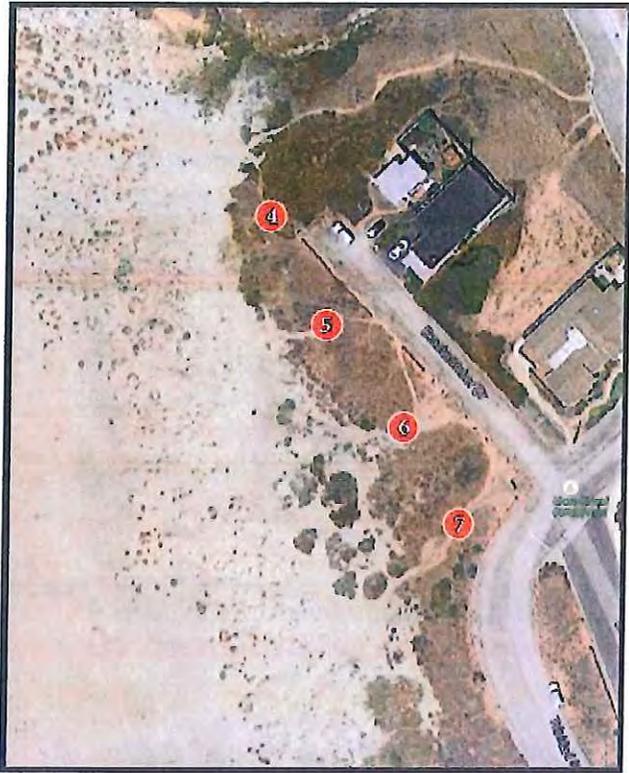
The existing public path across the 3420 Toro Lane property has been in use by the public for decades and is unique in the area because its gentle slope and stable, compacted soil make it particularly suitable for older persons, and for those using strollers and beach wagons to transport babies and young children. Given that these conveyances can be and are used on the path, it is likely that a wheelchair could also be used on the path.

None of the other area paths could be considered beach wagon -friendly, stroller-friendly, or wheel chair-friendly. In short, while some users of the current Toro Lane path may be able to use other area trails, some cannot.

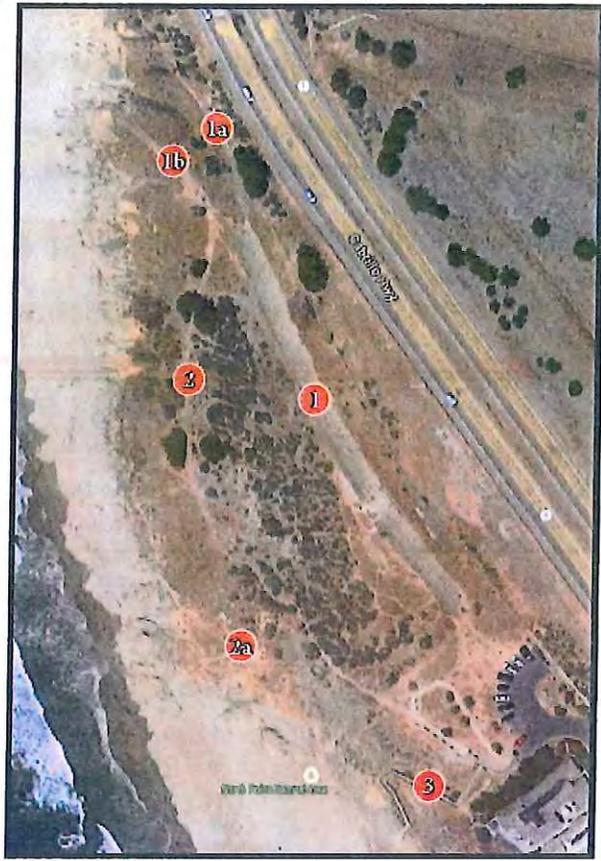
Contrary to claims made by the applicant's representative, some City staff, and one Planning Commissioner, the area does NOT have numerous comparable alternative routes to the beach. An extensive study of area beach access, prepared by Planning Commissioner Robert Tefft, provides substantial evidence that other area routes are not viable for many users of the current path.

In the document, "Investigation as to Potential Prescriptive Easement, Appendix A, PHOTOGRAPHIC RECORD OF ALTERNATE BEACH ACCESS", Commissioner Tefft provides both photographic and written description of area trails. Commissioner Tefft also provides annotated aerial views with path locations noted.

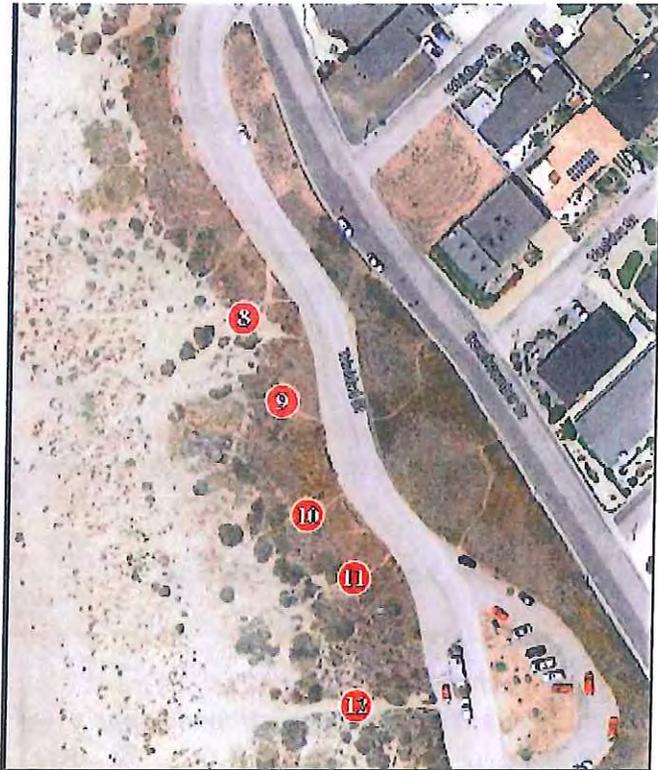
The first image below shows trails in the immediate vicinity of the 3420 Toro Lane path. The second and third images show trails in the general vicinity.



Alternative Access Routes - Beachcomber Area



Alternative Access Routes - North Point Area



Please note that Commissioner Tefft has numbered the trails from 1 through 12. Trails 1 through 3 access, (or connect with trails that access) the beach north of the 3420 Toro Lane path. Trails 4 through 7, and 8 through 12, access the beach south of the Toro Lane path.

Commissioner Tefft provides images of the trails/paths, and brief descriptions of each. Following, in italics, are quotes from his specific descriptions of these trails. Please note the portions in red type.

**“Trail 1**, North Point Area – Trail 1 appears to be the remnant of an old road along the ocean bluff (perhaps a vestige of the old, two-lane Highway 1). **It does not provide direct beach access**, but leads from the North Point parking area to four additional trails (1a, 1b, 1c, and 1d) which access the beach and coastal bluff views. The trail is composed of asphalt and packed dirt and is relatively level, with little irregularity related to erosion.”

**“Trail 1a**, North Point Area – Trail 1a extends northward toward the beach from the northern terminus of Trail 1, skirting the chain link fence that marks the boundary of the Highway 1 right-of way. The surface is packed dirt. Significant plant incursion suggests that this route is little-used”  
“... In all likelihood, the disuse of Trail 1a is due to the fact that this access is interrupted by a drainage ravine, which renders passage somewhat difficult. In addition, after passing the ravine, **the trail descends very steeply and is impacted by significant erosion.**”

**“Trail 1b**, North Point Area – Trail 1b leads from the north end of Trail 1 to the beach. Its surface is composed of packed dirt. As shown in the photograph, **the seaward end of this trail is quite steep and the walking surface is very irregular due to erosion.**”

**“Trail 2**, North Point Area – Trail 2 leads from the North Point parking lot northward along the edge of the coastal bluff. The trail is level to gently sloped. The initial 50 feet or so are asphalt and the remainder of the surface is packed dirt. This trail **does not provide direct beach access**, but offers spectacular views along the coast to both the north and south. Trail 2a, which branches off of Trail 2, does access the beach below”

**“Trail 2a**, North Point Area – Trail 2a leads from the mid-portion of Trail 2 to the beach. Its surface is composed of packed dirt, with numerous loose rocks in the uphill segment. **This trail is relatively narrow and very steep, and the walking surface is moderately irregular due to erosion.** This route appears to be used rather infrequently”

**“Trail 3**, North Point Area – Trail 3 **consists of a stairway leading** from the North Point parking area to the beach. The stair treads are wood and compacted gravel, and handrails are present on both sides of the stairway. The facility appears to be well-maintained and in good repair. This stairway provides the primary route for public beach access from the North Point parking lot.”

**“Trail 4**, Beachcomber Area – **Trail 4 is a narrow, steep access** that leads northward from the north end of Beachcomber Street and passes just seaward of the southwestern corner of the 3420 Toro Lane property. Although more challenging than other nearby access, Trail 4 does appear to be utilized to a degree, as evidenced by the footprints at the bottom of the trail.”

**“Trail 5**, Beachcomber Area – **Trail 5 is another narrow and rather steep** access that leads from Beachcomber Street to the beach”

**“Trail 6** Beachcomber Area – A third informal access from Beachcomber Street. **The trail is moderately steep at the top**, flattening some as it approaches the beach. The surface is hardpack near the road, giving way to sand in the lower section”

**“Trail 7**, Beachcomber Area – Trail 7 provides access to the beach from Beachcomber Street as it intersects with Yerba Buena and Trinidad Street. This is the widest and most gently sloped of the

*Beachcomber accessways, and exhibits a packed dirt surface all the way to beach level. As can be seen, moderate surface irregularity due to erosion is present. Trail 7 appears to be the most heavily used of the Beachcomber trails."*

It appears that Commissioner Tefft considered trail 7 the least difficult of the above-listed trails to negotiate. However, that does not mean that it is as user-friendly as the 3420 Toro Lane path. Following are two photos of trail 7 that were provided in the report. While it may be easier to manage than the other area trails, it is still quite steep. I have walked past this trail many times, and wouldn't even think of trying to use it to get to the beach. Furthermore, it cannot be considered usable for those using strollers or beach wagons to transport babies and small children, or for wheelchair beach access.

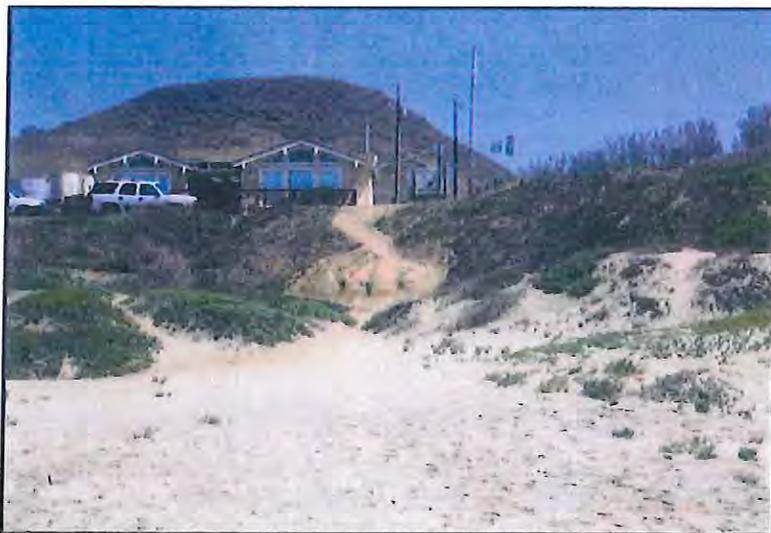


Photo No. 16 Trail 7, Beachcomber Area - View of Trail 7 looking inland from the beach.

Four trails farther to the south, designated by Commissioner Tefft as trails 8, 9, 20, 11, require negotiating a field of dunes in order to reach the flat area of the beach – and are thus not usable for any form of wheeled conveyance. In addition, in order to reach these trails, it is necessary to either drive or walk to the State Park day parking lot, which can fill up fast, leaving no place to park. The road to the lot – and the trails is, of course, frequented by numerous RV's arriving at and leaving the park campground, and has no sidewalk.

It should also be noted that although the two areas of beach are not a great distance apart, the beach experience in the State Park area is somewhat different than the experience at the foot of the Toro Lane path. The beach adjacent to the State Park is used by visitors staying at the park and tends to be more crowded.

**“Trail 8** intersects Trinidad Street while the paved road is still relatively high on the bluff. Consequently, **the upper part of this access is relatively steep**. Irregularity of the walking surface due to erosion is minimal, as most drainage is directed southward by the curb of Trinidad Street. Density of footprints at the foot of the trail suggests fairly light usage by the public”

**“Trail 9** appears similar in configuration and usage to Trail 8.”

**“Trail 10** leaves Trinidad Street at a lower elevation than Trails 8 and 9 and is, therefore, **less steep**. This beach accessway is **primarily sand** and undulates between dunes on its way to the beach. Footprint density is higher than observed on Trails 8 and 9.”

**“Trail 11** appears similar to Trail 10, though somewhat **more narrow**. The growth of vegetation in the trail and relatively low density of footprints would appear to indicate relatively little use by the public. This may be due to the fact that nearby Trail 12 offers easier access.”

While trails 10 and 11 may be less steep than trail 8, they are still not navigable for a significant portion of the population. This leaves trail 12.

**“Trail 12** begins at Trinidad Street just as that street enters Morro Strand State Beach. The head of this trail is also adjacent to the State Beach day-parking lot. The route skirts a protected snowy plover nesting area in the dunes immediately to the south. **The access is sandy and virtually level.**”

I have personally used this trail for beach access, and would agree that it is “fairly” level. However, given that the trail is sandy, it is obviously not suited for transporting anything or anyone down to the beach in any form of wheeled conveyance. While it is the easiest of the trails surveyed by Commissioner Tefft, it is not as user-friendly as the 3420 Toro Lane path.

So, although it has been claimed that there are numerous alternative beach access points in the vicinity, none offers beach access that is equivalent to, or even truly comparable to that offered by the existing public path through the 3420 Toro Lane property.

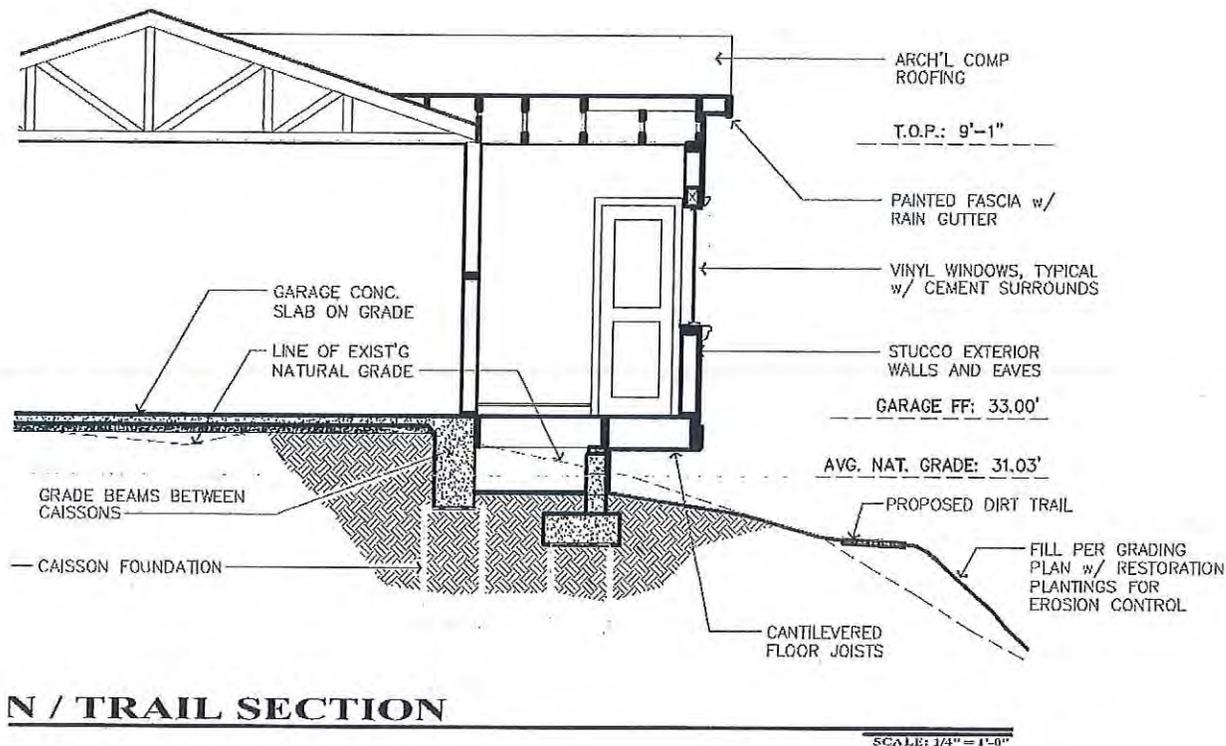
It should also be noted that, as for trails 8 through 11, reaching trail 12 requires driving or walking to the State Park campground day parking lot, which does not always have parking space available.

Also noteworthy is the fact that the 3420 path offers a different experience than trail 12. The 3420 path offers beautiful vistas of the canyon and, and sightings of wildlife species not seen on the more heavily-traveled trail 12.

### **The Proposed Path Would Erode Away Quickly and Beach Access Would be Lost**

While the existing path passes through the 3420 Toro Lane site on a level area on the bluff top, with flat areas on both sides, the proposed path would be located on the side of the steep canyon bluff. The following clip from a diagram in the October 6, 2015 Planning Commission meeting agenda packet, shows the proposed trail location on the edge of the ravine (lower right of diagram).

According to statements by the applicant’s representative and City staff, this path would be about 18 inches wide, would not be maintained, and would be posted with signs indicating that it was to be used at the user’s own risk. Please note the steep dropoff immediately adjacent to one side of the proposed trail.



The existing path has survived without maintenance for decades because of its configuration and location. However, trails on steep slopes must be maintained, or they can be quickly eroded away by a combination of use, precipitation and flowing water. In other words, the location of the proposed alternate path on a slope makes it particularly prone to erosion.

At the October 6, 2015 project hearing, much was made of the fact that a local trail maintenance group, the "Black Hill Gang" had been consulted regarding trail construction to ensure it would be done right. However, the best-constructed hillside trail will obviously not last if it is not maintained, and it was made very clear that there would be no maintenance. The problem with that seems very obvious, especially given the fact that if hillside trail maintenance were unnecessary, the "Black Hill Gang" would not exist.

Regarding the importance of maintaining trails, The County of Santa Clara Department of Parks and Recreation Trail Maintenance Manual says,

*"Neglect of drainage maintenance can develop into situations where a trail system could literally be washed away. An annual maintenance program will prevent expensive reconstruction projects. With the understanding that there is a limited amount of money and manpower for trail work, that work should be directed toward factors that are causing the most damage. Ideally, drainage maintenance, clearing, tread maintenance and brushing are considered annual routine trail maintenance."*

Please also consider the following quotes from the document, PCTA Trail Skills College Curriculum Instructor Planning Guide, Course 100. Intro to Trail Maintenance :

*"**Hillside Hydrology** : Water from rain, melting snow and seeps poses a major threat to trails. In a perfect trail world, when water **sheet flows** down a hillside and encounters a trail with good **outslope**, it immediately crosses the trail and continues down the hillside without causing any **erosion** of the trail **tread**. In the worst case, hillside sheet flow is interrupted and follows the trail instead. As the water **gains volume and speed on steep grades**, it erodes a trail into a deep gully filled with rocks and roots left behind after the soil has been carried away.*

*This can happen all at once in a major storm event, or slowly over years due to a lack of trail maintenance. Regardless, the outcome is the same: a trail difficult to use and sediment carried*

downhill, often into streams causing habitat damage. Such a trail needs major reconstruction or to be abandoned. But *it doesn't need to happen, if trail workers work to prevent it.*"

*"It is important for students to understand that the natural aging process of trails requires vigilant maintenance. If neglected, the problems will only grow worse and require major reconstruction or abandonment. In some cases poor design, construction and maintenance have exacerbated such problems. This all adds up to trail workers facing much work to do to improve tread and prevent further erosion"*

Clearly, the proposed alternate path would last a very short time. It would quickly deteriorate and become impassible, and then disappear entirely.

### **The Proposed Path Would, Even While it Lasted, be Unsafe and Even Impassible for Many Users of the Existing Path**

The proposed path would rest on the side of a steep slope leading down to a concrete swale. It would be just 18 inches wide, with no flat area on the canyon side. Thus, if someone were to slip and fall on the path, and fall toward the canyon, the person would most likely tumble down the hill and land on concrete. The following recent site photo, which shows some compacted soil in the area of the proposed path, illustrates the problem.



The reality, which is clearly shown in the above photo, seems to contrast sharply with the following simulated photo images of the project site that were provided by the applicant:



Note that neither seems to show the real steepness of the slope or the fact that there is a sharp dropoff right next to the proposed trail site. The dropoff is especially concerning given the narrowness (18 inches) of the proposed trail, and the fact that the edge of an unmaintained trail on the side of a sharp drop is likely to erode quickly.

Some trail standards from the "County of Santa Clara Department of Parks and Recreation Trail Maintenance Manual" state,

*"The width of the tread will vary from 4-feet to 12-feet depending on the type of use. There are five basic trail use types: 1) Single Use; 2) Pedestrian/Equestrian, 3) Multi-Use (non-fire road), 4) Paved Shared Use, and 5) Multi-Use & Fire Road (standards also apply for roads that function solely as fire or service roads and allow for no public access). The variation in tread width dimensions allows the trail to flow around natural barriers and provide for safety and resource protection."*

and, for single use trails (hiking),

*"Minimum tread width varies from 3 feet for shallow side slopes (less than 30%) up to 4 feet for steep side slopes (greater than 30%)."*

Specified minimum widths for other types of trails are greater. The existing path, which lies on a flat surface rather than on a side slope, appears to be at least 3 feet in most areas, and where it is not, there is a flat "shoulder" area.

Clearly, the proposed path would be unsuitable for not only those with mobility and/or balance issues. In addition, it is unlikely that those using wheeled conveyances would consider it a safe passage to the beach.

## It is Likely that a Public Prescriptive Easement has Been Established on the Existing Path

According to Coastal Commission staff, the City must address claimed public prescriptive easements in the Coastal Zone. Documents claiming a public prescriptive easement on the existing 3420 Toro Lane path were submitted to the City in late August, after a statement in documents for an August project hearing appeared to dismiss the importance of public beach access through the 3420 Toro Lane site..

On August 18, 2015, the Planning Commission held a hearing regarding the proposed project, identified as case number CPO-419, UPO-383. The staff report discussed the path at length, but the proposed Planning Commission resolution, PC28-15, dismissed the value of the path to the public with this Coastal Access finding:

*“The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because there are several other well established paths nearby that lead down to the beach from Beachcomber drive in addition to an engineered trail leading to the beach from a parking lot at the north end of Toro Lane. Therefore, it is not necessary to provide public access across the project site.”*

Public access was not mentioned within the Planning Conditions in the proposed resolution.

Shortly after that meeting, concerned residents, working with the California Coastal Commission's prescriptive easement expert, developed and distributed questionnaires to a subset of users of the existing path. Completed questionnaires were delivered to the City of Morro Bay Planning and Building Department. Data from the questionnaires was compiled by a resident, and the resulting document (attached) was also delivered to Planning and Building.

It appears that the results of the survey convinced some that a public prescriptive easement was a real possibility. The documents attached to the agenda for next hearing for the project, held October 6, 2015, contained a great deal of discussion on prescriptive easements, and a proposal for an alternate path on the 3420 Toro Lane property.

Equivalent alternate access would have to be established to prevent a public prescriptive easement from being established on the existing path. I believe the evidence submitted here proves that there is no equivalent alternate beach access in the vicinity of the existing 3420 Toro Lane path.

Given the problems with the proposed path, as described in this appeal document, its acceptance as equivalent alternate access seems unlikely. In addition, given the major issues with other area beach access paths, also described in this appeal, it seems clear that despite claims to the contrary, there simply is no equivalent alternate beach access in the vicinity – especially for path users who many have mobility limitations or balance issues, and users who need a path that is wheeled-conveyance-friendly.

Without viable alternative area beach access for all users of the current path, it appears that a public prescriptive easement on the existing path could be legally established.

## 3420 Toro Lane Public Path Prescriptive Easement Survey Results Summary

### Process:

Questionnaires were developed according to specifications and a sample obtained from the California Coastal Commission. Questionnaire requirements were also discussed with a Commission staff member who specializes in prescriptive easements.

The questionnaires were distributed by one individual over a two-week period. Distribution was done as follows:

- At the trailhead, on two weekend days, for about 2 hours each day
- At a farmer's market, on two consecutive Thursday afternoons
- Door-to-Door on three streets (Zanzibar, Yerba Buena, Vashon) east of Highway One
- To some persons with whom the person distributing the questionnaires was acquainted

Completed questionnaires were delivered to the City of Morro Bay Planning and Building department.

### Results:

75 questionnaires were completed by persons who use the path.

The earliest documented path use was by a respondent who used it in the 1950's. Two respondents began using the path in the 60's, seven began using it in the 70's, thirteen in the 80's, seven in the 90's, and 13 began using the path between 2000 and 2010. The remainder either began using it within the last five years, or misunderstood the question and gave the dates of their most recent uses.

The primary reason given for path use is beach access. Additional uses specified include birding, surfing, walking, biking, dog walking and clamming (clamming was in the 1950's).

More than a third of the responding path users state they are 61 or older. Age groups of respondents are as follows:

20 and under:	3
21 – 30:	9
31 – 40:	4
41 – 50:	6
51 – 60:	15
61 – 70:	19
71 – 80:	8
over 80:	1
No age given:	10

Fifteen respondents said they had used the path 100 times or more (of those, one said "100?"). Within that group, three said they had used it 1,000 or more times over the years. Three said their uses were "too many to count". Four said "numerous", "many", or "frequently". Some said they used it a specific number of times per week, month, or year. Others gave numbers of uses between 2 and 50+.

According to the California Coastal Commission, the following are the basic criteria for determining prescriptive rights to use a property:

- Use is substantial rather than minimal
- Use is continual, although it need not be continuous
- Use must be without asking or receiving permission from the owner
- Use must be with the actual or presumed knowledge of the owner
- There must be no significant objection or bona fide attempts by the fee owner to prevent or halt the use.

Only one respondent stated she had asked for permission to use the path; all others stated that they had never sought nor received permission. One respondent said that within the two week period prior to completing his questionnaire, someone had tried to interfere with his use of the path; one stated that in the last year, signs have been put up. All others stated that their path use had never been interfered with. Many respondents specifically stated on questionnaire page 2 that they believed the path was public property.

Respondents provided significantly more information than that compiled in the table below. The data provided here was chosen because it is a meaningful subset of that data which specifically addresses the California Coastal Commission criteria.

Respondent		Path Usage Duration	Approximate Number of Uses	Used Path Openly?	Asked and/or Received Permission?	Did Anyone Ever Try to Prevent Path Use?	Observed Others Using the Path?
Betty W.	63	1986 to present	35 - 40	Yes	No	Not until the last year, when signs were put up	Frequently
J. Gary W.	72	Last 3 years	20+	Yes	No	No	Frequently
F. Paul W.	56	1999 to present	20+	Yes	No	No	Frequently
James W.	53	1975 to present	Not specified	Yes	No	No	Whenever I was there
Robert S.	80	not specified	6	Yes	No	No	Frequently
Michael S.	70	1981 to present	100+	Yes	No	No	Whenever I was there; frequently
Chris S.	56	Since July, 2015	10+	Yes	No	No	Whenever I was there
Gail Q.	72	Since January, 2014	20	Yes	No	No	Whenever I was there
Daniel P.	66	Since 2001	4 times a year	Yes	No	No	Occasionally
Charlene P.	68	Since 2001	4 times a year	Yes	No	No	Occasionally
Daniel O.	25	Within last 6 months	4 or 5	Yes	No	No	Occasionally
Jonathan O.	34	Since 1981	100 ?	Yes	No	No	Frequently
Jeff O.	63	Since 1971	not specified	Yes	No	No	Frequently
Jacque O.	---	Since 1971	many	Yes	No	No	Frequently and Occasionally
Lynda M.	---	Since 1980	50	Yes	No	No	Occasionally
Frank M.	77	Since 1987	6	Yes	No	No	Occasionally
Denise H.	54	Since the 70's	whenever in town	Yes	Yes	No	Frequently

Robert L.	54	Since 1998	Too many to count - 100+	Yes	No	No	Frequently
Damien H.	43	yesterday	numerous	Yes	No	No	Whenever I was there
Susan H.	---	Since 2014	3 or 4	Yes	No	No	Occasionally
Janith G.	70	Since July, 2007	once a month	unspecified	No	No	Whenever I was there
Jill G.	51	For 15 years	numerous	Yes	No	No	Whenever I was there
Kevin F.	55	Since 2000	2 - 3 times weekly	Yes	No	No	Whenever I was there
Cherry F.	31	Since 2012	2 - 3 times weekly	Yes	No	No	Whenever I was there
Megan E.	29	Since 2010	More than 50	Yes	No	No	Whenever I was there
Brigid C.	63	8/2/15	12 / year	Yes	No	No	Whenever I was there
Tom C.	68	unspecified	Frequently	Yes	No	No	Frequently
Tim B.	---	Since 1989	30+	Yes	No	No	Whenever I was there
Kelly B.	58	Since 4/10/15	3 times	Yes	No	No	Frequently
Michele A.	65	Since 1970	4,000 times plus	Yes	No	No	Whenever I was there
Nancy B.	76	Since 1980	50+	Yes	No	No	Frequently
Linda J. B.	---	Since August 10, 2015	7	Yes	No	No	Whenever I was there
David B.	42	8/16/15	5 - 6	Yes	No	No	Whenever I was there
Joan C.	older	2000	100	Yes	No	No	Occasionally
Brandon C.	30	2008	Every week	Yes	No	No	Whenever I was there
Lindsey C.	31	For the last 2 years	20+	Yes	No	No	Frequently
Kim S. D.	30	June	5	Yes	No	No	Whenever I was there
Sandy F.	63	Since 1989	100	Yes	No	No	Whenever I was there
Carol G.	68	Since 1989	100's	Yes	No	No	Frequently
Jeanne H.	55	5/5/14	30	Yes	No	No	Frequently
Betsy K.	47	Since 1999	not sure -- more than 10	Yes	No	No	Occasionally
Michael K.	51	6/1999	10	Yes	No	Yes - in last 2 weeks	Whenever I was there
Miriam L.	42	unspecified	unspecified	unspecified	unspecified	unspecified	unspecified
Susan and Dennis M.	----	2014	10 - 12 times	Yes	No	No	Frequently
Makena M.	22	2000	Hundreds	Yes	No	No	Frequently
Jeffrey M.	30	2 years	20	Yes	No	No	Frequently
Chris N.	46	2002	Too many to count	Yes	No	No	Whenever I was there

David N.	67	1990	2 – 3 times a week	Yes	No	No	Whenever I was there
Monique N.	---	Roughly 1995	varied over years but now 2 – 3 times/week	Yes	No	No	Frequently
Ruby N.	9	2006	Too many to count	Yes	No	No	Whenever I was there
Bill N.	68	2000	50	unspecified	No	No	Occasionally
Ava R. P.	9	2006	100's	Yes	No	No	Whenever I was there
Leanne	57	unspecified	2	Yes	No	No	Frequently
Logan R.	25	2010	? – looks like 101s!	Yes	No	No	Frequently
Michele S.	43	40 years	100's	Yes	No	No	Whenever I was there
Nine T.	62	every day	7 days a week	unspecified	No	No	Whenever I was there
Ben W.	37	7-1-4	100	Yes	No	No	Whenever I was there
Alice Y.	72	3 x week	100's	Yes	No	No	Frequently
Diane and Ralph S.	---	1980	1000 +	Yes	No	No	Whenever I was there, and Frequently
Margie P.	70	1989	weekly	Yes	No	No	Whenever I was there
Abe P.	84	1989	On and off since 1989	Yes	No	No	Whenever I was there
Barbara W.	71	1987	Well over 3000	Yes	No	No	Frequently
Cynthia H.	---	August 2015 and in 1950's	20	Yes	No	No	Whenever I was there
Lisa K.	55	1986	20 – 30 years	Yes	No	No	Frequently
Kirk K.	65	1975	100	Yes	No	No	Frequently
Flora K.	27	1990	unspecified	Yes	No	No	Whenever I was there
Francesca K.	17	1998	unspecified	Yes	unspecified	No	Frequently
Nancy K. B.	65	2005	25	Yes	No	No	Occasionally
Chase C.	23	many, many years	? partially crossed out	Yes	No	No	Whenever I was there
Dennis C.	67	1968	50	Yes	No	No	Frequently
Natalia M.	---	1968	50	Yes	No	No	Frequently
Melinda J. U.	52	July, 2015	30	Yes	No	No	Frequently
Jackie R.	75	August, 2012	Twice a month	Yes	No	No	Frequently
Debbie H.	65	8/1/15	Several	Yes	No	No	Frequently
Helen G. A.	52	unspecified	unspecified	unspecified	unspecified	unspecified	unspecified
Christine B.	54	1996	20 times	Yes	unspecified	unspecified	occasionally

# EXHIBIT C

RECEIVED

OCT 13 2015

City of Morro Bay  
Community Development Dept.



## CITY OF MORRO BAY

Public Services Department  
Planning Division

955 Shasta Avenue  
Morro Bay, CA 93442  
(805) 772-6577

### APPEAL FORM

#### In CCC Appeals Jurisdiction?

YES - No Fee  
 NO - Fee Paid:  Yes  No

Project Address being appealed: <b>3420 TORO LANE, MORRO BAY, CA</b>	
Appeal from the decision or action of (governing body or City officer): <input type="checkbox"/> Administrative Decision <input checked="" type="checkbox"/> Planning Commission <input type="checkbox"/> City Council	
Appeal of action or specific condition of approval: <b>P.C. GRANTED APPROVAL TO CONSTRUCT S.F.P. ON TOP OF TRAIL THAT SHOULD BE PROTECTED BY PRESCRIPTIVE EASEMENT</b>	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): <b><del>HS</del> CPO-419 DPO-383 / COASTAL &amp; USE</b>	
Date decision or action rendered: <b>OCT 6, 2015</b>	
Grounds for the appeal (attach additional sheets as necessary): <b>THE CITY OF MORRO BAY HAS THE RESPONSIBILITY TO FOLLOW THEIR COASTAL PLAN. THIS PLAN'S GOAL IS TO FOSTER AND MAINTAIN PUBLIC USE AND ACCESS TO THE COAST LINE. THIS INCLUDES BEACH ACCESS FOR ALL. A TRAIL THAT HAS BEEN IN USE FOR 50 YEARS WILL BE BLOCKED.</b>	
Requested relief or action: <b>REQUEST CITY COUNCIL DENY THE PERMIT ON APPEAL. THE COASTAL COMMISSION HAS RULED THAT EXISTING PUBLIC TRAILS TO THE BEACH SHALL BE PRESERVED</b>	
Appellant (please print): <b>BARRY F. BRANIN</b>	Phone: <b>714 920 9226</b>
Address: <b>P.O. Box 540 / MORRO BAY, CA 93443</b>	
Appellant Signature: <b>Barry F. Branin</b>	Date: <b>OCT 9, 2015</b>

#### FOR OFFICE USE ONLY

Accepted by:	Date appeal filed:
Appeal body:	Date of appeal hearing:

# EXHIBIT D

## RESOLUTION NO. PC 28-15

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION ADOPTING A MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND APPROVING COASTAL DEVELOPMENT PERMIT (CP0-417) AND CONDITIONAL USE PERMIT (UP0-383) TO CONSTRUCT A NEW SINGLE-FAMILY DWELLING ON A VACANT BEACH FRONT PROPERTY WITH AN ENVIRONMENTALLY SENSITIVE HABITAT OVERLAY IN THE BLUFF SETBACK REVIEW AREA AND THE COASTAL APPEAL JURISDICTION AT 3420 TORO LANE

**WHEREAS**, the Planning Commission of the City of Morro Bay (the "City") conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on October 6, 2015, for the purpose of considering Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383 and the associated Mitigated Negative Declaration for construction of a new single-family home at 3420 Toro Lane, on a bluff review area property with an Environmentally Sensitive Habitat Overlay in the Coastal Commission appeal jurisdiction; and

**WHEREAS**, notice of the public hearing was provided at the time and in the manner required by law; and

**WHEREAS**, the Planning Commission has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

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

**Section 1: Findings.** Based upon all the evidence, the Commission makes the following findings:

### California Environmental Quality Act (CEQA) Finding

1. For purposes of the California Environmental Quality Act, an Initial Study was prepared for the project which resulted in a Mitigated Negative Declaration. The Mitigated Negative Declaration was routed to the State Clearinghouse for the required 30 day review and all other legal noticing and review requirements have been met. The project applicants agreed to all mitigations. With the incorporation of these mitigations the project will have a less than significant impact on the environment.

### Coastal Development Finding

1. As conditioned, the project is consistent with applicable provisions of the Local Coastal Program for construction of a new single-family residence and bluff development in the Atascadero State Beach Bluff Area.

# EXHIBIT D

## Conditional Use Findings

1. As conditioned, the project is consistent with the General Plan and Local Coastal Program regarding the location of residential uses and development of property in coastal bluff setback review area.
2. As conditioned, the project will not be detrimental to the health, safety and welfare of persons residing or working in the neighborhood.

## Reduced Buffer Area Finding

1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area.

## Coastal Access Finding

1. The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because it includes a beach access trail through the project site.

**Section 2. Action.** The Planning Commission does hereby adopt the June, 2015 Mitigated Negative Declaration and approve Coastal Development Permit CP0-419 and Conditional Use Permit UPO-383 for property located at 3420 Toro Lane subject to the following conditions:

## STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated October 6, 2015, for the project at 3420 Toro Lane (the "Property"), as depicted on plans received by the City on September 29, 2015, as part of Coastal Development Permit CP0-419 and Conditional Use Permit UPO-383, on file with the Community Development Department, as modified by these conditions of approval, and more specifically described as follows: Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Manager (the "Manager"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local

# EXHIBIT D

Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Manager. Any changes to this approved permit determined, by the Manager, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. Applicant understands and acknowledges the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: . The applicant's establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Manager or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Manager, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.
7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

## PLANNING CONDITIONS

1. Construction Hours: Pursuant to MBMC subsection 9.28.030.I, Construction or Repairing of Buildings, the erection (including excavating), demolition, alteration or repair of any building or general land grading and contour activity using equipment in such a manner as to be plainly audible at a distance of fifty feet from the building other than between the hours of seven a.m. and seven p.m. on

# EXHIBIT D

weekdays and eight a.m. and seven p.m. on weekends except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Community Development Department, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues.

2. Dust Control: That prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.
3. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.
4. Exterior Materials: Building color and materials shall be as shown on plans approved by the Planning Commission and specifically called out on the plans submitted for a Building Permit to the satisfaction of the Community Development Manager Manager.
5. Boundaries and Setbacks: The property owner is responsible for verification of lot boundaries. Prior to requesting foundation inspection, a licensed land surveyor shall verify lot boundaries and building setbacks to the satisfaction of the Community Development Manager. A copy of the surveyor's *Form Certification* based on a boundary survey shall be submitted to the Building Inspector with the request for foundation inspection.
6. Building Height Verification: Prior to foundation inspection, a licensed land surveyor shall measure and inspect the forms and submit a letter to the Community Development Manager certifying that the tops of the forms are in compliance with the finish floor elevations as shown on approved plans. Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the Building Inspector certifying that the height of the structures is in accordance with the approved plans.
7. Maximum Building Height: Building height shall comply with the maximum building height standards in the S-2.AOverlay, which are 14 feet for flat roofs and roof deck sills, and 17 feet for roofs with a minimum pitch of 4 in 12. Height shall be measured from the average natural grade beneath the building footprint.
8. Stream Corridor Buffer: The minimum buffer area for the stream corridor shall be 25 feet from the top of bank as delineated on the project site plan.
9. Coastal Dune Buffer: The minimum buffer area for the coastal dune habitat shall be 50 feet as delineated on the project site plan.

# EXHIBIT D

10. ESH Easement: Consistent with Land Use Element Policy LU-61, the property owners shall dedicate a permanent easement over portions of the Property determined to be sensitive habitat as defined by the Zoning Ordinance. This will include the stream corridor and the coastal dune area as shown on the project site plan and in the Addendum to Biological Resources Assessment (KMA 2014) together with the approved buffer areas. Easement boundaries shall be clearly delineated to the satisfaction of the Community Development Manager.
11. Geologic Reports: The applicant shall comply with all recommendations contained in the geologic reports, prepared for this property by Earth Systems Pacific (June/September 2002, September, 2013 Update).
12. Slope Stability Analysis: The applicant shall comply with all recommendations contained in the slope stability analysis prepared for this property by Earth Systems Pacific (March 5, 2015).
13. Soils Engineering Report: The applicant shall comply with all recommendations contained in the soils engineering report prepared for this property by GeoSolutions (August, 2014).
14. Utility Undergrounding: Prior to final occupancy clearance, the applicant shall install all utility distribution and service lines to the site underground.
15. Landscaping: Project landscaping shall include native and drought tolerant plants consistent with the Habitat Restoration and Enhancement Plan (as required by Biological mitigation measure 4 in the *Mitigation, Monitoring and Reporting Program* approved by the Community Development Manager). Landscaping shall be designed to minimize ecological and geological disturbances. Only plant materials recognized for their drought tolerance or erosion controlling properties shall be authorized on bluffs or bluff tops.
16. HVAC Location: Any HVAC system shall be located under the roof lines or on the ground outside of required setbacks and not visible from the public right of way to the satisfaction of the Community Development Manager.
17. Shoreline Protective Structures Prohibited: Shoreline protective structures that protect the approved development (including but not limited to seawalls, revetments, retaining walls, tie backs, caissons other than for structural foundation purposes, piers, groins, etc.) shall be prohibited. Prior to issuance of a building permit, the Applicant shall record acknowledgement of this condition on behalf of itself and all successors and assigns in a manner and form acceptable to the City.
18. Public Access Offer to Dedicate: In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area for an unimproved public access trail

# EXHIBIT D

through the project site to the satisfaction of the City Engineer and the Community Development Manager (the "Public Access Trail"). Prior to issuance of a building permit, the offer of dedication of the Public Access Trail shall be recorded. Upon that recordation, the City will not make nor support any effort to preserve that implied dedication. The Applicant's offer of dedication and any acceptance thereof shall not require the City, the Applicant or other public entity to maintain the Public Access Trail.

19. Public Access Design: To effectuate Condition No. 18, above, prior to issuance of a building permit, the Applicant shall submit a design for the creation of the Public Access Trail through the project site and the adjacent Toro Lane right-of-way to the satisfaction of the City Engineer and the Community Development Manager (the "Design").
20. Preparation of the Public Access: Prior to issuance of final occupancy for the project, the Applicant shall create the Public Access Trail in accordance with the Design.
21. Trail Hours: The Public Access Trail shall be open to the public from one hour before dawn until one hour after sunset.
22. Limitation on Trail Area: Trails through the ESH areas located on the Property, other than the Public Access Trail and a link from the residence to the Public Access Trail shall be prohibited.
23. Retaining Wall: There shall be no retaining wall or fence past the western edge of the patio.
24. Fence Height: The maximum fence height adjacent to the patio shall not exceed the minimum height required by the Building Code.

## ENVIRONMENTAL CONDITIONS

1. The applicant shall comply with the environmental mitigation measures as detailed in the Mitigation Monitoring and Reporting Program which is attached hereto as Attachment 1.

## PUBLIC WORKS CONDITIONS

1. The project shall provide frontage improvements as noted below and must include Low Impact Development (LID) Performance Requirements as required by the Storm Water Management Guidance- EZ Manual, March 6, 2014 amendment to the City Standard Drawings and Specifications.

The following comments shall be addressed with the building permit submittal:

# EXHIBIT D

2. Stormwater: Since the project is  $\geq 2,500$ sf of impervious area provide a Stormwater Performance Requirement #1 Certification, prepared by a Registered Civil Engineer. Since there is no potential for downstream flooding, the project is exempt from the requirements of Performance Measure #5.
3. Erosion and sediment control: Provide a standard erosion and sediment control plan. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area.
4. Frontage improvements:
  - a. City standard driveway approach and a concrete curb and gutter are required. A street tree is required.
  - b. All standard improvements (e.g. driveway approach) in the City right of way per City Engineering Standards require a Standard Encroachment Permit.
  - c. Non-standard improvements in the right of way (e.g. retaining wall) shall require a Special Encroachment Permit.
5. Utilities:
  - a. Include the locations of all proposed utilities, gas, sewer, water etc. Indicate on the plans if the sewer lateral is proposed or existing. If the existing sewer lateral is going to be used the following must be completed:
    - i. Conduct a video inspection of the conditions of existing sewer lateral prior to building permit issuance. Submit a DVD to City Public Services Department. Repair or replace as required to prohibit inflow/infiltration.
  - b. Sewer Backwater Valve: A sewer backwater valve shall be installed on site to prevent a blockage or maintenance of the municipal sewer main from causing damage to the proposed project. (MBMC 14.07.030) Indicate on the plans.

Add the following Notes to the Plans:

1. Any damage to City facilities, i.e. curb/berm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay.

## **BUILDING CONDITIONS**

1. Building Permit: Prior to construction, the applicant shall submit a complete Building Permit Application and obtain the required Permit.

# EXHIBIT D

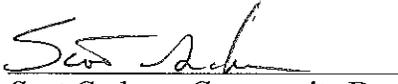
Planning Commission Resolution 28-15  
CP0-419 UP0-383: 3420 Toro Lane  
Page 8

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 6<sup>th</sup> day of October, 2015 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

  
Chairperson Robert Tefft

ATTEST

  
Scot Graham, Community Development Manager

The foregoing resolution was passed and adopted this 6<sup>th</sup> day of October, 2015.

# EXHIBIT D

## Attachment 1 to Resolution PC 28-15

### Mitigation Monitoring and Reporting Program

#### AESTHETICS:

**AES Impact 1**      **Visibility of night lighting and daytime glare would adversely affect views resulting in a direct long-term impact.**

*AES/mm-1*      *Prior to issuance of a building permit, a comprehensive lighting plan shall be submitted for review and approval by the City. The lighting plan shall be prepared using guidance and best practices endorsed by the International Dark Sky Association. The lighting plan shall address all aspects of the lighting, including but not limited to all buildings, infrastructure, parking and driveways, paths, recreation areas, safety, and signage. The lighting plan shall include the following at minimum:*

- a) The point source of all exterior lighting shall be shielded from offsite views.*
- b) Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields.*
- c) Lumination from exterior lights shall be the lowest level allowed by public safety standards.*
- d) Exterior lighting shall be designed to not focus illumination onto exterior walls.*
- e) Bright white-colored light shall not be used for exterior lighting.*
- f) Any signage visible from offsite shall not be internally illuminated.*

*AES/mm-2*      *Prior to issuance of a building permit, the applicant shall submit building plans and elevations for review and approval consistent with the following conditions:*

- a) No highly reflective glazing or coatings shall be used on windows.*
- b) No highly reflective exterior materials such as chrome, bright stainless steel, or glossy tile shall be used on the portions of the development where visible from off-site locations.*

After implementation of these measures, residual impacts would be less than significant.

#### Monitoring:

The City of Morro Bay would verify implementation of these design details through review and approval of the lighting plan and building plans prior to issuance of building permits for the project.

#### AIR QUALITY

**AQ Impact 1**      **Construction activities associated with development of the proposed project would result in short-term emissions of DPM, potentially affecting sensitive receptors.**

*AQ/mm-1*      *Prior to issuance of grading and construction permits, the applicant shall submit plans including the following notes, and shall comply with the following standard mitigation measures for reducing diesel particulate matter (DPM) emissions from construction equipment:*

- a) Maintain all construction equipment in proper tune according to manufacturer's specifications;*

# EXHIBIT D

3420 Toro Lane  
CP0-419 & UP0-383  
Resolution 28-15  
Mitigation, Monitoring and Reporting

- b) *Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);*
- c) *Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation;*
- d) *Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation;*
- e) *Construction or trucking companies with fleets that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance;*
- f) *All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5-minute idling limit;*
- g) *Excessive diesel idling within 1,000 feet of sensitive receptors is not permitted;*
- h) *Electrify equipment when feasible;*
- i) *Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,*
- j) *Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.*

## **AQ Impact 2**

**Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.**

### *AQ/mm-2*

*Prior to issuance of grading and construction permits, the applicant shall include the following notes on applicable grading and construction plans, and shall comply with the following standard mitigation measures for reducing fugitive dust emissions such that they do not exceed the APCD's 20 percent opacity limit (APCD Rule 401) and do not impact off-site areas prompting nuisance violations (APCD Rule 402) as follows:*

- a) *Reduce the amount of disturbed area where possible;*
- b) *Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water shall be used whenever possible;*
- c) *All dirt stockpile areas shall be sprayed as needed;*
- d) *Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible, following completion of any soil disturbing activities;*
- e) *All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;*
- f) *All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.*

# EXHIBIT D

3420 Toro Lane  
CP0-419 & UP0-383  
Resolution 28-15  
Mitigation, Monitoring and Reporting

- g) *Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;*
- h) *All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114;*
- i) *Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;*
- j) *All PM<sub>10</sub> mitigation measures required shall be shown on grading and building plans; and*
- k) *The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. The name and telephone number of such persons shall be provided to the APCD Compliance Division and listed on the approved building plans prior to the start of any grading, earthwork or demolition.*

**AQ Impact 3**      **Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.**

*AQ/mm-3*      *Prior to issuance of a grading permit, the applicant shall submit a geologic evaluation that determines if naturally occurring asbestos (NOA) is present within the area that will be disturbed. If NOA is not present, an exemption request shall be filed with the District. If NOA is found at the site, the applicant shall comply with all requirements outlined in the Asbestos ATCM. This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the APCD.*

With implementation of these measures, air quality impacts would be less than significant.

## **Monitoring:**

Copies of regulatory forms will be submitted to the APCD for review and approval, consistent with existing regulations. The applicant is required to submit approval documentation from APCD to the City Community Development Director/Planning Manager. Monitoring or inspection shall occur as necessary to ensure all construction activities are conducted in compliance with the above measures. Measures also require that a person be appointed to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. All potential violations, remediation actions, and correspondence with APCD will be documented and on file with the City Community Development Director.

## **BIOLOGICAL RESOURCES**

**BIO Impact 1**      **Development of the project could indirectly affect the natural drainage feature to the north of the site, coastal and shoreline habitat to the west, and special-status species and wildlife in the proximity.**

*BIO/mm-1*      *Prior to issuance of construction permits, the applicant shall submit documentation verifying designation of a qualified environmental monitor for all biological resources measures to ensure compliance with Conditions of Approval and mitigation measures. The monitor shall be responsible for: (1) ensuring that procedures for verifying compliance with environmental mitigations are followed; (2) lines of communication and reporting methods; (3) compliance reporting; (4) construction crew training regarding environmentally sensitive areas; (5) authority to stop work; and (6) action to be taken in the event of non-compliance. Monitoring shall be at a frequency and*

# EXHIBIT D

3420 Toro Lane  
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*duration determined by the affected natural resource agencies, which may include the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, California Coastal Commission, U.S. Fish and Wildlife Service, and the City of Morro Bay.*

*BIO/mm-2*

*Prior to the initiation of construction, the environmental monitor shall conduct environmental awareness training for construction personnel. The environmental awareness training shall include discussions of sensitive habitats and animal species in the immediate area. Topics of discussion shall include: general provisions and protections afforded by the Endangered Species Act; measures implemented to protect special-status species; review of the project boundaries and special conditions; the monitor's role in project activities; lines of communications; and procedures to be implemented in the event a special-status species is observed in the work area.*

*BIO/mm-3*

*Prior to the initiation of construction, the applicant's contractors and the environmental monitor shall coordinate the placement of project delineation fencing throughout the work areas. The environmental monitor shall field fit the placement of the project delineation fencing to minimize impacts to sensitive resources. The project delineation fencing shall remain in place and functional throughout the duration of the project. During construction, no project related work activities shall occur outside of the delineated work area.*

*BIO/mm-4*

*Prior to issuance of grading and construction permits, the applicant shall submit a Habitat Restoration and Enhancement Plan prepared by a qualified restoration ecologist for the review and approval by the City Community Development Manager. The plan shall be implemented concurrent with or immediately following construction. The plan shall include, but not be limited to the following measures, pursuant to the Biological Resources Assessment (KMA December 2013 and KMA Addendum 2014):*

- a. Prior to any construction activities, a construction buffer shall be demarcated with highly visible construction fencing or staking for the benefit of contractors and equipment operators.*
- b. Restoration of surface contours through minor grading and seeding native vegetation may be required to reduce the erosion potential and provide temporary cover during and after construction.*
- c. Non-native and invasive plant species shall not be permitted in the approved buffer areas. For a list of noxious weeds and appropriate plant materials, please refer to the following sources: the California Invasive Plant Council website at [www.cal-ipc.org](http://www.cal-ipc.org) and the County of San Luis Obispo's approved landscape plant list. Substitutions may be allowed, but shall be approved by a qualified botanist.*
- d. The ESH buffer areas shall utilize native species characteristic of the coastal scrub and coastal grassland habitat. Landscaping around the house and to the east and south shall utilize drought tolerant, non-invasive species.*
- e. As part of any building permit application, a sediment and erosion control plan shall be submitted that specifically seeks to protect the drainage and protected native habitat adjacent to the construction site. Erosion control measures shall be implemented to prevent runoff from the site. Silt fencing, straw bales, and/or sand bags shall be used as well as other methods to prevent erosion and sedimentation of the drainage channel. The plan shall specify locations and types of erosion and sediment control structures and materials that would be used on-site during construction activities. Biotechnical approaches using native vegetation shall be used as feasible. The plan shall also describe how any and all pollutants originating from construction equipment would be collected and disposed.*
- f. Current Best Management Practices (commonly referred to as BMPs) shall be utilized to minimize impacts to the drainage feature and native habitat areas onsite. Washing of concrete, paint, or equipment shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Washing of equipment, tools, roads, etc. shall not be allowed in any location where the tainted water could affect the drainage and adjacent beach's sensitive biological resources.*

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- g. *Identification of areas to be seeded or planted following weed abatement, planting and weed control methodologies, measures to protect plantings during the establishment period, irrigation methods and timing (which shall not result in erosion or down-gradient sedimentation).*
- h. *The plan shall be monitored for two years following initial site preparation, planting, and seeding.*
- i. *Two annual monitoring reports shall be submitted to the City Community Development Manager, and shall include written explanation of adherence to the plan, any necessary remediation or maintenance actions, and photo-documentation.*

## **BIO Impact 2**

**Development of the project could adversely affect nesting birds onsite or in the proximity.**

*BIO/mm-5*

*Prior to ground disturbance, to minimize impacts to nesting bird species, including special status species and species protected by the Migratory Bird Treaty Act, initial site grading shall be limited to outside the nesting season and focused during the time period between September 1 and February 1 as feasible. If initial site disturbance cannot be conducted during this time period, a pre-construction survey for active bird nests onsite shall be conducted by a qualified biologist. Surveys shall be conducted within two weeks prior to any construction activities. If no active nests are located, ground disturbing/construction activities can proceed. If active nests are located, then all construction work shall be conducted outside a non-disturbance buffer zone to be developed by the qualified biologist based on the species (i.e., 50 feet for common species and upwards of 250 feet for special status species), slope aspect and surrounding vegetation. No direct disturbance to nests shall occur until the young are no longer reliant on the nest site as determined by the project biologist. The biologist shall conduct monitoring of the nest until all young have fledged.*

After implementation of these measures, residual impacts to biological resources would be less than significant.

### **Monitoring:**

The City shall verify required elements on plans and compliance in the field. The City shall review and approve plans and monitoring reports.

## **CULTURAL RESOURCES**

### **CR Impact 1**

**Ground disturbance associated with the construction of the residence and all associated facilities may result in the inadvertent discovery of previously undocumented archaeological resources.**

*CR/mm-1*

*A qualified archaeologist and a Salinan or Chumash Native American who is culturally affiliated to the project area, as approved by the City, shall be on site to monitor grading, trenching and related site preparation. The name and contact information of the monitoring archaeologist shall be included on the cover sheet of the building plans. Prior to a request for foundation inspection, the applicant shall submit a report prepared by the monitoring archaeologist summarizing the dates and times of monitoring and observations regarding the presence or absence of cultural material during grading operations.*

*CR/mm-2*

*In the event that intact and/or unique archaeological artifacts or historic or paleontological resources are encountered during grading, clearing, grubbing, and/or other construction activities associated with the proposed project involving ground disturbance, all work in the immediate vicinity of the find shall be stopped immediately, the onsite archaeological monitor shall be notified, and the resource shall be evaluated to ensure the discovery is adequately recorded, evaluated and, if significant, mitigated.*

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CR/mm-3

*Prior to any grading or construction, contractors involved in grading and grubbing activities shall receive training from a City-approved qualified archaeologist knowledgeable in local tribes. At a minimum, the training shall address the following:*

- a) Review of the types of archaeological artifacts that may be uncovered.*
- b) Provide examples of common archaeological artifacts to examine.*
- c) Review what makes an archaeological resource significant to archaeologists and local Native Americans.*
- d) Describe procedures for notifying involved or interested parties in case of a new discovery.*
- e) Describe reporting requirements and responsibilities of construction personnel.*
- f) Review procedures that shall be used to record, evaluate, and mitigate new discoveries.*
- g) Describe procedures that would be followed in the case of discovery of disturbed or intact human burials and burial-associated artifacts.*

After implementation of these measures, residual impacts would be less than significant.

## **Monitoring:**

The City Community Development Director shall verify compliance with this measure.

## **GEOLOGY/SOILS**

**GS Impact 1**

**Development associated with the proposed project places structures and people in an area subject to geologic hazards including seismic groundshaking, and risks associated with slope stability.**

GS/mm-1

*Upon application for grading and construction permits, all mitigation measures identified in the September 13, 2002 Geologic Report and September, 2013 Update prepared by Earth Systems Pacific shall be incorporated into the project. These measures shall be included on all grading and building plans. These include the following:*

- a. The Certified Engineering Geologist of record shall provide an engineering geologist's written certification of adequacy of the proposed site development for its intended use.*
- b. A Certified Engineering Geologist shall review, approve and stamp construction plans including all plans for building foundations and excavation.*
- c. The Certified Engineering Geologist shall inspect work on-site and verify that building construction, including all foundation work, has been performed in a manner consistent with the intent of the plan review and engineering geology report.*
- d. Before final inspection and/or issuance of occupancy permits, should the services of the Certified Engineering Geologist be terminated the applicant shall submit a transfer of responsibility statement to the Planning Division from the new Certified Engineering Geologist pursuant to the Uniform Building Code.*

GS/mm-2

*Concurrent with submittal of construction plans, the applicant shall submit a Soils Report, prepared by a California Registered Geologist or Soils Engineer, a Geology Report, prepared by a*

# EXHIBIT D

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*California Registered Geologist, and a Slope Stability Report, prepared by a California Registered Engineering Geologist. The Soils Report shall address soils engineering and compaction requirements, slope stability issues, drainage locations with respect to walls, finish floor elevations, drain materials, and shall contain recommendations regarding foundation design, retaining wall design, and paving sections, where applicable, for the project. The soils report shall be reviewed and approved by the City Engineer.*

*GS/mm-3 Prior to issuance of grading and construction permits, the applicant shall prepare a drainage and erosion control plan to reduce the potential for erosion and down-gradient sedimentation both during construction and for the life of the project. Grading and construction plan shall include measures to prevent and avoid spills or spread of dangerous materials and clean-up procedures in the event of a spill. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with the erosion control plan.*

After implementation of these measures, residual impacts related to geology and soils would be less than significant.

## **Monitoring:**

Design plans shall be inspected and approved by the City Engineer to ensure compliance with the requirements of the Geologic Report. Erosion control plans shall be submitted to the City Community Development Department for review and approval, in consultation with the City Engineer. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with design plans and the drainage and erosion control plan.

## **HAZARDS AND HAZARDOUS MATERIALS**

**HAZ Impact 1** Development associated with the proposed project has the potential to result in the accidental release of hazardous materials into sensitive areas adjacent to the project site.

*HAZ/mm-1 Prior to construction, the applicant shall prepare a drainage and erosion control plan which also specifically addresses hazardous materials to be used during construction and operation, and identifies procedures for storage, distribution, and spill response for review and approval by the City Community Development Department. The plan shall identify hazardous materials to be used during construction and operation, and shall identify procedures for storage, distribution, and spill response. Equipment refueling shall be done in non-sensitive areas and such that spills can be easily and quickly contained and cleaned up without entering any existing stormwater drainage system or creek. The plan shall include procedures in the event of accidents or spills, identification of and contact information for immediate response personnel, and means to limit public access and exposure. Any necessary remedial work shall be done immediately to avoid surface or ground water contamination. The plan shall be implemented by the construction contractor, and verified by the City Building Inspector.*

With implementation of this mitigation measure, impacts related to hazards and hazardous materials would be less than significant.

## **Monitoring:**

The applicant shall be responsible for implementing the approved drainage and erosion control including spill prevention control and response measures. The City Building Inspector shall conduct periodic inspections to verify compliance.

# EXHIBIT D

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## HYDROLOGY AND WATER QUALITY

**HWQ Impact 1**      **The project would increase impervious surfaces at the project site, which would increase the total volume of storm water runoff and could contribute to erosion, siltation and flooding risks.**

*HWQ/mm-1*      *Prior to issuance of grading permits, the applicant shall submit a final grading and drainage plan for review and approval by the City Engineer and California Department of Transportation (Caltrans). The drainage plan shall demonstrate that additional runoff resulting from the project would not compromise the existing culvert under Toro Lane, and would avoid scour under the culvert structure and concrete portion of the channel.*

*HWQ/mm-2*      *Prior to issuance of grading permits, final plans shall clarify if any work will occur within the easement for the culvert and drainage channel and obtain any encroachment permit deemed necessary by the City Engineer.*

*HWQ/mm-3*      *Prior to issuance of grading and building permits, the applicant shall submit construction plans incorporating Low Impact Development (LID) planning principles, to the maximum extent feasible, consistent with the City of Morro Bay "Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements" to the satisfaction of the Public Works Director.*

After implementation of these measures, residual impacts would be less than significant.

### Monitoring:

Monitoring shall occur as necessary to ensure development is proceeding consistent with the final grading and drainage plan. The City shall verify receipt of a copy of the Caltrans-issued Encroachment Permit.

## NOISE

**N Impact 1**      **The proposed project places structures and people in an area subject to excessive noise levels associated with traffic along State Route 1.**

*N/mm-1*      *Prior to issuance of building permits, the applicant shall submit plans incorporating noise mitigation measures, including, but not limited to:*

- a. location of all vents and other roof and wall penetrations on walls and roofs facing away from the noise source (on the north, west and east elevations whenever possible)*
- b. use of bends and insulation in ventilation systems*
- c. use of closable dampers*
- d. Sound Transmission Class rated wall, door and window materials*
- e. use of acoustical sealant on all windows and other openings as appropriate.*

With implementation of these construction measures, impacts would be less than significant.

### Monitoring:

Monitoring shall occur as necessary to ensure development is proceeding consistent with the mitigation measures and that all exterior and interior noise levels are consistent with levels established in the Noise Element prior to occupancy.

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## Acceptance of Mitigation Measures by Project Sponsor:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

# EXHIBIT D

# EXHIBIT E

AGENDA ITEM: A-1

DATE: November 3, 2015

ACTION: \_\_\_\_\_

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING – OCTOBER 6, 2015  
VETERANS MEMORIAL BUILDING – 6:00 PM

PRESENT: Robert Tefft Chairperson  
Katherine Sorenson Vice-Chairperson  
Gerald Luhr Commissioner  
Michael Lucas Commissioner  
Richard Sadowski Commissioner

STAFF: Scot Graham Community Development Manager  
Cindy Jacinth Associate Planner  
Whitney McIlvaine Contract Planner

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE  
PLANNING COMMISSIONER ANNOUNCEMENTS – NONE

## PUBLIC COMMENTS

Chairperson Tefft opened Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=3m19s>

Chairperson Tefft closed the Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=3m42s>

## PRESENTATIONS – NONE

### A. CONSENT CALENDAR

<https://youtu.be/CSw0mXgmykM?t=3m47s>

A-1 Approval of amended Planning Commission Resolution No. 34-15 with added findings and condition of approval for Burger King Restaurant at 781 Quintana; continued from the 9/15/2015 Planning Commission meeting.  
**Staff Recommendation:** Approve Planning Commission Resolution No. 34-15

A-2 Current and Advanced Planning Processing List  
**Staff Recommendation:** Receive and file.

**MOTION:** Vice-Chairperson Sorenson moved to approve the Consent Calendar. Commissioner Sadowski seconded. The motion passed 4-1 with Commissioner Lucas dissenting.

### B. PUBLIC HEARINGS

B-1 **Case No.:** #UP0-359 (continued from the 3-3-15 Planning Commission hearing)  
**Site Location:** 725 Embarcadero, Morro Bay, CA  
**Proposal:** Concept Plan approval of Conditional use permit for construction of new gangway, dock, and seven (7) boat slips which will be 6 private month-to-month rentals and 1 public slip controlled by the Harbor Dept.  
**CEQA Determination:** Mitigated Negative Declaration, State Clearinghouse #2015011002

# EXHIBIT E

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING –OCTOBER 6, 2015

Phil Both, Morro Bay resident, stated he supports the project.

Betty Winholtz, Morro Bay resident stated her concerns on the issues stated in the Coastal Commission letter. She stated she would like to have the buildable area defined and noted there was no updated information on the geologists load and configuration report for the bluff. She also noted her concerns about the trail.

Carol Raines, Morro Bay resident, stated she and her husband have been using the designated parking lots and stairs for 15 years and have no issues with using them. She stated she is in support of the project.

Chairperson Tefft closed Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=46m19s>

**MOTION:** Commissioner Luhr moved to approve Resolution PC 28-15 with the deletion of planning condition 16 regarding fencing at the ESH boundary and amended language for planning conditions 19, 20, 21, 22 and 23 regarding the coastal access trail. Commissioner Lucas seconded the motion and the motion passed 4-1 with Commissioner Sadowski dissenting.  
<https://youtu.be/CSw0mXgmykM?t=1h16m1s>

**B-3 Case No.:** #CP0-410 & UP0-369 *(continued from the 9-1-15 Planning Commission hearing)*

**Site Location:** 289 Main Street

**Proposal:** Coastal Development Permit & Conditional Use Permit to construct a 2,882sf single family residence with 503sf basement and 520sf garage on a vacant lot. This project is located inside the Coastal Commission appeals jurisdiction.

**CEQA Determination:** Categorically exempt, Class 3

**Staff Recommendation:** Conditionally approve

**Staff Contact:** Cindy Jacinth, Associate Planner, (805) 772-6577

<https://youtu.be/CSw0mXgmykM?t=1h19m53s>

Chairperson Tefft recused himself because he lives within the 500 foot proximity of the project.

## COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –

- Vice-Chairperson Sorenson received an email correspondence from the applicant's representative.
- Commissioner Lucas received an email from the applicant's representative.
- Commissioner Luhr communicated on the telephone with the applicant's representative.

Jacinth presented the staff report.

Vice-Chairperson Sorenson opened Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=1h45m12s>

# EXHIBIT E

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING –OCTOBER 6, 2015

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –  
None

McIlvaine presented the staff report.

Chairperson Tefft opened Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=2h31m48s>

Chairperson Tefft closed Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=2h33m23s>

Chairperson Tefft opened Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=2h34m58s>

**MOTION:** Vice-Chairperson Sorenson moved to approve Resolution PC 7-15. Commissioner Sadowski seconded the motion and the motion passed 4-1 with Commissioner Lucas dissenting.  
<https://youtu.be/CSw0mXgmykM?t=2h42m40s>

**B-5 Case Number:** N/A

**Site Location:** Vacant Mindoro Street lot, West side of Highway 1 abutting the HWY 1 right of way. APN: 065-113-066

**Proposal:** Planning Commission review of General Plan conformance in association with City property disposal/sale. The City has listed the subject property for sale and prior to any property sale, California Government Code Section 65402 requires the Planning Commission to review and report on the property disposition as to conformity with the City's General Plan.

**CEQA Determination:** Exempt Per Section 15061(b)(3)

**Staff Recommendation:** Continue item to a date uncertain to allow staff time to prepare a site evaluation taking into consideration lot size and easement locations.

**Staff Contact:** Scot Graham, Community Development Manager, (805) 772-6291

<https://youtu.be/CSw0mXgmykM?t=2h49m45s>

Graham presented staff report.

Chairperson Tefft opened Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=2h53m12s>

Lindsey Castro, a Bakersfield resident, stated she and her husband were very interested in purchasing the property and has already placed an offer for it.

Chairperson Tefft closed Public Comment period.  
<https://youtu.be/CSw0mXgmykM?t=2h54m41s>

**MOTION:** Commissioner Luhr moved to continue item to a date uncertain. Commissioner Lucas seconded the motion and the motion passed unanimously (5-0).  
<https://youtu.be/CSw0mXgmykM?t=2h54m54s>

C. UNFINISHED BUSINESS - NONE

# EXHIBIT F

Re: Proposed trail for Morro Bay's beach access easement at 3420  
Toro Lane

My name is Bob Mason and I have been constructing and maintaining California State Park trails for thirteen years throughout San Luis Obispo County. Our volunteer organization, under the auspices of the California Department of Parks and Recreation, utilize the guidelines found in the Department of Parks and Recreation Trail Handbook to construct and maintain these trails.

I have been working with the Fryes and have been on their property several times in regards to a new trail from Toro Lane to the beach. It will cross the northern aspect of their property. I have analyzed the existing trail as well as the proposed trail realignment and feel the proposed trail will be a simple project. The new trail will be comparable to the existing trail, but will have the advantage of being designed with sustainability in mind.

Best regards,

Bob Mason

RECEIVED

SEP 30 2015

City of Morro Bay  
Community Development Dept.



AGENDA NO: B-2

MEETING DATE: October 6, 2015

## Staff Report

TO: Planning Commissioners

DATE: October 6, 2015

FROM: Whitney McIlvaine, Contract Planner

SUBJECT: Coastal Development and Conditional Use Permit (CP0-419 &amp; UP0-383)

Continued review from the August 18, 2015 Planning Commission meeting of a request to construct a single-family residence with an attached garage on a vacant coastal lot with designated environmentally sensitive habitat (ESH) at 3420 Toro Lane.

### RECOMMENDATION:

*CONDITIONALLY APPROVE THE PROJECT* by adopting Planning Commission Resolution 28-15 which includes findings for adoption of the Mitigated Negative Declaration and findings, conditions, and environmental mitigation measures for approval of the project.

### APPLICANTS/AGENT:

Greg and Jeanne Frye, Owners/Applicants  
Chris Parker, Architect  
Rachell Kovesdi, Agent

### LEGAL DESCRIPTION/APN:

065-091-022



### PROJECT DESCRIPTION:

The project proposes construction of a 1,580 square-foot single-story house with an attached 552 square-foot garage and approximately 240 square feet of open patio. Plans show a 50-foot ESH buffer from the coastal dune habitat and a 25-foot buffer from the edge of the stream corridor. Revisions to the plans reviewed at the August 18, 2015 meeting are discussed below.

### PREVIOUS REVIEW:

The staff report prepared for the August 18, 2015 Planning Commission meeting is available on the City website at <http://www.morro-bay.ca.us/DocumentCenter/View/8846>. Meeting minutes are available at <http://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2545>, and attached as Exhibit E. Commissioners and members of the public discussed coastal access, project architecture, site constraints shaping the resulting building envelope, and proposed grading. Plans submitted

Prepared By: WM

Department Review: SG

September 29, 2015 show revisions in response to Commission direction.

## **RESPONSE TO PLANNING COMMISSION DIRECTION:**

At its meeting of August 18, 2015, the Planning Commission voted 4-0 (Commissioner Sorenson absent), to continue action to a date uncertain on the project with the following direction:

1. *Redesign the project to minimize the amount of excavation and removal of natural land form at the west end of the bluff.*

Revised plans show a reduction in the amount of excavation in this area of the site. Less grading is now proposed for the yard area beyond the patio. Previously the finish elevation of the yard area was proposed to range from 32 feet up to 35 feet. Current plans show the finish elevation at 34 to 35 feet. The retaining wall along the south property line now wraps around the west end of the patio instead of extending approximately 23 feet beyond the patio. Planning conditions 24 and 25 in the attached resolution address limitations on the extent of retaining walls and fencing in this area.

2. *Explore a common driveway configuration through the undeveloped Toro Lane right-of-way such that development on the adjacent lot to south (APN: 065-091-023) could share access. Please provide a conceptual plan of this shared access.*

The applicants have responded that they are not interested in creating a common driveway because of concerns for safety and liability issues that can arise with sharing a common driveway. The other lot already has access from Yerba Buena. Also, parking is prohibited on common driveways which could complicate the design and location of the common area, especially without a development proposal for the adjacent lot. Development of the adjacent lot will require Planning Commission approval in the future. Staff recommend revisiting the common driveway idea at the time plans are being formulated for that project.

3. *Alter the architectural treatment to be more aesthetically distinctive and innovative and to relate more particularly to the project setting consistent with the City's Design Guidelines, especially in terms of the northerly façade. Provide more fully rendered elevations of the house.*

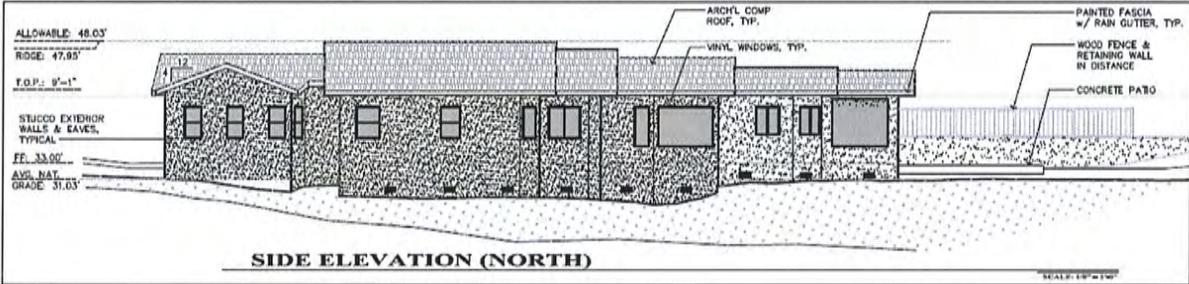
Revised plans show more fully developed design elements, including a slightly altered roof line utilizing concrete tiles rather asphalt shingles, a four-foot recess in the under floor foundation along the northern side of the building with decorative wooden corbels, and large picture windows with lower sliders and casement and awning windows in place of double hung windows. A precast concrete sill is proposed for the windows. A beveled stucco detail is proposed at the sides and top of windows and doors. Two bay windows are shown in the northerly elevation of the house that would accommodate a window seat in the office and in the dining area. Minor changes to the floor plan are shown at the main entry, in the master bath and in the kitchen layout. Revised plans are attached as Exhibit B. Previous plans are part of the August 18, 2015 staff report, included in the

# EXHIBIT G

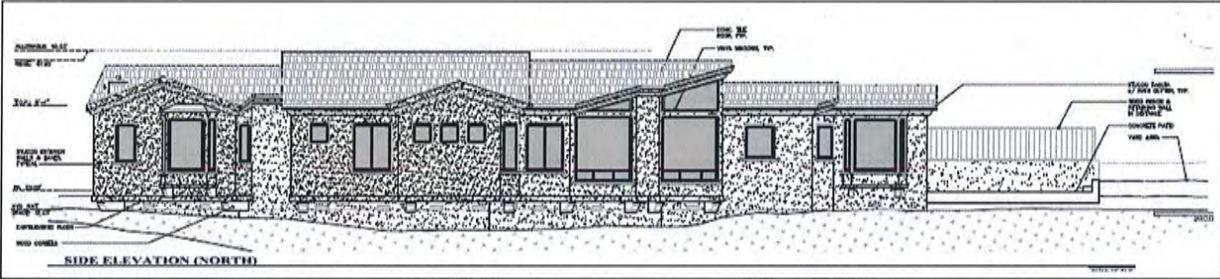
Planning Commission  
October 6, 2015  
3420 Toro Lane

Commissioners' packets and on line at <http://www.morro-bay.ca.us/DocumentCenter/View/8846>. A revised color board is attached as Exhibit C. Colored renderings are attached as Exhibit D.

### Previous North Elevation



### Revised North Elevation



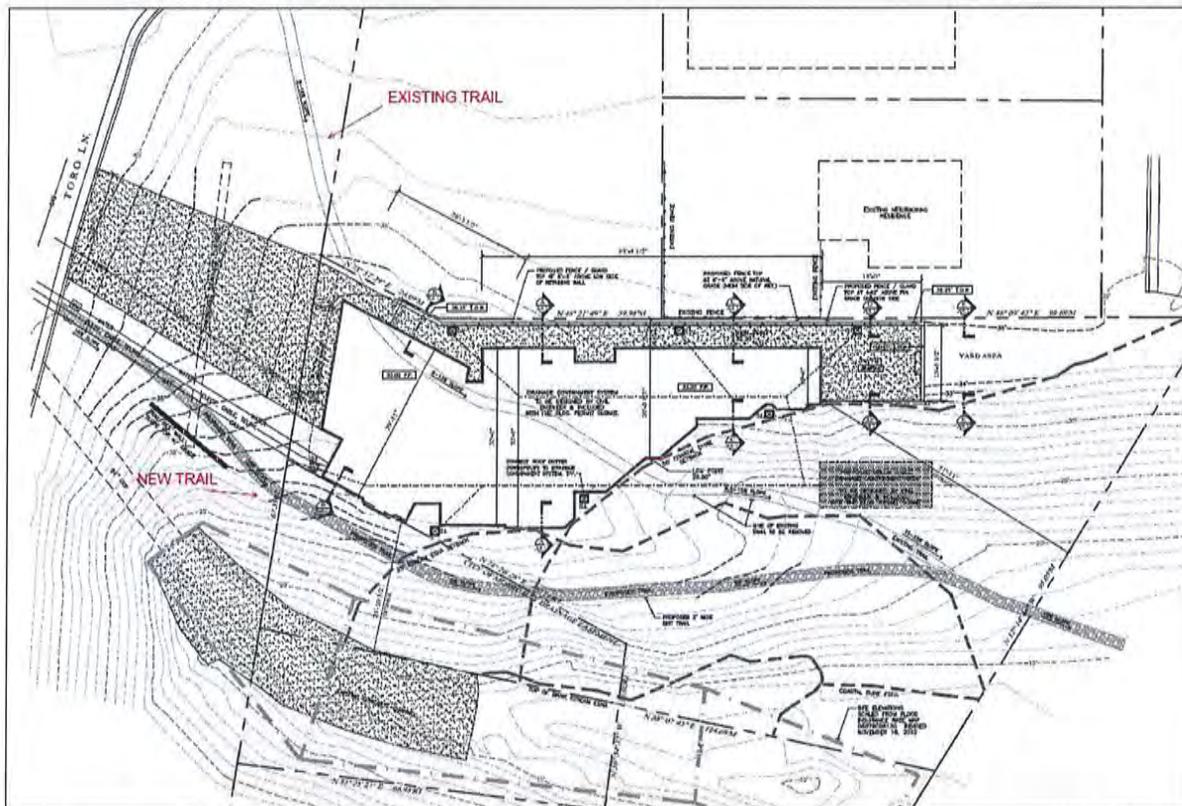
### Color Rendering of Revised Plans



- 4. Provide a conceptual plan showing the location of a re-routed public access trail through the

site and the adjacent undeveloped Toro Lane right-of-way with a link to the trail from the residence.

Plans show a re-routed trail to the north of the existing trail, both through the right-of way and through the project site. The two overlap near the western edge of the site. Planning Conditions 19-23 in the attached resolution address provisions for coastal access should the Commission decide coastal access is required as part of this project. Coastal access is further discussed below.



5. *The Planning Commission also instructed staff to include conditions in a resolution for approval that address prohibition of shoreline protective devices and prohibition of trails through the ESH areas other than for public access and a link from the residence.*

Please refer to Planning Conditions 18 and 23 in the attached resolution (Exhibit A).

### **Public Prescriptive Easement**

Staff is aware some members of the public believe the public has acquired a prescriptive right to use the existing trail across the property for access to the beach. Whether or not such right has been acquired is not yet known. Establishment of such a right is a fact-specific determination, ultimately made by a court and outside the purview of the Planning Commission's review of the project. However, given public interest in the potential for a prescriptive right determination, Coastal

# EXHIBIT G

Planning Commission

October 6, 2015

3420 Toro Lane

Commission staff asked that the City provide information regarding historic use of the on-site trail and potential environmental impacts of providing an alternate trail through the ESH buffer. *Some Facts About Public Prescriptive Rights* is an educational summary of the issue prepared by the California Coastal Commission and attached as Exhibit F.

Several sources of information point to the trail's historic use. Aerial photos dating back to 1953 show beach access crossing the site. Some of these are included in a September 29, 2015 report prepared by Earth Systems Pacific in response to earlier Coastal Commission staff comments (<http://www.morro-bay.ca.us/DocumentCenter/View/8742>). In support of a prescriptive right determination, roughly 75 public use questionnaires were submitted to the City for consideration at the August 18, 2015 Planning Commission meeting. (These can be viewed on the City web page at <http://www.morro-bay.ca.us/index.aspx?NID=842> along with a summary of the questionnaires prepared by an interested Morro Bay resident.) Anecdotal evidence of trail use was also presented at the August 18, 2015 meeting.

Also in response to Coastal Commission staffs' request for information, Planning Commission Chairman Robert Tefft assembled the attached *Investigation as to Potential Prescriptive Easement* (Exhibit G). This document provides information on the project setting, describes nearby coastal-related facilities and coastal access routes, includes a summary of relevant regulatory background and agency authority, and addresses the relevance of a potential public prescriptive easement in reviewing the proposed project at 3420 Toro Lane. The document also outlines the basic criteria for determining prescriptive rights to use a property. The summary of the public use questionnaires is included in the document as Appendix B.

The Coastal Commission, with the help of the State Attorney General's Office, could decide to further research whether or not the prescriptive right criteria appear to be satisfied in this case. If research indicates the public use is substantial enough to create potential prescriptive rights, the Attorney General's Office has the authority to proceed with legal action. Legal action can also be initiated by members of the public or by the City of Morro Bay at the behest of the City Council.

Evaluation of whether or not to proceed with legal action will necessarily include consideration of the overall goal of protecting coastal access consistent with other stated goals of the Coastal Act, including conservation and protection of environmentally sensitive coastal resources, and whether loss of this access can be considered significant in light of the number and variety of available alternative coastal access points nearby. Any requirement to allow continued use of the existing trail would effectively preclude site development, given other constraints on the location and size of the building envelope, and would raise the question of a property taking. Coastal Commission staff have confirmed that a reasonably comparable on-site trail would satisfy the Coastal Act requirement for protection of access.

## **Coastal Access and Project Review**

# EXHIBIT G

*Planning Commission*

*October 6, 2015*

*3420 Toro Lane*

Because the project is located seaward of the first public road, it is subject to the Public Access and Recreation policies of the Coastal Act, in addition to the City's LCP policies related to coastal access. For development between the nearest public road and the sea, the Planning Commission must make a specific finding regarding project conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

The project before the Planning Commission is a request for a coastal development and conditional use permit to construct a single-family home on a vacant lot at 3420 Toro Lane. Whether or not to condition the project to include a coastal access trail is a legitimate consideration. The Coastal Act and the City's LCP encourage maximum protection of coastal access, but also recognize situations where access would not be necessary or would be in conflict with other goals such as resource conservation, public safety and the protection of private property rights.

Comments from Coastal Commission staff on the June 2015 Mitigated Negative Declaration recommended the City further analyze the feasibility and environmental impact of including a public access trail within the stream buffer, given Coastal Act and City policies related to coastal access, and because there are members of the public who have an interest in continued access through the site. Please note the City also received approximately 35 letters in support of the project which specifically recommend against the continued provision of an access trail through the site. Public comment can be viewed on the City website at <http://www.morro-bay.ca.us/index.aspx?NID=842>.

The staff report prepared for the August 18, 2015 Planning Commission meeting includes a discussion of LCP and Coastal Act policies related to coastal access and concludes that a trail through this site to the beach is not necessary. There are numerous alternative access points nearby, with varying degrees of convenience relative to this site. Two sites in particular have well developed coastal access— the North Point Stairs and the Morro Strand State Park. North Point Stairs are approximately 800 feet to the north and the entrance to Morro Strand is approximately 1,000 feet to the south. Between North Point and the south end of Morro Strand, including the trail at 3420 Toro Lane, there are 17 access routes to the beach. Furthermore, coastal access through this site would reduce the area available for re-vegetation and habitat restoration in the Environmentally Sensitive Habitat buffer areas.

In response to Planning Commission direction, project plans show a re-routed trail through the site. The applicants have stated they are willing to provide coastal access through their property. However, they have concerns regarding liability and ongoing responsibility for maintenance. Provision of coastal access is not required for project approval. If the applicant wishes to include a coastal access trail as part of the project description as shown on the September 29, 2015 plans, staff recommends the following conditions be applied to the project:

# EXHIBIT G

*Planning Commission*

*October 6, 2015*

*3420 Toro Lane*

1. **Public Access Offer to Dedicate:** Prior to issuance of a building permit, the Applicant shall submit an offer to dedicate a public access easement through the project site to the satisfaction of the City Engineer and the Community Development Manager.
2. **Public Access Design:** Prior to issuance of a building permit, the Applicant shall submit a design for the construction of a public access trail through the project site and the adjacent Toro Lane right-of-way to the satisfaction of the City Engineer and the Community Development Manager.
3. **Construction of the Public Access:** Prior to issuance of final occupancy for the project, the Applicant shall construct all improvements necessary for the provision of public access through the site and in the adjacent Toro Lane right-of-way in accordance with the approved public access design.
4. **Trail Hours:** The beach access trail shall be open to the public from one hour before dawn until one hour after sunset.

At this time City of Morro Bay only has limited funds available to improve existing access ways, let alone acquire, improve and maintain new access ways. Findings and conditions in the attached resolution reflect staff recommendations if a coastal access trail remains part of the project description. Staff can provide amendments if a trail is no longer part of the project.

## **ENVIRONMENTAL DETERMINATION:**

On June 6, 2015, the 30-day public review period began for a Mitigated Negative Declaration (MND) of Environmental Impact. The MND identifies potentially significant impacts primarily associated with aesthetics, biological resources, and geology/soils, and recommends mitigation measures that, if incorporated into the project, would reduce potential impacts to a less than significant level. The full text of the MND is available on line at <http://www.morro-bay.ca.us/DocumentCenter/View/7529>. A hard copy was previously provided to each Planning Commissioner. Attachment 1 to the resolution for approval lists project mitigation measures and monitoring requirements.

## **PUBLIC COMMENT:**

In addition to public agency response to the MND, the City received written comments about the project from members of the public. Public comment is posted on the City website at <http://www.morro-bay.ca.us/DocumentCenter/View/8737>.

## **PUBLIC NOTICE:**

Notice of a public hearing on this item was published in the San Luis Obispo Tribune newspaper and posted on site on September 25, 2015. All property owners of record and occupants within 500 feet

of the subject site were mailed notification of this evening's public hearing and invited to voice any concerns on this application.

## **CONCLUSION:**

The project site is one of the last remaining vacant beachfront parcels in Morro Bay. As such, it has some notable constraints, including steep slopes, access through unimproved right-of-way, a drainage easement and intermittent stream corridor, coastal dune habitat and a flood zone boundary. The ESH and Special Treatment S.2A zoning overlays further restrict the site's developable area and project design. Public comment has been submitted both for and against coastal access through the site. Considerable effort has been made by the project applicant to address environmental concerns and design a project that addresses site constraints consistent with the Coastal Act and the City's Local Coastal Plan and Zoning Ordinance.

With the incorporation of conditions of approval and recommended environmental mitigation measures, staff recommends the Planning Commission approve the project as shown on plans dated September 29, 2015 by adopting Planning Commission Resolution 28-15 which includes the Findings for adoption of the Mitigated Negative Declaration and Findings, Mitigation Measures, and Conditions of Approval for the project.

## **EXHIBITS:**

Exhibit A – Planning Commission Resolution 28-15, with Attachment 1: *Mitigation Monitoring and Reporting Program*

Exhibit B – Project Plan Reductions, dated September 29, 2015

Exhibit C – Color Board

Exhibit D - Colored Renderings

Exhibit E – 9/18/15 meeting minutes

Exhibit F - *Some Facts About Public Prescriptive Rights*

Exhibit G – *Investigation as to Potential Prescriptive Easement*

Planning Commissioners' packets include full-size plans and the August 18, 2015 staff report and attachments. The MND was distributed at the August 4, 2015 Planning Commission meeting. Commissioners should bring their copy to the meeting.

## **On the City of Morro Bay Web Page:**

Environmental Review (MND):

<http://www.morro-bay.ca.us/DocumentCenter/View/7529>

Public Comment:

<http://www.morro-bay.ca.us/DocumentCenter/View/8737>

# EXHIBIT G

*Planning Commission*

*October 6, 2015*

*3420 Toro Lane*

Previous Coastal and USFWS 2014 comments:

<http://www.morro-bay.ca.us/DocumentCenter/View/8762>

Professional Studies and Reports:

GeoSolutions Soils Report:

<http://www.morro-bay.ca.us/DocumentCenter/View/8737>

2012 Biological Resources Report:

<http://www.morro-bay.ca.us/DocumentCenter/View/8739>

2013 Biological Resources Report:

<http://www.morro-bay.ca.us/DocumentCenter/View/8740>

2014 Biological Resources Assessment Addendum:

<http://www.morro-bay.ca.us/DocumentCenter/View/8741>

Earth Systems Pacific Response to Coastal Comments:

<http://www.morro-bay.ca.us/DocumentCenter/View/8742>

Earth Systems Pacific Revised Sea Wave Run-up Analysis:

<http://www.morro-bay.ca.us/DocumentCenter/View/8743>

Earth Systems Pacific Slope Stability Analysis:

<http://www.morro-bay.ca.us/DocumentCenter/View/8744>

Earth Systems Pacific Update of Geologic Bluff Study:

<http://www.morro-bay.ca.us/DocumentCenter/View/8745>



**LOW-IMPACT DEVELOPMENT**

HABITAT RESTORATION AND ENHANCEMENT AS PER BIOLOGY REPORT  
 NON-INVASIVE DROUGHT TOLERANT PLANTS  
 VEGETATED SWALES  
 AMEND SOILS  
 CATCH BASINS  
 CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)

**GREEN MEASURES**

ENERGY STAR APPLIANCES  
 TANKLESS WATER HEATER  
 HIGH EFFICIENCY FAU  
 LOW E GLAZING  
 SHIELDED LOW INTENSITY EXT. LIGHTING  
 TITLE 24 ENERGY COMPLIANCE  
 LOW & NO-VOC FINISHES

**BLDG. CODES**

2013 CALIFORNIA BUILDING CODE  
 2013 CALIFORNIA RESIDENTIAL CODE  
 2013 CALIFORNIA PLUMBING CODE  
 2013 CALIFORNIA MECHANICAL CODE  
 2013 CALIFORNIA ELECTRIC CODE  
 2013 CALIFORNIA ENERGY CODE  
 CALIFORNIA GREEN BUILDING CODE  
 2013 CALIFORNIA FIRE CODE  
 CALIFORNIA REFERENCE STANDARDS CODE

**STORMWATER**

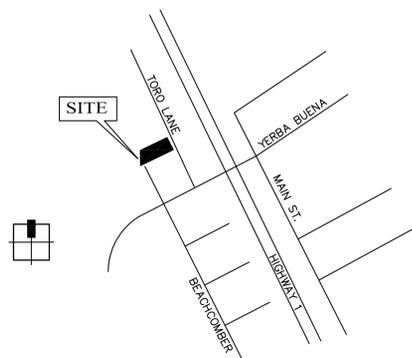
APPENDIX A

SFR PERFORMANCE REQUIREMENT DETERMINATION FORM

The following form shall be completed for all SFR development and redevelopment projects. Projects that are exempt from performance requirements are required to complete Section 1 & 2 only.

Section 1: General Information	
Project name	FRYE RESIDENCE
Project Address	3420 TORO LN
Assessor's Parcel Number(s)	065-091-022
Name of Applicant	GREG & JENNIE FRYE
Applicant email address:	gryfne@gmail.com
Applicant phone:	(805) 235-6503
Project Type (e.g. single-family residential, commercial, etc.)	SINGLE-FAMILY RESIDENCE
Section 2: Area Information (ft <sup>2</sup> )	
Total Project Area	SITE: 10,019 SQ. FT.
Total Existing Impervious surface area	NONE
Proposed Gross Impervious Area (list only the surface areas that are being created or replaced)	
a. Rooftops	2124.7 SQ. FT.
b. Driveways	581.6 SQ. FT.
c. Patios	<PART OF B.>
d. Parking Lots	
e. Other	
Total Gross Impervious Area	2,706.3 SQ. FT.
If Gross Impervious Area <2,500 ft <sup>2</sup> , write "EXEMPT". Otherwise continue to Sec. 3	
Section 3: PR Determination	
Net Impervious Area (from page 7)	2,706.3 SQ. FT.
Performance Requirements (from Flow Chart)	#1 & #5

**VICINITY MAP**



**PROJECT INFO.**

APN: 065-091-022  
 ZONING: R-1 / S.2.A / ESH  
 PROPOSED NEW RESIDENCE:  
 CONDITIONED SPACE: 1,569 SQ. FT.  
 GARAGE: 552 SQ. FT.  
 COVERED ENTRY: 17 SQ. FT.  
 OPEN PATIO: 242.4 SQ. FT.  
 PORTION OF DRIVEWAY & CONC. FLATWORK ON PROPERTY: 581.6 SQ. FT.  
 PORTION OF DRIVEWAY IN RIGHT-OF-WAY: 1,056 SQ. FT.  
 LOT SIZE: 10,019 SQ. FT.  
 PROPOSED LOT COVERAGE: (2,138 SQ. FT.) 21.3%  
 [HOUSE, GARAGE, & COVERED ENTRY]  
 PROPOSED IMPERVIOUS SURFACES: 2,948.7 SQ. FT.  
 [WITHIN PROPERTY - HOUSE, GARAGE, COVERED ENTRY, OPEN PATIO, DRIVEWAY & CONCRETE FLATWORK]  
 OCCUPANCY: R-3 SFR  
 CONSTRUCTION TYPE: TYPE V, SPRINKLED  
 A.N.G. OF BUILDING PAD: 31.03'  
 ALLOWED ROOF HEIGHT: > 4:12 SLOPE 48.03'  
 ALLOWED ROOF HEIGHT: < 4:12 SLOPE 45.03'  
 PROPOSED ROOF HEIGHT: > 4:12 SLOPE 47.95'

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**C. P. PARKER ARCHITECT**

CHRISTOPHER P. PARKER ARCHITECT  
 630 QUINTANA RD. #330  
 MORRO BAY, CA 93442-1962  
 (805) 772-5700



CONSULTANTS

**MBS LAND SURVEYS**  
 MICHAEL B. STANTON PLS 5702  
 3563 SUELDO ST., UNIT Q  
 SAN LUIS OBISPO, CA 93401  
 (805) 594-1960

**EARTH SYSTEMS PACIFIC**  
 4378 SANTA FE ROAD  
 SAN LUIS OBISPO, CA 93401  
 (805) 544-3276

**KMA KEVIN MERK ASSOCIATES, LLC**  
 P.O. BOX 318  
 SAN LUIS OBISPO, CA 93406

PROJECT

**FRYE RESIDENCE**

3420 TORO LANE  
 MORRO BAY, CA 93442

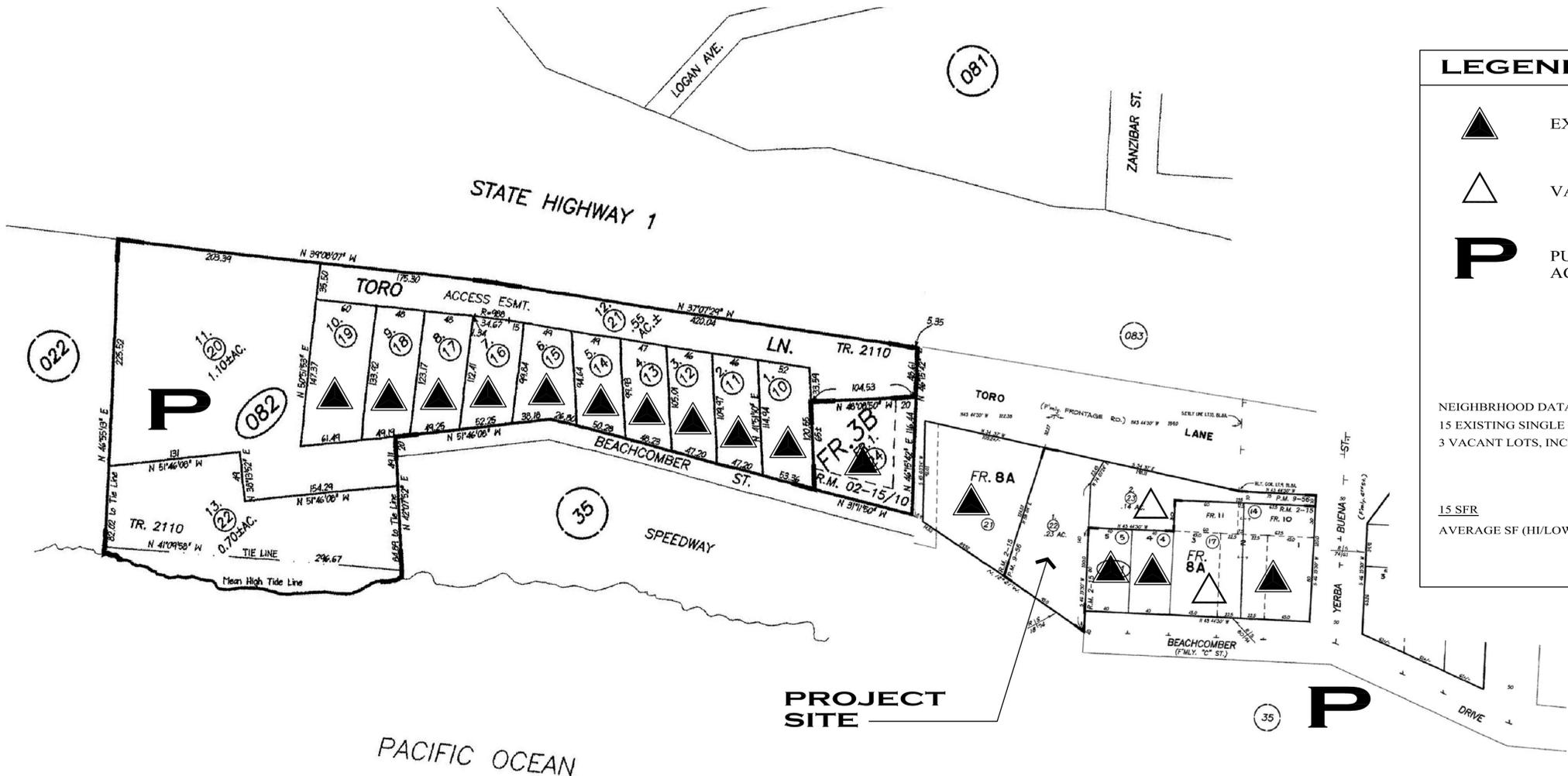
DRAWING PHASE  
**CONSTRUCTION DOCUMENTS**

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/14/15
Updated	-
Scale	AS NOTED

REVISIONS


SHEET TITLE  
**PROJECT INFO.**  
 SHEET NO.

**A1.1**



**LEGEND**

- ▲ EXISTING SFR
- △ VACANT PARCEL
- P PUBLIC LANDS & ACCESS POINT

NEIGHBORHOOD DATA (FROM PUBLIC RECORDS)  
 15 EXISTING SINGLE FAMILY RESIDENCES (SFR)  
 3 VACANT LOTS, INCLUDING THE PROPOSED RESIDENCE

15 SFR	AREA	LOT COVERAGE
AVERAGE SF (HI/LOW)	2,463 SF	28.89%

**SHEET INDEX**

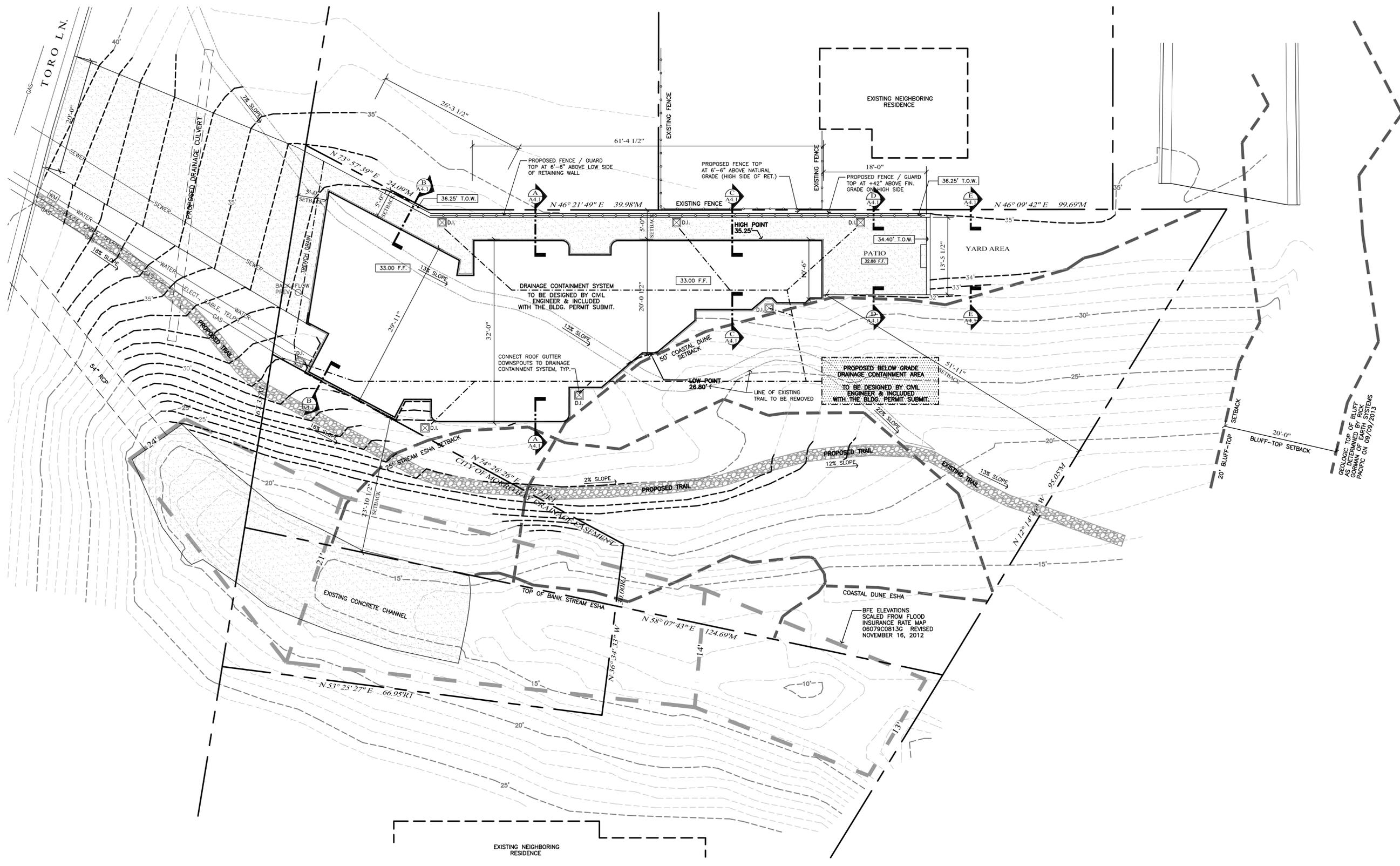
A1.1	PROJECT INFORMATION
A1.2	SITE PLAN
A1.3	GRADING PLAN
A2.1	FLOOR PLAN
A3.1	ELEVATIONS
A4.1	SECTIONS

**NEIGHBORHOOD COMPATIBILITY**



SCALE: NONE

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CHRISTOPHER P. PARKER ARCHITECT  
 630 QUINTANA RD. #330 MORRO BAY, CA. 93442-1962  
 (805) 772-5700

STAMPS



CONSULTANTS

**MBS LAND SURVEYS**  
 MICHAEL B. STANTON PLS 5702  
 3563 SUELDO ST., UNIT Q  
 SAN LUIS OBISPO, CA 93401  
 (805) 594-1960

**EARTH SYSTEMS PACIFIC**  
 4378 SANTA FE ROAD  
 SAN LUIS OBISPO, CA 93401  
 (805) 544-3276

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 P.O. BOX 318  
 SAN LUIS OBISPO, CA 93406

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 MORRO BAY, CA  
 93442

DRAWING PHASE

**CONSTRUCTION DOCUMENTS**

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Drawn By	CPP
Dwg. Date	09/14/15
Updated	-
Scale	AS NOTED

REVISIONS


SHEET TITLE

**SITE PLAN**

SHEET NO.

**A1.2**

**SITE PLAN**

SCALE: 1/8" = 1'-0"

**C. P. PARKER ARCHITECT**

CHRISTOPHER P. PARKER ARCHITECT  
 630 GUINTANA RD. #330  
 MORRO BAY, CA. 93442-1962  
 (805) 772-5700

STAMPS



CONSULTANTS

**MBS LAND SURVEYS**

MICHAEL B. STANTON PLS 5702  
 3563 SUELDO ST., UNIT Q  
 SAN LUIS OBISPO, CA 93401  
 (805) 594-1960

**EARTH SYSTEMS PACIFIC**

4378 SANTA FE ROAD  
 SAN LUIS OBISPO, CA 93401  
 (805) 544-3276

**KMA**

KEVIN MERK ASSOCIATES, LLC  
 P.O. BOX 318  
 SAN LUIS OBISPO, CA 93406

PROJECT

**FRYE RESIDENCE**

3420 TORO LANE  
 MORRO BAY, CA  
 93442

DRAWING PHASE

**CONSTRUCTION DOCUMENTS**

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/14/15
Updated	-
Scale	AS NOTED

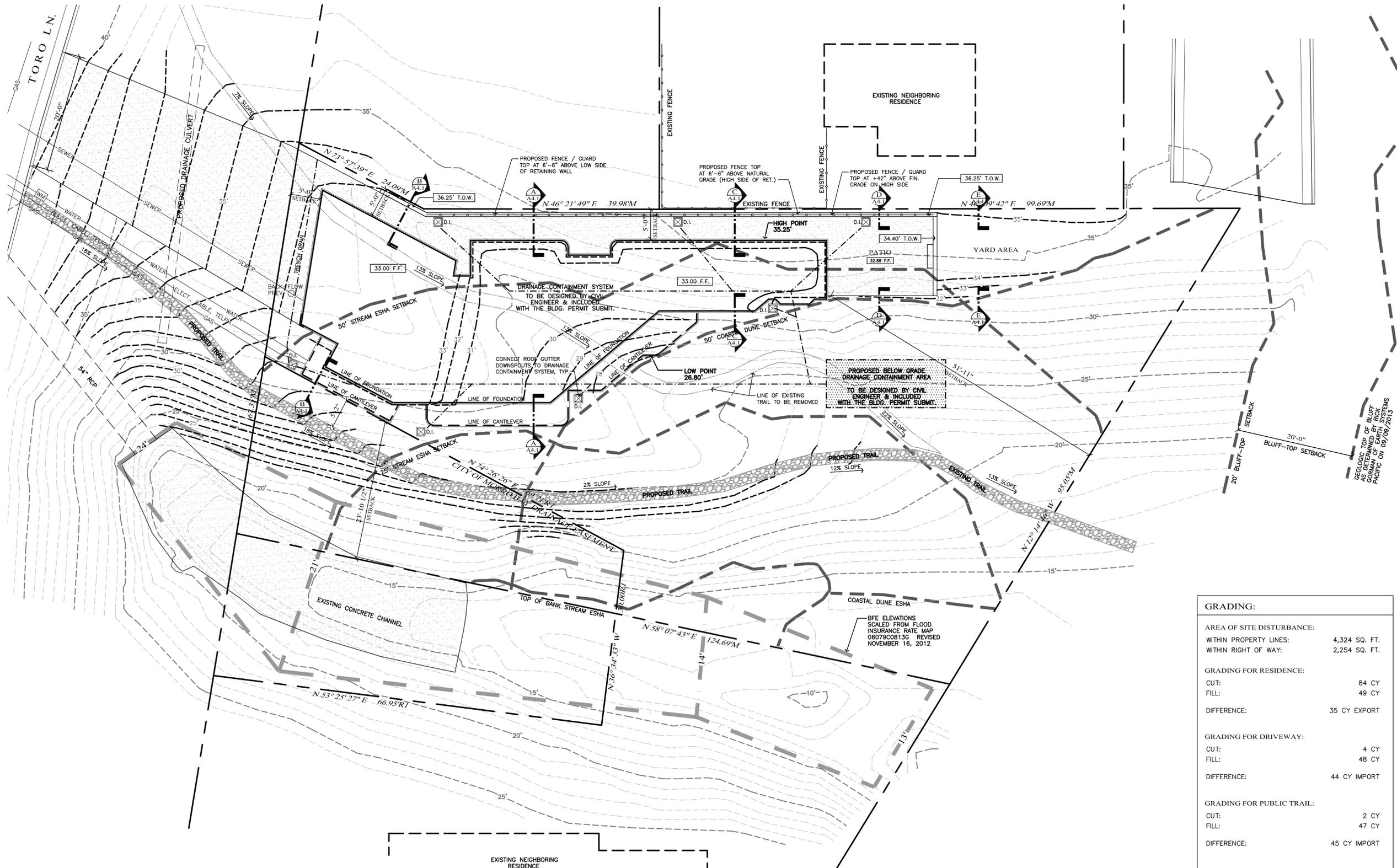
REVISIONS


SHEET TITLE

**GRADING PLAN**

SHEET NO.

**A1.3**



<b>GRADING:</b>	
AREA OF SITE DISTURBANCE:	
WITHIN PROPERTY LINES:	4,324 SQ. FT.
WITHIN RIGHT OF WAY:	2,254 SQ. FT.
GRADING FOR RESIDENCE:	
CUT:	84 CY
FILL:	49 CY
DIFFERENCE:	35 CY EXPORT
GRADING FOR DRIVEWAY:	
CUT:	4 CY
FILL:	48 CY
DIFFERENCE:	44 CY IMPORT
GRADING FOR PUBLIC TRAIL:	
CUT:	2 CY
FILL:	47 CY
DIFFERENCE:	45 CY IMPORT
PROJECT TOTALS:	
DIFFERENCE:	54 CY IMPORT

**GRADING PLAN**

SCALE: 1/8" = 1'-0"

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**C. P. PARKER**  
 ARCHITECT

CHRISTOPHER P. PARKER  
 ARCHITECT  
 630 QUINTANA RD. #330  
 MORRO BAY, CA.  
 93442-1962  
 (805) 772-5700

STAMPS



CONSULTANTS

**MBS**  
 LAND SURVEYS

MICHAEL B. STANTON PLS 5702  
 3563 SUELDO ST., UNIT Q  
 SAN LUIS OBISPO, CA 93401  
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**EARTH SYSTEMS PACIFIC**

4378 SANTA FE ROAD  
 SAN LUIS OBISPO, CA 93401  
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**KMA**

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 SAN LUIS OBISPO, CA 93406

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**CONSTRUCTION**  
**DOCUMENTS**

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Scale	AS NOTED

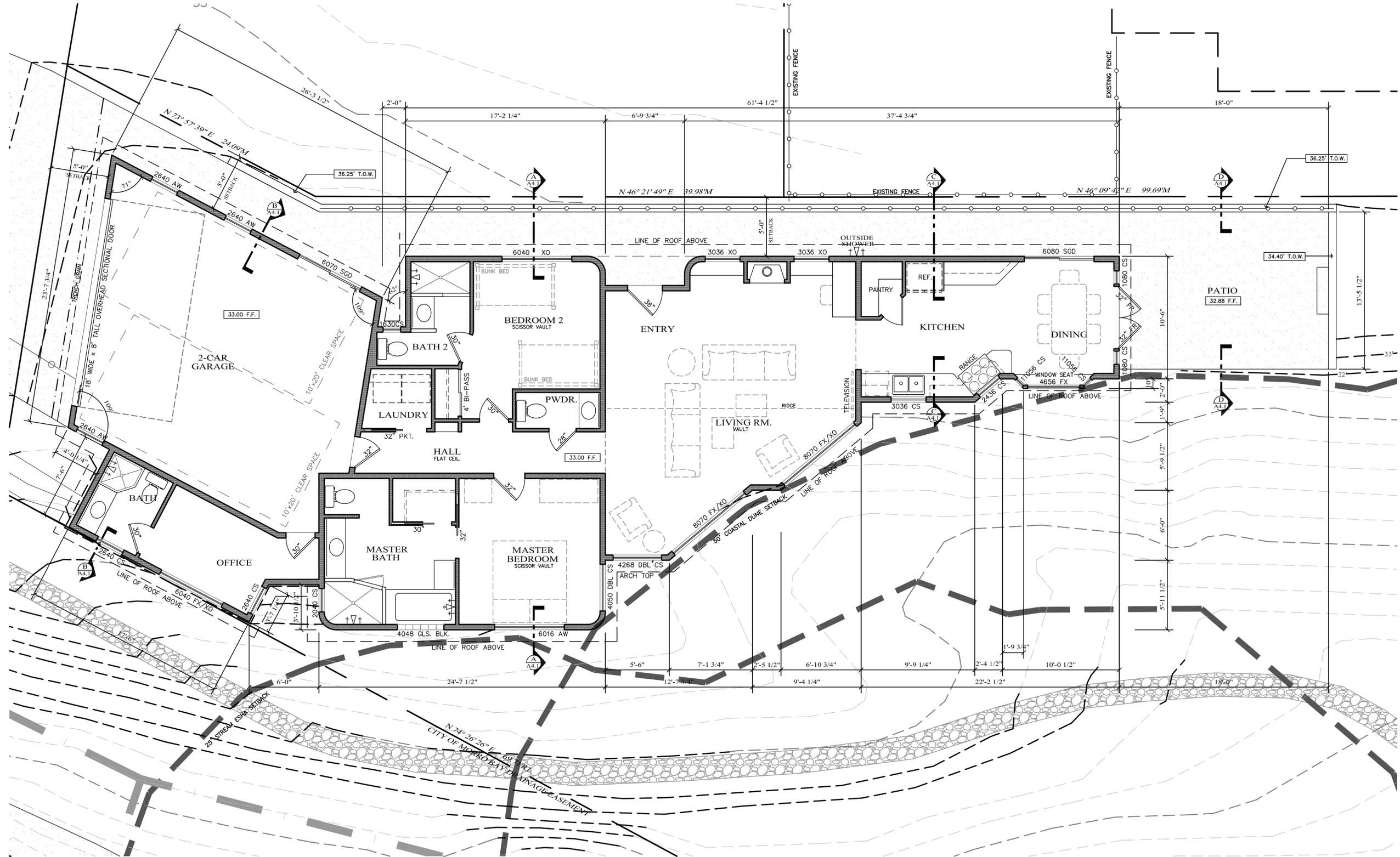
REVISIONS

SHEET TITLE

**FLOOR PLAN**

SHEET NO.

**A2.1**



**FLOOR PLAN**

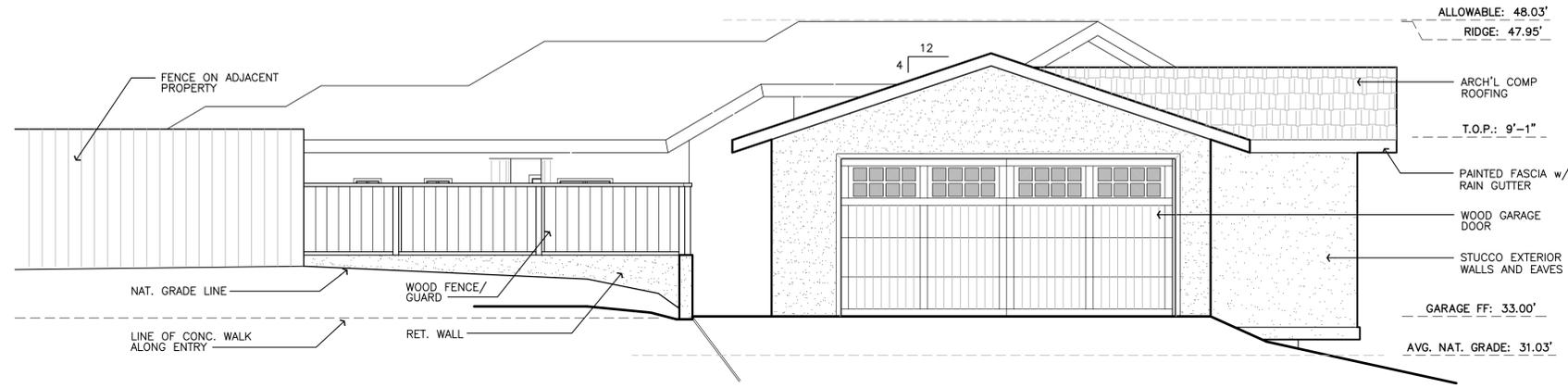
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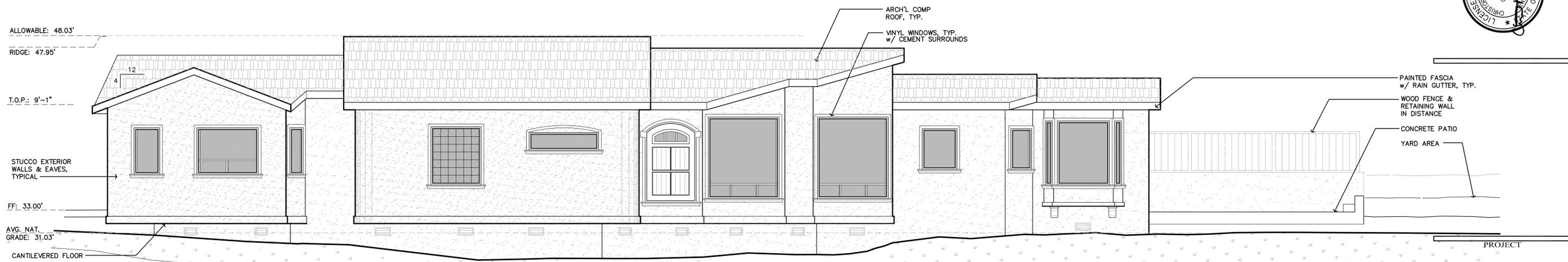
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 ARCHITECT  
 630 QUINTANA RD. #330  
 MORRO BAY, CA  
 93442-1962  
 (805) 772-5700

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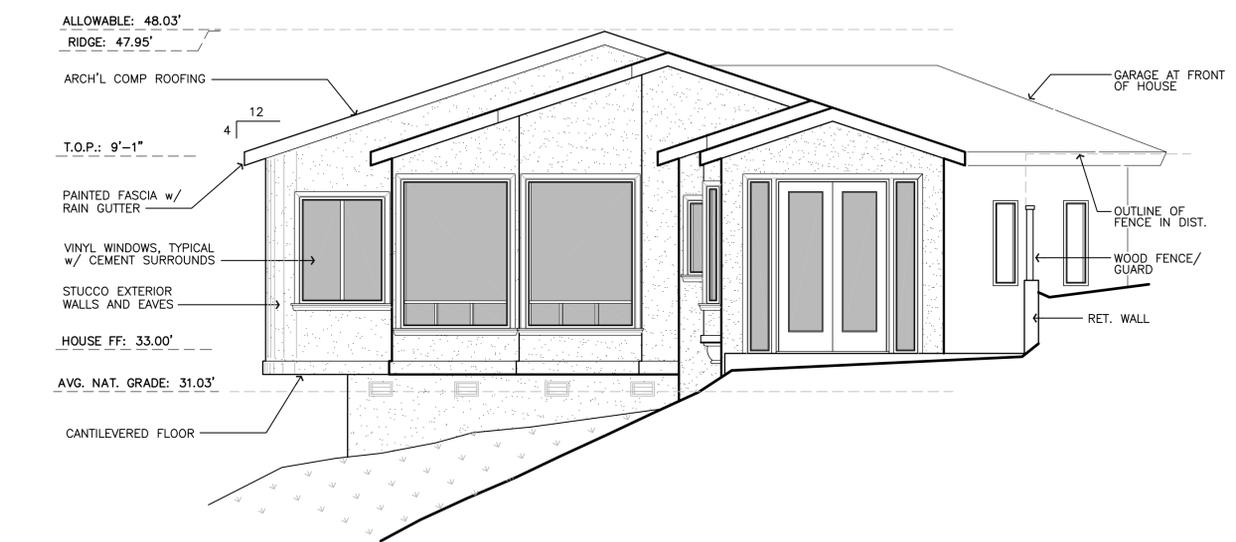
**FRONT ELEVATION (EAST)**

SCALE: 1/4" = 1'-0"



**SIDE ELEVATION (NORTH)**

SCALE: 1/4" = 1'-0"



**REAR ELEVATION (WEST)**

SCALE: 1/4" = 1'-0"

**EXTERIOR LIGHTING REQUIREMENTS**

ALL EXTERIOR LIGHTING SHALL BE OF HIGH EFFICACY, OR ON A PHOTOCELL & MOTION SENSOR  
 EXTERIOR LIGHTING IS TO BE DOWNWARD FACING AND SHIELDED TO NOT ALLOW THE BULB TO BE VISIBLE FROM NEIGHBORING PROPERTIES, OR PUBLIC SPACES



**SIDE ELEVATION (SOUTH)**

SCALE: 1/8" = 1'-0"

**FRYE RESIDENCE**

3420 TORO LANE  
 MORRO BAY, CA  
 93442

DRAWING PHASE  
**CONSTRUCTION DOCUMENTS**

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/14/15
Updated	
Scale	AS NOTED

REVISIONS

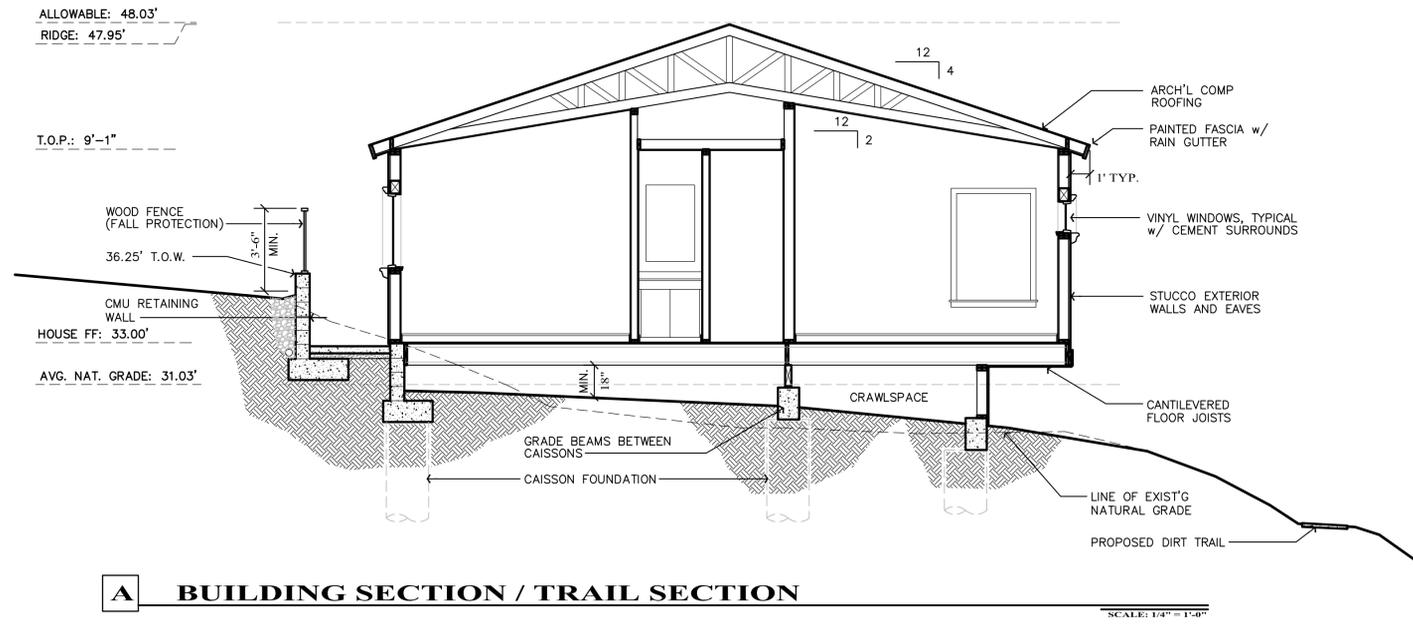
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**ELEVATIONS**

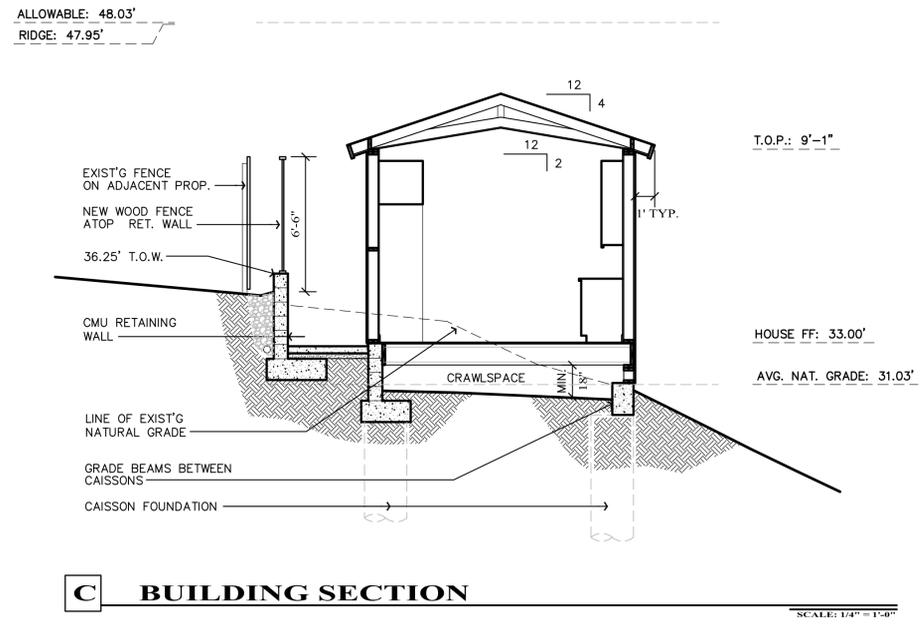
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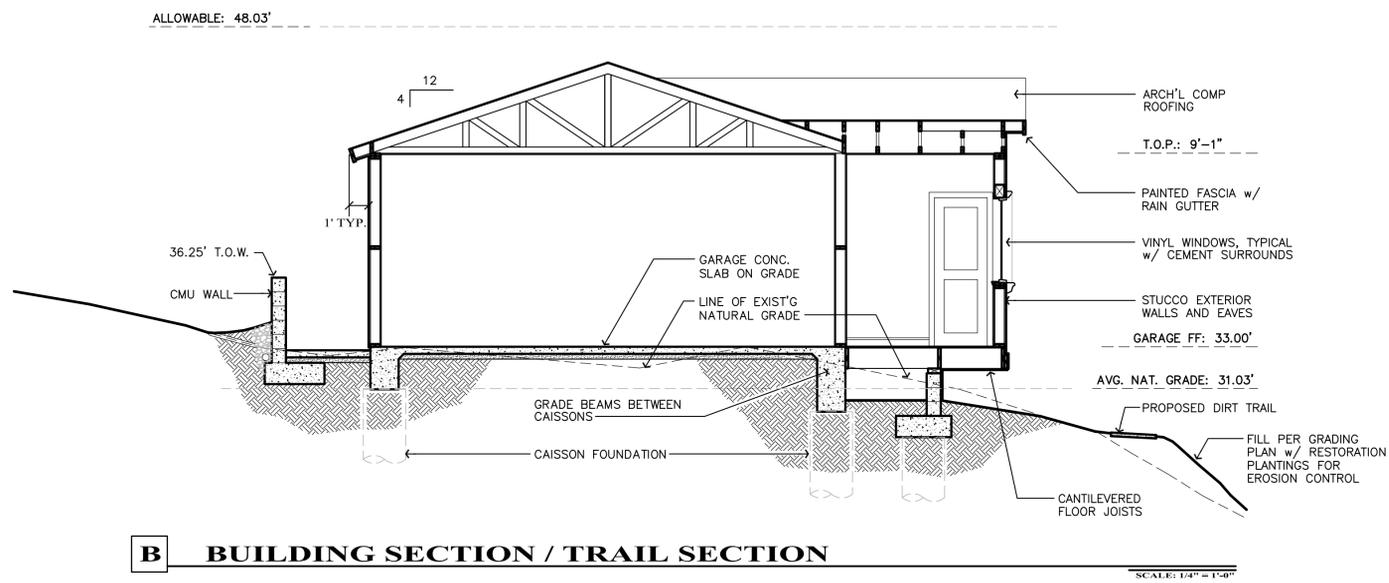
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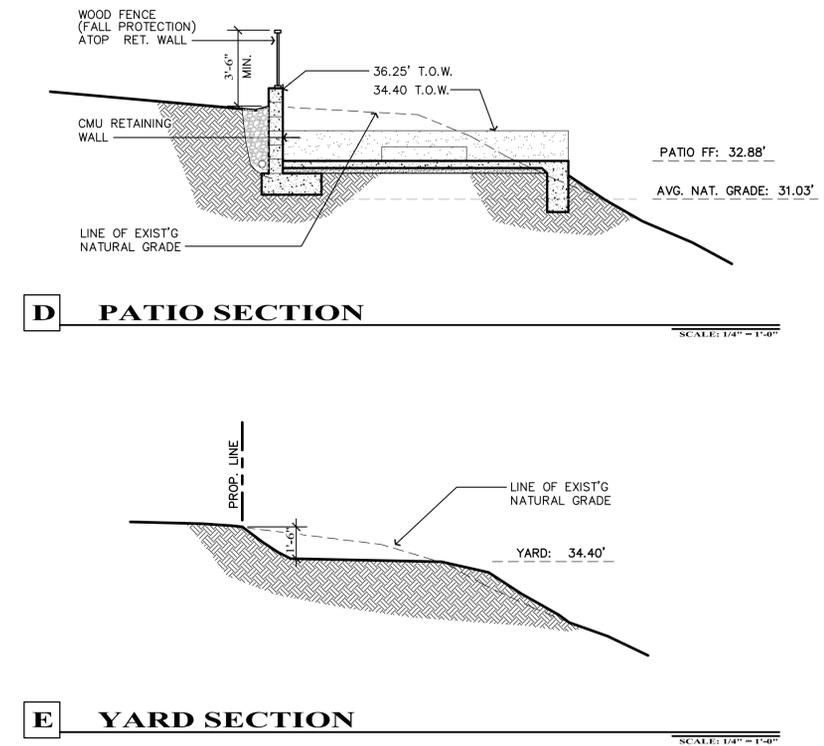
**A BUILDING SECTION / TRAIL SECTION**



**C BUILDING SECTION**



**B BUILDING SECTION / TRAIL SECTION**



**D PATIO SECTION**

**E YARD SECTION**

**C. P. PARKER ARCHITECT**

CHRISTOPHER P. PARKER ARCHITECT  
 630 QUINTANA RD. #330  
 MORRO BAY, CA 93442  
 (805) 772-5700

STAMPS



CONSULTANTS

**MBS LAND SURVEYS**  
 MICHAEL B. STANTON PLS 5702  
 3563 SUELDO ST., UNIT Q  
 SAN LUIS OBISPO, CA 93401  
 (805) 594-1960

**EARTH SYSTEMS PACIFIC**  
 4378 SANTA FE ROAD  
 SAN LUIS OBISPO, CA 93401  
 (805) 544-3276

**KMA KEVIN MERK ASSOCIATES, LLC**  
 P.O. BOX 318  
 SAN LUIS OBISPO, CA 93406

PROJECT

**FRYE RESIDENCE**

3420 TORO LANE  
 MORRO BAY, CA 93442

DRAWING PHASE

**CONSTRUCTION DOCUMENTS**

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/14/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

**SECTIONS**

SHEET NO.

**A4.1**

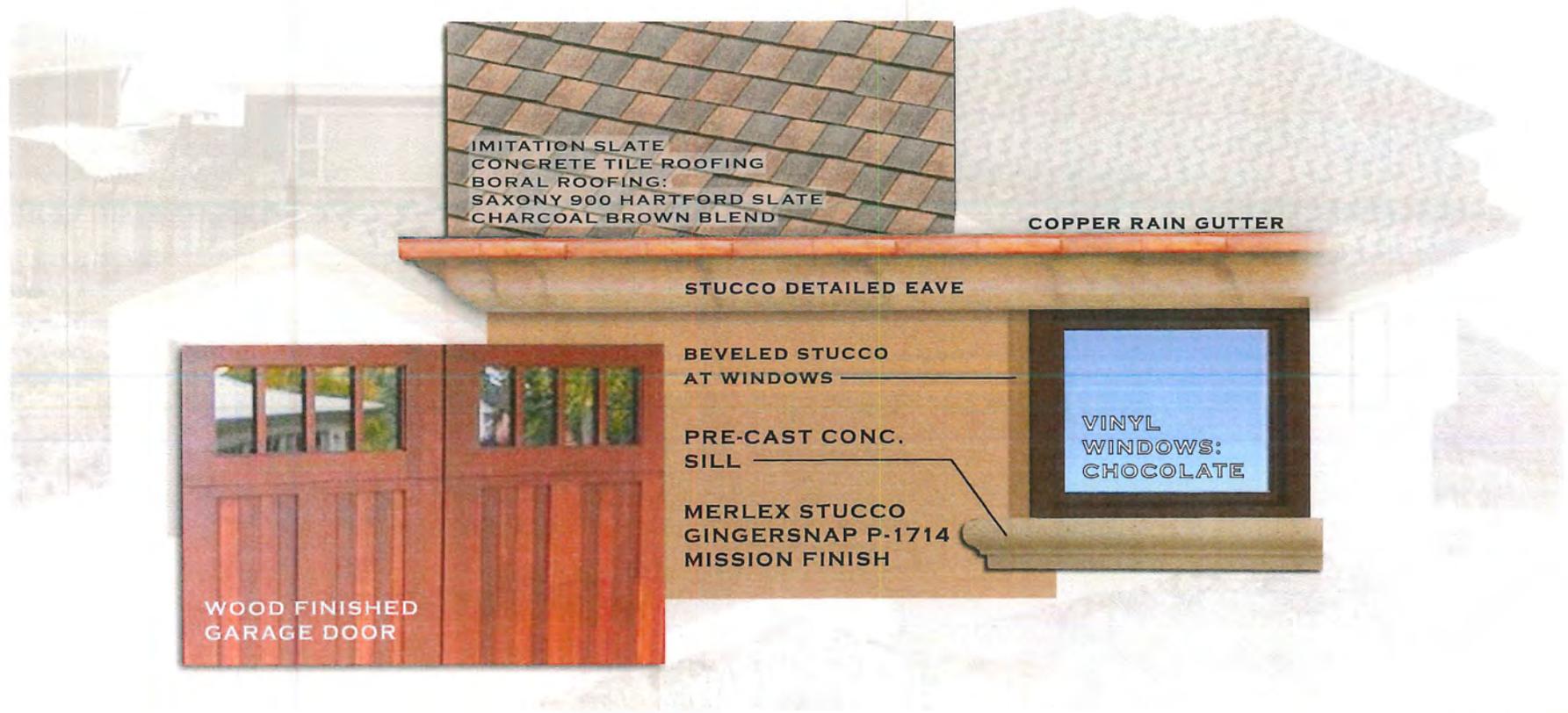
# EXHIBIT G

EXHIBIT C PC Meeting 10-6-15

**FRYE RESIDENCE**  
**3420 TORO LANE**

**C.P. PARKER**  
ARCHITECT

## COLOR BOARD



**RECEIVED**

**SEP 29 2015**

City of Morro Bay  
Community Development Dept.

FRYE RESIDENCE  
3420 TORO LANE

C.P. PARKER  
ARCHITECT

VIEW FROM BEACH



RECEIVED

SEP 29 2015

City of Morro Bay  
Community Development Dept.

# EXHIBIT G

**FRYE RESIDENCE  
3420 TORO LANE**

**C.P. PARKER  
ARCHITECT**

VIEW FROM HIGHWAY 1



**RECEIVED**

**SEP 29 2015**

City of Morro Bay  
Community Development Dept.

# EXHIBIT G

**FRYE RESIDENCE  
3420 TORO LANE**

**C.P. PARKER  
ARCHITECT**

VIEW FROM HIGHWAY 1



**RECEIVED**

**SEP 29 2015**

City of Morro Bay  
Community Development Dept.

# EXHIBIT G

**FRYE RESIDENCE  
3420 TORO LANE**

VIEW FROM BEACH



**C.P. PARKER  
ARCHITECT**

**RECEIVED**

**SEP 29 2015**

City of Morro Bay  
Community Development Dept.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING – AUGUST 18, 2015  
VETERANS MEMORIAL BUILDING – 6:00 PM

PRESENT:	Robert Tefft	Chairperson
	Gerald Luhr	Commissioner
	Richard Sadowski	Commissioner
	Michael Lucas	Commissioner
STAFF:	Scot Graham	Community Development Manager
	Whitney McIlvaine	Contract Planner

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

Commissioner Sadowski announced NOAA (National Oceanic and Atmospheric Administration) has moved the application for the Chumash Heritage National Marine Sanctuary to the second phase.

Commissioner Luhr announced there has been a rash of construction trailer theft in the area. He advised if anyone has any information, to please contact the Morro Bay Police Department.

Chairperson Tefft announced the GPAC Committee had their first meeting last week and are in the process of constituting a subcommittee for the RFP's which will be for the general contractors working on the plan.

PUBLIC COMMENTS

Chairperson Tefft opened Public Comment period and seeing none, closed Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=5m6s>

PRESENTATIONS – NONE

A. CONSENT CALENDAR

<https://youtu.be/uXKHfMLEvSI?t=5m26s>

A-1 Approval of minutes from the Planning Commission meeting of June 16, 2015.  
**Staff Recommendation:** Approve minutes as submitted.

A-2 Current and Advanced Planning Processing List  
**Staff Recommendation:** Receive and file.

**MOTION:** Commissioner Luhr moved to approve the Consent Calendar. Commissioner Lucas seconded the motion and the motion passed unanimously (4-0).

<https://youtu.be/uXKHfMLEvSI?t=6m1s>

B. PUBLIC HEARINGS

<https://youtu.be/uXKHfMLEvSI?t=6m19s>

**B-1 Case No.: CP0-419, UP0-383**

**Site Location:** 3420 Toro Lane, Morro Bay, CA

**Project Description:** The applicants propose to grade for and construct a 1,538 square-foot dwelling and a 579 square-foot garage, on a vacant 10,019 square-foot beach front parcel. Plans also show a 242.4 square-foot patio area. The proposed lot coverage is 21.2%. The project site is located in a Single Family Residential (R-1) zone with an S.2.A Overlay which limits the height of the structure to a maximum of 17 feet. The site contains areas of environmentally sensitive habitat and is subject to development standards for coastal bluff properties. This project is located in the Coastal Commission appeal jurisdiction.

**CEQA Determination:** The Community Development Director determined the project qualifies for a Mitigated Negative Declaration of Environmental Impact (MND). Mitigation is recommended to reduce any environmental impacts to a less than significant level.

**Staff Recommendation:** Adopt the Mitigated Negative Declaration and conditionally approve the project.

**Staff Contact:** Whitney McIlvaine, Contract Planner, (805) 772-6211

Chairperson Tefft opened Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=29m44s>

Rachel Kovesdi, agent for Greg and Jeanne Frye, presented her report to the Commission.

Brad Schnook, coach for county chapter Surf Rider Foundation, stated his concerns regarding the native sensitive habitat and the prescriptive easement.

Bill McClennan, resident, stated his comments regarding the beach access and his concerns with the retaining wall on the bluff.

Betty Winholtz, resident, stated the Fryes are the owners of an adjoining lot. She also brought up her concerns with the bluff on the north and asked how the fill was going to be held up. She noted the flooding issues would need to be addressed along with the right-of-way in front of the house and prescriptive rights.

Bill Martoni, resident, stated his concerns with the City's fee owned property and how it would be affected by the project. He also noted he understood the front of the house shouldn't be built on the bluff and should be looked at again.

Christopher Fala, resident, stated how he felt about the resistance to the Fryes project but is pleased the Fryes are improving the area with the native plants.

Andrew Wilke, surfer, stated he hasn't seen too many people using the beach access on the Frye's property. He also noted there are other beach access ways which could be used.

Greg Frye, applicant, stated they have taken the necessary steps in order to move forward with the project.

Mike Frye, father of Greg Frye, stated the trail on the property is not very easy to access and he uses other beach access. He also noted the new plants would improve the property.

Melinda Yudi, resident, stated she sees a lot of weekenders using the access because when they cross the street this is the first access to the beach they see. She thinks the parking will eventually worsen as time goes on.

Rachel Kovesdi, agent, answered questions about who owned the two lots and clarified what type of plants would be used on the property. Rachel also answered questions about the setbacks and noted the Coastal Commission has been on site.

Chris Parker, architect, answered questions about the retaining walls.

Chairperson Tefft closed Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=1h16m22s>

Chairperson Tefft opened Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=2h14m42s>

Chris Parker, architect, answered questions from the Commission. Parker stated the house is already at the height limit. And part of the design was driven by the shape of the floor plan. He stated the reason for the excavation at the western end of the site was to get more usable yard space.

Betty Winholtz, resident, asked the Commission why the north side marking looks like the 25 foot setback is at the edge of the bluff stream.

Chairperson Tefft stated the ESH 25 foot setback starts at the stream bank, not at the top of the hill.

Chairperson Tefft closed Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=2h18m47s>

Chairperson Tefft opened Public Comment period.

<https://youtu.be/uXKHfMLEvSI?t=2h43m56s>

Rachel Kovesdi, agent, stated the applicants are not interested in modifying the home if it would require a variance. They would like to work with the Commission on moving forward with the project.

**MOTION:** Commissioner Luhr moved to continue Item B-1, CP0-419, UP0-383, to a date uncertain with the following directions. Commissioner Lucas seconded the motion. Motion passed (4-0).

<https://youtu.be/uXKHfMLEvSI?t=3h2m58s>

- Redesign the project to minimize the amount of excavation and removal of natural land form at the west end of the bluff.

- Explore a common driveway configuration through the undeveloped Too Lane right-of-way such that development on the adjacent lot to south (APN: 065-091-023) could share access. Please provide a conceptual plan of this shared access.
- Alter the architectural treatment to be more aesthetically distinctive and innovative and to relate more particularly to the project setting consistent with the City's Design Guidelines, especially in terms of the northerly façade. Provide more fully rendered elevations of the house.
- Provide a conceptual plan showing the location of a re-routed public access trail through the site and the adjacent undeveloped Toro Lane right-of-way with a link to the trail from the residence. Note what erosion control, grading, and construction would be necessary to install the access. Provide cross section drawings every 20 feet, including two of the existing trail, one of which shows the transition from the existing trail to the new trail.

The Planning Commission also instructed staff to include conditions in a resolution for approval that address prohibition of shoreline protective devices and prohibition of trails through the ESH areas other than for public access and a link from the residence.

C. UNFINISHED BUSINESS - NONE

D. NEW BUSINESS - NONE

E. PLANNING COMMISSIONER COMMENTS

<https://youtu.be/uXKHfMLEvSI?t=3h3m56s>

Commissioner Lucas announced he was a speaker at the International Society for Environmental Ethics meeting. He noted they were fascinated with the applications Morro Bay was taking, specifically issues with the wastewater recycling plant.

Commissioner Lucas also announced he attended the California Climate Action Conference for Local Planners at Cal Poly. They discussed greenhouse gas emissions and climate action plans.

Commissioner Sadowski announced he attended the Special City Council Meeting which covered the Morro Bay Reclamation Facility. He stated his concerns on the limited technology which will be implemented at the facility. It would limit the City in obtaining funding and the City would be missing out on opportunities for new innovations and performance. He feels it would be a disservice to the community to limit ourselves with this type of technology.

F. COMMUNITY DEVELOPMENT MANAGER COMMENTS

<https://youtu.be/uXKHfMLEvSI?t=3h10m16s>

Graham presented a report on the definition for building height. Graham requested that the Commissioners agendize an interpretation on the issue.

G. ADJOURNMENT

The meeting adjourned at 9:19 p.m. to the regular Planning Commission meeting at the Veteran's Memorial Building, 209 Surf Street, on September 1, 2015, at 6:00 p.m.

## CALIFORNIA COASTAL COMMISSION

Coastal Public Access Program  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4875

**SOME FACTS ABOUT PUBLIC PRESCRIPTIVE RIGHTS****What is a public prescriptive right?**

- Prescriptive Rights refer to public rights that are acquired over private lands through use. Along the California coast the general public has historically used numerous coastal areas. Trails to the beach, informal parking areas, beaches, and blufftops have provided recreational opportunities for hiking, picnicking, fishing, swimming, surfing, diving, viewing and nature study. The public may have the right to use the property by permission of the owner or the public may acquire the right through use of the property without permission.
- A right of access acquired through *use* is, essentially, an easement over real property that comes into being without the explicit consent of the owner. The acquisition of such an easement is referred to as an "implied dedication", the right acquired is also referred to as a "public prescriptive easement". This term recognizes that the use must continue for the length of the "prescriptive period" before a public easement comes into being. In California the prescriptive period is five (5) years.

**The Commission's interest in prescriptive rights.**

- Under the California Coastal Act, Coastal Public Access Program, Public Resources Code Sections 30530-34, the Commission is required to prepare and implement a program in coordination with other federal, state, and local agencies, including the State Attorney General's Office, to maximize public access. The program includes a prescriptive rights element whereby the Coastal Commission researches and inventories the historic public use of areas with the potential for significant public access benefits. Where research indicates that the public use is substantial enough to create potential prescriptive rights, the Attorney General's Office has the authority to proceed with the legal action necessary to protect those use areas.
- On sites with coastal development permit proposals, where investigation shows that public use is substantial enough to create potential prescriptive rights, the Coastal Commission is required to protect those areas of use prior to approving a development project that would interfere with those rights. The California Coastal Act, Public Resources Code Section 30211, states:

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

**Investigating Potential Prescriptive Rights.**

- The Commission in conjunction with the State Attorney General's Office can investigate areas of potential prescriptive rights. The goal of a prescriptive rights investigation is to gather enough information about the subject property to accurately detail the property's history and use status. The initiation of a prescriptive rights investigation is not a judgement that a "prescriptive right" exists or probably exists. The outcome of the investigation will determine whether there is a sound factual basis for making a claim of prescriptive rights.

**SOME FACTS ABOUT PUBLIC PRESCRIPTIVE RIGHTS (cont'd.)****Basic Criteria for Determining Prescriptive Rights to Use a Property.**

- Basic criteria to determining a public prescriptive right include that the land has been used:
  - For the prescriptive period of five years as if it were public land - the use must be substantial rather than minimal - and continual, though it need not be continuous.
  - Without asking or receiving permission from the owner;
  - With the actual or presumed knowledge of the owner;
  - Without significant objection or bona fide attempts by the fee owner to prevent or halt such use.

**Preventing Creation of Public Prescriptive Rights.**

- With regard to coastal properties (defined generally as being within 1000 yards of the sea, bay or estuary or between the mean high tide line and the nearest public road, whichever distance is less) presently being used by the public, since March 4, 1972, the landowners have had the power to prevent future creation of public rights by implied dedication. The landowner may do this by posting signs containing the language set forth in Civil Code Section 1008, "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code", and renewing the same, if they are removed, at least once a year; or by annually publishing such language in a newspaper of general circulation in the county in which the land is located. As another method to prevent creation of public rights by implied dedication, the landowner may record in the office of the recorder of the county in which the land is situated a notice of consent to public use as provided in Civil Code Section 813. Landowners should refer directly to the statutes for details.
- Public prescriptive rights existing prior to the effective date of the statute are not affected by this legislation.

**The Public's Role in Preserving Prescriptive Rights.**

- A prescriptive rights investigation includes documentary searches, on-site inspections and questionnaires and interviews. The most important source of evidence is from persons familiar with the past and current uses of the property. The loss of historical access and recreational sites funnels a growing population into fewer and fewer areas and can reduce the range of uses as well. Prescriptive trails or sites may provide access to bluff tops, wide sandy beaches, remote coastal areas, rocky fishing sites, scuba entry points, intimate pocket beaches and more providing for a wide variety of coastal experiences. Participating in prescriptive rights investigations will help identify where these rights exist and protect them in perpetuity.

Completing the questionnaire is a way for you to assist in the preparation of a prescriptive rights study.

Questions regarding prescriptive rights and the Coastal Commission can be directed to Linda Locklin, 831-427-4875 or [llocklin@coastal.ca.gov](mailto:llocklin@coastal.ca.gov).

**Investigation as to Potential Prescriptive Easement  
Appendix A  
PHOTOGRAPHIC RECORD OF ALTERNATE BEACH ACCESS**

LOCATION OF AVAILABLE ALTERNATIVE BEACH ACCESS ROUTES: North Point and Beachcomber Areas

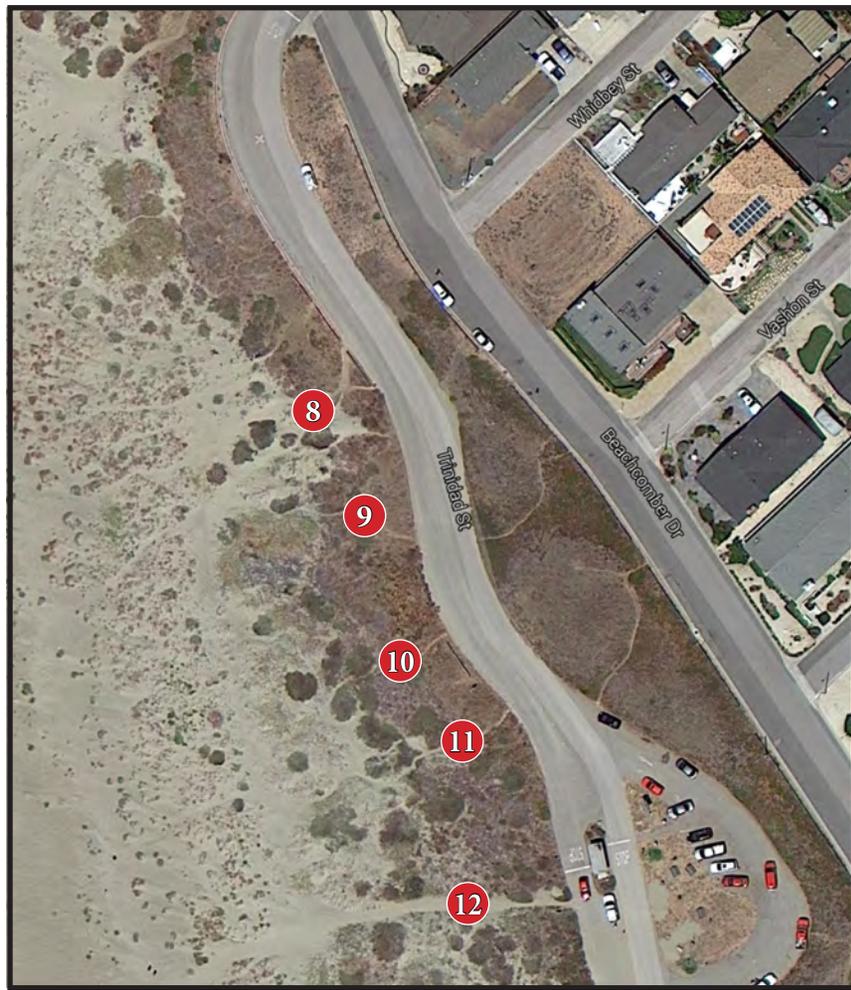


Alternative Access Routes – North Point Area

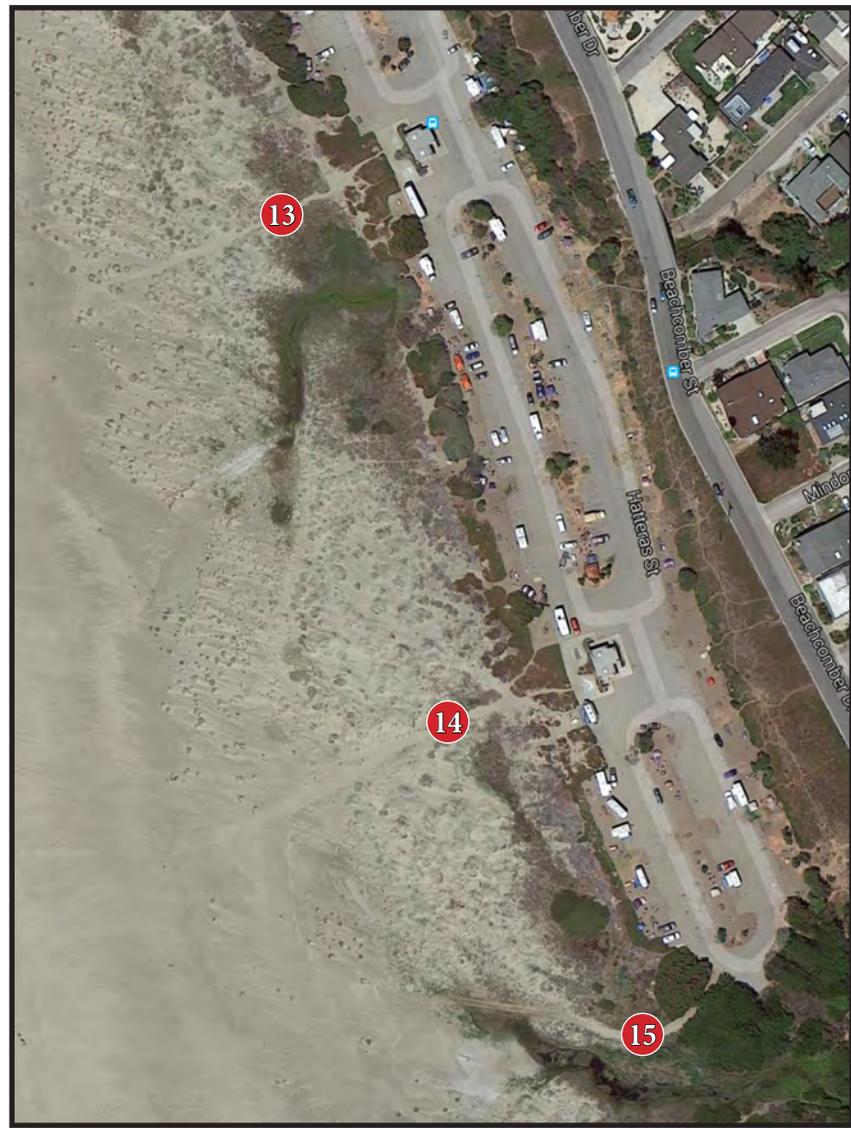


Alternative Access Routes – Beachcomber Area

LOCATION OF AVAILABLE ALTERNATIVE BEACH ACCESS ROUTES: Trinidad and Morro Strand Areas



Alternative Access Routes – Trinidad Area



Alternative Access Routes – Morro Strand Area



**Photo No. 1: Trail 1, North Point Area** – Trail 1 appears to be the remnant of an old road along the ocean bluff (perhaps a vestige of the old, two-lane Highway 1). It does not provide direct beach access, but leads from the North Point parking area to four additional trails (1a, 1b, 1c, and 1d) which access the beach and coastal bluff views. The trail is composed of asphalt and packed dirt and is relatively level, with little irregularity related to erosion.



**Photo No. 2: Trail 1a, North Point Area** – Trail 1a extends northward toward the beach from the northern terminus of Trail 1, skirting the chain link fence that marks the boundary of the Highway 1 right-of-way. The surface is packed dirt. Significant plant incursion suggests that this route is little-used



**Photo No. 3: Trail 1a, North Point Area** – In all likelihood, the disuse of Trail 1a is due to the fact that this access is interrupted by a drainage ravine, which renders passage somewhat difficult. In addition, after passing the ravine, the trail descends very steeply and is impacted by significant erosion.



**Photo No. 4: Trail 1b, North Point Area** – Trail 1b leads from the north end of Trail 1 to the beach. Its surface is composed of packed dirt. As shown in the photograph, the seaward end of this trail is quite steep and the walking surface is very irregular due to erosion. This trail is utilized almost exclusively by dog owners and their pets accessing an area of the beach where dogs are allowed.



**Photo No. 5: Trail 2, North Point Area** – Trail 2 leads from the North Point parking lot northward along the edge of the coastal bluff. The trail is level to gently sloped. The initial 50 feet or so are asphalt and the remainder of the surface is packed dirt. This trail does not provide direct beach access, but offers spectacular views along the coast to both the north and south. Trail 2a, which branches off of Trail 2, does access the beach below.



Photo No. 6: View Northward from Trail 2



Photo No. 7: View Southward from Trail 2.



**Photo No. 8: Trail 2a, North Point Area** – Trail 2a leads from the mid-portion of Trail 2 to the beach. Its surface is composed of packed dirt, with numerous loose rocks in the uphill segment. This trail is relatively narrow and very steep, and the walking surface is moderately irregular due to erosion. This route appears to be used rather infrequently.



**Photo No. 9: Trail 3, North Point Area** – Trail 3 consists of a stairway leading from the North Point parking area to the beach. The stair treads are wood and compacted gravel, and handrails are present on both sides of the stairway. The facility appears to be well-maintained and in good repair. This stairway provides the primary route for public beach access from the North Point parking lot..



**Photo No. 10: Trail 4, Beachcomber Area** – Trail 4 is a narrow, steep access that leads northward from the north end of Beachcomber Street and passes just seaward of the southwestern corner of the 3420 Toro Lane property. Although more challenging than other nearby access, Trail 4 does appear to be utilized to a degree, as evidenced by the footprints at the bottom of the trail.



**Photo No. 11: Trail 5, Beachcomber Area** – Trail 5 is another narrow and rather steep access that leads from Beachcomber Street to the beach.



Photo No. 12: Trail 5, Beachcomber Area – Looking landward from the beach.



**Photo No. 13: Trail 6, Beachcomber Area** – A third informal access from Beachcomber Street. The trail is moderately steep at the top, flattening some as it approaches the beach. The surface is hardpack near the road, giving way to sand in the lower section.



Photo No. 14: Trail 6, Beachcomber Area – View of Trail 6 from the beach.



**Photo No. 15: Trail 7, Beachcomber Area** – Trail 7 provides access to the beach from Beachcomber Street as it intersects with Yerba Buena and Trinidad Street. This is the widest and most gently sloped of the Beachcomber accessways, and exhibits a packed dirt surface all the way to beach level. As can be seen, moderate surface irregularity due to erosion is present. Trail 7 appears to be the most heavily used of the Beachcomber trails.

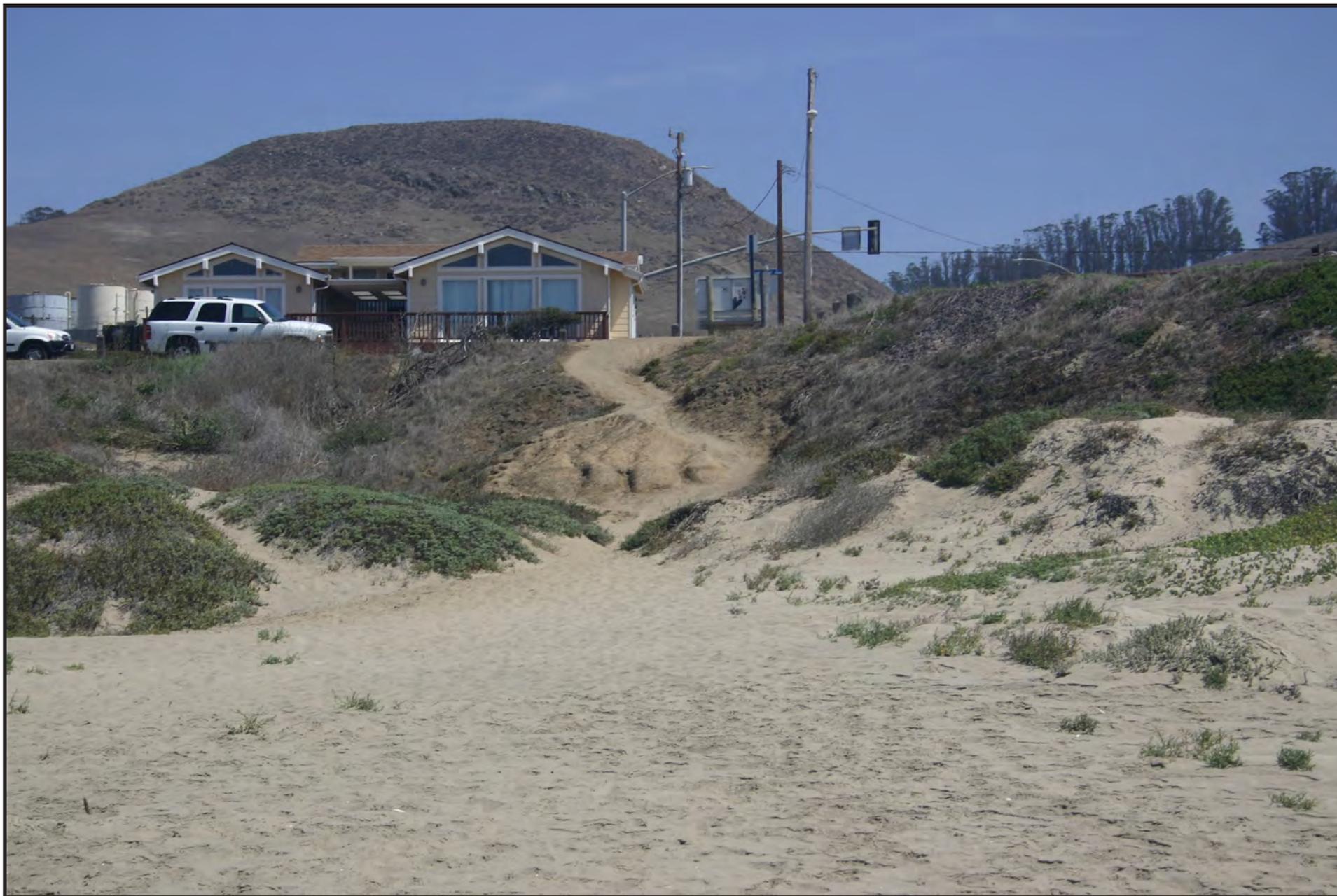
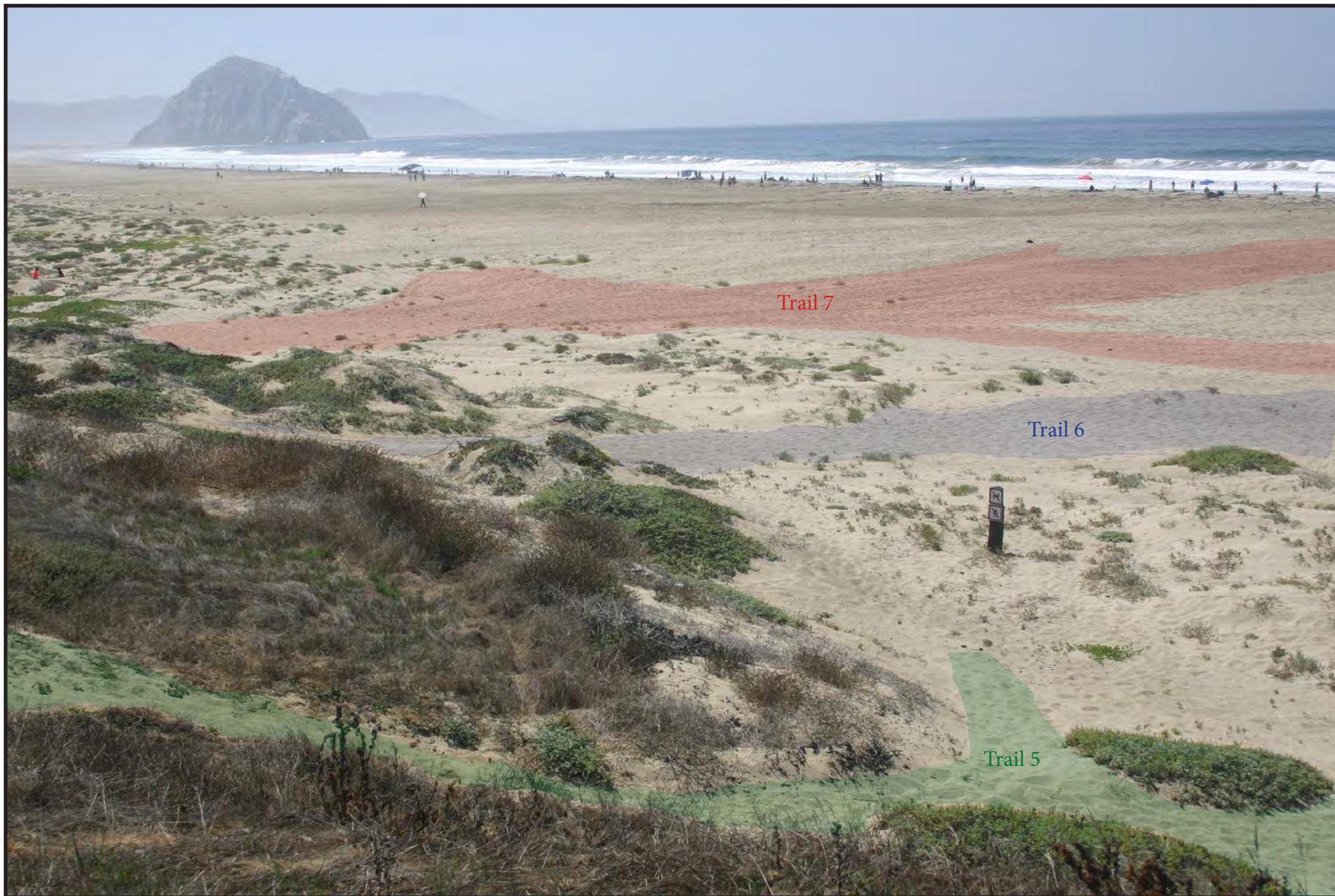


Photo No. 16: Trail 7, Beachcomber Area – View of Trail 7 looking landward from the beach.



**Photo No. 17: Beachcomber Area** – View of beach adjacent to Beachcomber Street. Footprint patterns document public use of Trails 5, 6, and 7, but demonstrate that Trail 7 is the most heavily utilized of the three by a substantial margin.



**Photo No. 18: Trail 8, Trinidad Area** – Trail 8 intersects Trinidad Street while the paved road is still relatively high on the bluff. Consequently, the upper part of this access is relatively steep. Irregularity of the walking surface due to erosion is minimal, as most drainage is directed southward by the curb of Trinidad Street. Density of footprints at the foot of the trail suggests fairly light usage by the public



Photo No. 19: Trail 9, Trinidad Area – Trail 9 appears similar in configuration and usage to Trail 8.



**Photo No. 20: Trail 10, Trinidad Area** – Trail 10 leaves Trinidad Street at a lower elevation than Trails 8 and 9 and is, therefore, less steep. This beach accessway is primarily sand and undulates between dunes on its way to the beach. Footprint density is higher than observed on Trails 8 and 9.



Photo No. 21: Trinidad Area – Trails 8, 9, and 10, as viewed looking landward.



**Photo No. 22: Trail 11, Trinidad Area** – Trail 11 appears similar to Tail 10, though somewhat more narrow. The growth of vegetation in the trail and relatively low density of footprints would appear to indicate relatively little use by the public. This may be due to the fact that nearby Trail 12 offers easier access.



**Photo No. 23: Trail 12, Trinidad Area** – Trail 12 begins at Trinidad Street just as that street enters Morro Strand State Beach. The head of this trail is also adjacent to the State Beach day-parking lot. The route skirts a protected snowy plover nesting area in the dunes immediately to the south. The access is sandy and virtually level.



Photo No. 24: Trail 12, Trinidad Area – View of Trail 12 from the beach. Note the rope line restricting access to snowy plover nesting habitat.



Photo No. 25: Trail 13, Morro Strand Area – Trail 13 also offers a level sandy access. Rope lines restrict access to snowy plover nesting areas.



Photo No. 26: Trail 13, Morro Strand Area – View of Trail 13 from the beach.



Photo No. 27: Trail 14, Morro Strand Area



Photo No. 28: Trail 14, Morro Strand Area – View of Trail 14 from the beach



**Photo No. 29: Trail 15, Morro Strand Area** – Trail 15 accesses the beach from the southern tip of Morro Strand State Beach. The walking surface is sand and compacted sand, covered in some spots with short beach grass. The trail is essentially level. The head of the trail exits the camping area through a small grove of trees, then meanders to the beach. Trail 15 would probably provide the easiest wheelchair access to the beach, since the sand is somewhat firmer than on Trails 12, 13, and 14.



Photo No. 30: Trail 15, Morro Strand Area – View of Trail 15 looking landward from the beach.

**INVESTIGATION AS TO POTENTIAL PRESCRIPTIVE EASEMENT**

**Related To  
Beach Access Trail  
3420 Toro Lane  
Morro Bay, CA**

**Prepared for the  
Planning Commission  
City of Morro Bay**

**by  
Robert G. Tefft, MD  
Chairperson, Planning Commission**

**September, 2015**

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## SUMMARY FINDINGS AND CONCLUSIONS

- Finding 1:** The normal beach trail which is clearly identifiable across the property at 3420 Toro Lane in Morro Bay, CA appears to afford coastal access that can reasonably be utilized by most able-bodied persons. The width, incline, and surface characteristics may, however, be challenging for the elderly and the infirm. Surface irregularities due to erosion present at least some degree of risk for trip-and-fall accidents or ankle injuries. Wheelchair access would be infeasible at this site.
- Finding 2:** The area surrounding the property at 3420 Toro Lane affords many alternate beach access routes, both informal and improved. The primary obstacles to public coastal access in this area are a severe lack of off-street parking facilities and inadequate signage to direct visitors to available access points.
- Finding 3:** Investigation into the potential for a public prescriptive easement with respect to the trail on the 3420 Toro Lane property suggests that all of the elements required for a prescriptive easement are extant, with the possible exception of “adverse” or “hostile” use.
- Finding 4:** Perfection of a prescriptive easement for the trail at 3420 Toro Lane, in combination with buffers required by the local coastal plan for protection of dune and stream habitat, would prevent the owners building a residence at the site and would therefore prohibit any economically viable use of the property. This would, in all likelihood, be considered a taking of private property for public use without just compensation and would, therefore, be prohibited by the Fifth Amendment to the Constitution of the United States and by Article 1 of the Constitution of the State of California.
- Finding 5:** Irrespective of the potential prescriptive easement question, the issues before the City of Morro Bay, at the time of this report, are the approval of a Coastal Development Permit and Conditional Use Permit for the 3420 Toro Lane property. Under the precedent established by the California Appellate Court in *LT-WR, LLC. v. California Coastal Commission*, a determination that a potential prescriptive easement may exist with respect to a particular property is “speculative” and can not serve as the basis for denying such permits.
- Finding 6:** While the City of Morro Bay has both the authority and the responsibility to establish appropriate mitigation if public access is lost due to development at this site, permit conditions requiring alternate on-site access would, by definition, impinge on the fundamental right of landowners to exclude others from their property. Such conditions would foreseeably violate the principle of “proportionality”, as established by the United States Supreme Court in *Dolan v. City of Tigard*. In addition, other adequate mitigation requirements are available to the City (e.g., requiring the owners to provide improvements at existing off-site beach access points or requiring owners to contribute in-lieu funds that will be used by the City to improve coastal access) which would not infringe upon constitutionally protected property.

## INVESTIGATION OF POTENTIAL PRESCRIPTIVE PUBLIC ACCESS EASEMENT

3420 Toro Lane  
City of Morro Bay, CA

### SECTION 1: SITE DESCRIPTION AND SETTING

#### Description of Coastal Access

The beach access addressed in this investigation is located near the northern tip of the City of Morro Bay, extending from an origin on Toro Lane approximately 200 feet north of the intersection of Toro Lane and Yerba Buena Street to a terminus just south of the mouth of Alva Paul Creek. The access consists of an informal trail which appears to have been created by pedestrian usage, with no evidence of deliberately constructed improvements. The overall length of the trail is estimated to be approximately 250 feet and, over its length, the trail drops approximately 40-45 feet in elevation.

The initial portion (approximately 50 feet in length) of the access trail is located within City-owned property that constitutes the right-of-way adjacent to Toro Lane. This segment diverges from Toro Lane at approximately a 45 degree angle in a west-by-northwesterly direction. The walking surface is hard-packed dirt with minimal damage due to erosion. Topography is nearly level to gently-sloping and the width of the path is roughly six-to-eight feet. This portion of the access trail does not lie within any environmentally sensitive habitat area (ESHA) or ESHA-associated buffers.

As the access route leaves City property, it traverses, for a distance of approximately 10-15 feet, a private parcel (APN 065-091-023) that lies to the south and east of 3420 Toro Lane. The San Luis Obispo County Tax Assessor's website indicates that this property is owned by "Frye, Gregory J. Tre Etal", although there is some question as to whether this information is current. A low split-rail fence is located near the boundary of the City-owned right-of-way, but this structure is in an advanced state of disrepair and presents no obstruction to use of the accessway. A sign affixed to the fence reads "RIGHT TO PASS BY PERMISSION AND SUBJECT TO CONTROL OF OWNER, CIVIL CODE SECTION 1008". In terms of width and surface, this portion of the trail is similar to the initial segment. The incline of this portion is slightly greater than of the first segment, but would still be considered gentle.

Continuing, the trail enters the property at 3420 Toro Lane (APN 065-091-022). This parcel is also recorded



Figure 1: Site Location (yellow circle)

# EXHIBIT G



**Figure 2: Location of Access Trail at 3420 Toro Lane**

with the County Tax Assessor as belonging to “Frye, Gregory J. Tre Etal”, though, again, there is some question as the currency of this information. As the access enters this property, it curves to the west and begins an oblique descent of the bank of an unnamed creek. In consequence, the incline of the walkway steepens to a moderate pitch. The surface of the path is still packed earth, but, in some areas, is uneven due to erosion caused by water run-off during rain events. The degree of surface irregularity is sufficient to present at least some risk of a trip-and-fall accident or ankle injury to users who are

inattentive.

As the access trail approaches the beach, the pitch continues to steepen, and the last 25 feet or so of the trail could be described as moderate-to-steep. In addition, the walking surface changes from packed dirt to beach sand. Erosive damage is not prominent in this segment. The pathway does not pass through the areas of riparian habitat or of degraded dune habitat located at the north edge of the property. It does, however, pass



**Figure 3  
Origin of Access Trail  
at Toro Lane**

3420 Toro Lane  
Morro Bay, CA

**Figure 4**  
**Upper Portion of**  
**Access Trail**



3420 Toro Lane  
Morro Bay, CA

**Figure 5**  
**Condition of Split**  
**Rail Fence**



3420 Toro Lane  
Morro Bay, CA

through the 25-foot stream buffer zone and the 50-foot buffer associated with the dune habitat. Considerable evidence of gopher activity is noted on both sides of the trail.

The trail terminates onto beach sand just south of the mouth of the unnamed creek. On the beach near the foot of the trail are two small informational signs, apparently placed by State Parks. Aside from these signs, there are no improvements along or adjacent to the path, and there are no visitor amenities. After arriving at the foot of the accessway, visitors must traverse an estimated 100 to 200 yards of beach sand (depending on



**Figure 6  
Posted Signage**

3420 Toro Lane  
Morro Bay, CA

tide conditions) in order to reach the ocean.

Street parking for persons utilizing this access point is available on Toro Lane between the intersection with Yerba Buena Street on the south and a point approximately 50 feet north of the northerly property line at 3420. Beyond that point, going north, Toro Lane becomes a private road on which public parking is not permitted. “No Parking” signs have been placed along the street at frequent intervals, and the curbs along both sides are painted bright red. South of 3420, the westerly curb of Toro Lane actually bows toward the

**Figure 7  
Mid- and Lower  
Sections of Access  
Trail**



3420 Toro Lane  
Morro Bay, CA

ocean, providing an area of parking that is father from traffic lanes. The capacity for on-street on Toro Lane is estimated to be between 12 and 14 vehicles.

**Figure 8**  
**Erosive Damage,**  
**Mid- Portion of**  
**Access Trail**



3420 Toro Lane  
Morro Bay, CA

**Figure 9**  
**Termination of**  
**Access Trail**



3420 Toro Lane  
Morro Bay, CA



**Figure 10**  
**Adjacent Street**  
**Parking on Toro Lane**

3420 Toro Lane  
 Morro Bay, CA

### **Area Description**

Toro Lane itself is approximately 1000 feet in length and extends from Yerba Buena Street on the south to the a small public parking area at its north end (North Point). Vehicular access to the street is by way of a signalized intersection of Yerba Buena with State Highway 1. Toro Lane runs parallel to and adjacent to Highway 1, and the chain link safety fence associated with the State highway is only a few feet from the eastern curb of Toro Lane. Fifteen properties along the west side of Toro Lane are developed with single-family residences, and three lots remain vacant. Topographically, Toro Lane lies along a coastal bluff. The elevation of the bluff increases as one travels north, rising from approximately 40 feet at the Yerba Buena intersection to 60 feet at North Point.

The area of Morro Bay that surrounds Toro Lane is also essentially residential in character. No commercial, industrial, or private visitor-serving land uses exist west of Highway 1 between the northern City limits and Morro Bay High School, almost two miles to the south. Commercial development to the east of Highway 1, along North Main Street is primarily community-oriented, rather than visitor serving.

## Nearby Coastal-Related Facilities

In contrast to the absence of commercial visitor-serving land uses, the neighborhood surrounding 3420 Toro Lane does provide several public, coastal-related facilities. This area of the City is a residential neighborhood with virtually no commercial development. Two visitor-serving facilities are located in this area: Morro Strand State Beach and the North Point public parking area.

### Morro Strand State Beach

Morro Strand State Beach lies immediately to the south of the Toro Lane-Yerba Buena Street intersection, approximately 400 yards from 3420 Toro Lane.

The California Department of Parks and Recreation describes Morro Strand as follows:

“This beach is a coastal frontage park featuring outstanding picnic sites. A three-mile stretch of beach connects the southern and northern entrances to the beach. Fishing, windsurfing, jogging, and kite flying are popular.”

The park offers 81 campsites, as well as a day use parking area that can accommodate 12 to 15 vehicles. Park staff, however, notes that the availability of day parking is often, during periods of heavy campground use, impacted by the fact that some spaces are occupied by overnight campers waiting for reserved campsites to be vacated. Morro Strand also provides four large public restrooms, the only such facilities in the vicinity.

Vehicular access to Morro Strand is only by way of Trinidad Street, which descends from Yerba Buena Street along the face of the coastal bluff. Pedestrian access to the park is by way of Trinidad Street, by multiple informal trails from Beechcomber Street, by a well-constructed wooden stairway from Beachcomber, or by a paved walkway which crosses under Beachcomber from Orcas Street.



Figure 11: Morro Strand, Access from Beachcomber



Figure 12: Morro Strand, Access from Orcas Street

### North Point Public Parking Area

The North Point public parking area is located at the north end of Toro Lane, approximately 300 yards from 3420 Toro Lane.

The parking lot itself is small, providing only nine parking spaces (including one handicapped space), but the area around the parking lot has been improved to offer some visitor amenities. Perhaps the most significant of these is a wide, well-constructed stairway, with handrails on either side, which leads to the beach below. Additionally, benches have been installed along the south and west edges of the parking



Figure 13: Stairway at North Point



Figure 14: Benches at North Point

area, and these offer spectacular views of the coastline to the north and south and of Morro Rock. Public restroom facilities, however, are not provided at this location.

Because of its relatively remote location, the North Point parking area is not highly utilized by visitors from out of the area. It is, however, a very popular coastal access point with “locals” and is often filled to capacity. This lot is especially frequented by dog owners, as it offers the closest parking to dog-accessible beaches to the north.

### Alternate Beach Access

The issue of other available beach access in the vicinity of 3420 Toro Avenue does not have direct bearing on this investigation into the potential for a prescriptive public access easement over that property. Consideration of this matter, however, is included here because it may be very important in reviewing possible alternatives to prescriptive easement, such as, for example, a requirement for public access as a condition of a coastal development permit or conditional use permit.

The area chosen for the survey of alternate beach access extended from North Point southward to the southern end of Morro Strand campground. The length of the survey area is approximately 1000 yards, or 0.56 mile. Although the choice of survey area was, admittedly, somewhat arbitrary, it represents a stretch of beach that can easily be walked by an average person and which is bounded on the north end by Morro Bay’s city limit and on the south by a long stretch of relatively solid residential development, with little visitor-serving activity.

The preliminary location and identification of possible beach access routes was performed using satellite imagery obtained through Google Earth. Each potential access was then visually verified and inspected and documented photographically. Verified beach access routes were evaluated with respect to:

*Nature of the walking surface* – The material composition of each access route was noted and recorded. If more than one type of walking surface was observed at a given site, all surfaces were recorded and are shown in Table 2, separated by slashes (e.g., PS/S or PG/W).

*Width of the walking surface* – The width surface of each access route was estimated. When the width of the path was variable, the width classification reflects the most narrow portion of the trail or path, since this segment would determine the ultimate usability of the access.

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*Slope* – The slope of each access route was noted and classified. In cases where the slope of the path varied, the slope classification reflects the most narrow portion of the trail or path, since this segment would determine the ultimate ease the access.

*Surface irregularity* – The presence of irregularities in the walking surface was noted and recorded. Most frequent causes of surface irregularity were the presence of rocks, plants, or other foreign objects and erosive damage to the surface due to water run-off.

*Overall accessibility* – An overall estimate of the usability of each access route was made, based upon the type of visitor who could safely and conveniently use the access.

The classification system used in evaluating each of the above characteristics is outlined in Table 1, below

**Table 1: Evaluation of Beach Access Routes in the Vicinity of 3420 Toro Lane, Morro Bay, CA**

Symbol	Interpretation
<i>Nature of the walking surface</i>	
A	Asphalt
BG	Matted beach grass
PD	Packed earth
PG	Packed gravel
PS	Packed sand
S	Loose sand
W	Wood
<i>Width of the walking surface</i>	
1	Wide - Minimum width >6 feet
3	Medium - Minimum width 3-6 feet
5	Narrow - Minimum width <3 feet
<i>Slope</i>	
1	Level or nearly level
2	Mildly inclined - Can be negotiated by an average person with little special effort
3	Moderately inclined - Can be negotiated by an average person with care
4	Steeply inclined - Can be negotiated only with considerable difficulty
5	Very steep - Too steep for routine use
<i>Surface irregularity</i>	
1	Essentially smooth
2	Mildly irregular or eroded
3	Moderately irregular or eroded - some trip-and-fall hazard
4	Severely irregular or eroded - high trip-and-fall hazard
5	Essentially impassable due to gullies or ruts
<i>Overall accessibility</i>	
1	Accessible to virtually all potential users, including beach wheelchairs
2	Accessible to virtually all ambulatory users, including aged and infirm
3	Accessible to most able-bodied users
4	Accessible only to athletic users
5	Dangerous or impassable to all users

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In this survey, a total of seventeen beach access routes were found between North Point and the south end of Morro Strand (including the access trail at 3420 Toro Lane). This corresponds to a density of 30 access points per linear mile of beach. For comparison, the average access density for all beaches in California is 0.77 access points per mile. The location of each of these beach access trails is shown in Figures 15 - 18.



Figure 15: Trails in North Point Area



Figure 16: Trails in Beachcomber Drive Area

The **North Point** area provides two routes of ready access to the coastal bluff. In this area, the bluff has been improved with benches and offers spectacular views of the shoreline to the north and of beaches and Morro Rock to the south. Trail 2 provides the most direct bluff access. This route begins with an upward incline from the North Point parking area. The ascending segment, however, is paved with asphalt and is easily usable for all potential visitors, though persons in wheelchairs may require some assistance here. The remainder of the trail is composed of hard-packed dirt and is essentially level. Trail 2a branches off of Trail 2, providing a route to the beach below. The steep incline of this access route, however, renders it unsuitable for many beachgoers. At its terminus, Trail 2 joins Trail 1 and Trail 1b.

Trail 1b provides direct access to the beach areas to the north. The initial portion of this access route slopes gently downward and is easily traveled. As the trail approaches the beach, however, the slope becomes much steeper and marked erosive damage is present. Despite its challenges, Trail 1b is relatively heavily utilized, as it provides access to an area of the beach where dogs are allowed.

Trail 1 is a wide, flat route that runs from the North Point parking area to the norther edge of the coastal



**Figure 17: Trails in Trinidad Street Area**



**Figure 18: Trails in Morro Strand Area**

bluff, where it joins Trails 1a, 1b, and 2. Access to this trail requires users to walk up a berm that surrounds the parking lot. This would likely prove difficult for any visitor confined to wheelchair. The trail itself is wide and level, and much of it is paved with asphalt (probably representing an abandoned segment of the original Highway 1). Trail 1 is much-used by dog owners, as it is the most direct route to Trail 1b (discussed above). Trail 1a, on the other hand, has been severely eroded by water run-off and is considered, for practical purposes, impassable.

Trail 3 provides the most important direct beach access from the North Point Area. This “trail” is actually a wide and well-constructed stairway that descends from the parking lot to the sand. The stair treads consist of packed gravel, retained by wooden risers, and handrails are provided on both sides of the stairway. This route is accessible for virtually all visitors, except for persons confined to wheelchairs.

Trails 1, 2, and 3 in the North Point area provide beach and coastal bluff access that is superior to that offered by the trail at 3420 Toro Lane.



**Figure 19: North Point Parking Area**

The primary obstacle to public beach access in the North Point area is a shortage of available parking. The parking lot here provides only 9 spaces (including one handicapped space), and is often filled to capacity. In addition, much of Toro Lane, leading to the parking lot, is a private road and is prominently posted with “No Parking” signs. The potential exists to greatly facilitate recreational beach use in this area by enlarging the existing parking area, removing parking restrictions on Toro Lane, constructing a dedicated bicycle accessway, and posting directional signage at the intersection of Yerba Buena Street and Toro Lane.

**Beachcomber Drive** is a very popular site for informal beach access, probably because of its direct connection to Yerba Buena Street. In this area, four informal trails (Trails 4 - 7) descend from street level to the sand. The surface of these trails is packed dirt, transitioning to sand near beach level. Assessment of footprint density at the foot of the trails suggests that Trail 7 is most heavily-used. This trail is also the most accessible of the four routes, as it is less steep than others in this area. Trail 7 offers access to virtually all able-bodied visitors that is essentially equivalent to that provided at the 3420 Toro Lane site.

Trails 5 and 6 are similar to, but somewhat steeper than, Trail 7. Footprint patterns, however, suggest that these trails are utilized for beach access to at least a moderate degree. Trail 4 is much steeper and much more narrow than other5 accesses in this area, and appears to be little-used.

As with the North Point area, the primary constraint to beach access in the Beachcomber Drive area is lack of sufficient parking.

The **Trinidad Street** area provides five established points of beach access (Trails 8-12). Four of these (Trails 8-11) are informal trails that appear to have been created simply by public use. Trail 12, which is adjacent to the entrance to Morro Strand State Beach, has been improved with signage and with rope barriers to prevent incursion into snowy plover nesting habitat.

Trinidad Street provides vehicular access to Morro Strand State Beach and descends approximately 30 feet from Yerba Buena Street to the park entrance. In consequence, the access trails which originate from the northern part of the street (Trails 8 and 9) are rather steep. Trails 10 and 11, on the other hand, are only moderately inclined and Trail 12 is essentially level. Because the curb of Trinidad Street blocks the flow of water run-off, trails in this area show little of the erosive surface damage seen at other sites. Trails 10 and 11 provide beach access



**Figure 20: Parking for Beachcomber Trails**



**Figure 21: Parking for Trinidad Trails**

that is equivalent to that at 3420 Toro Lane, while Trail 12 provides superior access.

Footprint patterns suggest that Trails 10 and 12 are the most heavily utilized beach routes in this area. Trail 10 is the closest gentle path to the intersection of Trinidad Street with Yerba Buena and Beachcomber, while Trail 12 is the widest, most level, and best-marked trail in the area and is adjacent to the day-use parking area for Morro Strand State Beach. Although Trail 11 is quite accessible, it shows relatively sparse signs of use, probably because of its proximity to Trail 12.

Although parking is not permitted on Trinidad Street, considerable parking is available non the portion of Beachcomber that runs parallel to the east. From Beachcomber, visitors can access the Trinidad trails via a number of informal, though somewhat steep, paths that connect the two streets. Persons who wish a less strenuous route may walk north on Beachcomber to the intersection with Trinidad, the downhill on Trinidad to the desired trail.

The **Morro Strand** area offers three outstanding beach access trails (Trails 13 - 15). All three of these trails are wide (8-12 feet), essentially flat, and unmarred by erosive damage. They are heavily utilized by visitors staying at the adjacent campground and by day-users, as well. Trails are marked, signed, and separated from nearby snowy plover nesting sites. In addition, public restroom facilities are available in the campground. The access provided by each of these three routes is far superior to that at the 3420 Toro Lane site.

The landward ends of Trails 13 and 14 traverse low dunes. As a result, there is some gentle undulation of the walking surface and some dune vegetation within the trails. As these routes leave the dunes, they become quite broad, flat, and sandy. In contrast, the landward end of Trail 15 is paved with asphalt as it winds through a small grove of trees. The remaining surface of this trail includes substantial areas of packed sand and of matted beach vegetation, as well as some loose beach sand. Because of its width, lack of undulation, and relatively firm surface, Trail 15 offers excellent access for persons in beach wheelchairs.

Day-use beach parking is not permitted within the Morro Strand campground itself. A free parking area at the State Beach entrance provides space for 12-15 vehicles, including one marked handicapped-accessible space. This facility, however, is often filled to capacity during high-use periods. Additional street parking is available on Beachcomber Drive. Visitors parking on Beachcomber can access

the Morro Strand trails via a staircase (see Figure 11), by informal trails leading down the bluff between Beachcomber and the campground, or by way of Trinidad Street. Persons who are unable to negotiate a stairway have the option of parking on or adjacent to Orcas Street and accessing the campground by means of a paved asphalt path that runs under Beachcomber (see Figure 12). Accessibility of the Morro Strand trails could be significantly improved by enlarging the current day-use parking area and designating additional handicapped-accessible parking within this lot, by establishing handicapped-accessible parking spaces within



**Figure 22: Morro Strand Day Parking Area**

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the campground in proximity to trail heads, and by providing appropriate signage to inform visitors about the stairway from Beachcomber Drive and the underpass from Orcas Street.

In summary, this area of Morro Bay currently enjoys an abundance of beach access, both formal and informal. Table 2, below, provides an overview of this information. The primary impediment to public access in north Morro Bay appears not to be a lack of beach access routes, but rather a shortage of organized, well-signed parking and, particularly, a deficit in well-located handicapped-accessible spaces.

**Table 2: Summary of Beach Access in the Vicinity of 3420 Toro Lane, Morro Bay, CA**

Trail Number	Surface	Width	Slope	Surface Irregularity	Overall Accessibility	Comments
<b>North Point Area</b>						
1	A/PD	5	1	1	2	Access to coastal bluff only.
1a	PD	3	5	5	5	Virtually impassable
1b	PD	3	4	4	4	
2	PD	3	1	1	1	Access to coastal bluff only
2a	PD	3	4	2	4	
3	G/W	3	n/a	1	2	Stairway
<b>Toro Lane Area</b>						
3420 Toro	PD/S	3	3	3	3	Few footprints at base
<b>Beachcomber Drive Area</b>						
4	PS/S	5	4	2	4	
5	PD	3	4	2	4	Footprints at base indicate some use
6	PD/S	5	4	2	4	Footprints indicate moderate use
7	PD/S	5	3	3	3	Footprints at base indicate heavy use
<b>Trinidad Street Area</b>						
8	S	5	4	2	4	Footprints at base indicate some use
9	PD/S	5	4	1	4	Footprints at base indicate some use
10	S	5	3	1	3	Footprints indicate moderate use
11	PD/S	5	3	1	3	Little apparent usage
12	S	3	1	1	2	Footprints indicate moderate use
<b>Morro Strand Area</b>						
13	S	3	1	1	2	Footprints at base indicate heavy use
14	S	3	1	1	2	Footprints at base indicate heavy use
15	BG/PS/S	1	1	1	1	Footprints at base indicate heavy use
<i>Primary beach access routes indicated by yellow shading. Primary coastal bluff access routes indicated by green shading.</i>						

## SECTION 2: CONSIDERATION OF POTENTIAL FOR PRESCRIPTIVE EASEMENT

**Terminology and Background**

- An *easement* is a nonpossessory interest in another's land that entitles the holder only to the right to use such land in a specified manner.
- A *prescriptive easement* is a right of use over another's land that is established by use, rather than by a contract or other means. Specific criteria are set forth in law as to the nature and duration of use that may result in a prescriptive easement,
- A prescriptive easement is termed a *public prescriptive easement* when the holder of the easement (i.e., the party entitled to use the land of another) is the public, in general, rather than a specific individual or entity.

As a general rule, California law does not permit the establishment of a prescriptive right of access over private property by the public in general or by any governmental body<sup>1</sup>. An exception to this principle, however, applies to properties which are located along the coast or adjacent to other marine environments.

The right of public access to the ocean and navigable waterways is ultimately based on Article X, Section 4 of the California Constitution, which reads:

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

One of the stated goals of the California Coastal Act, enacted in 1976, is to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners”<sup>2</sup>. The Coastal Act goes on to require that:

“Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation”<sup>3</sup>; and

“Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected<sup>4</sup>.

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<sup>1</sup> **California Civil Code, Section 1009(3)(b)**: “Regardless of whether or not a private owner of real property has recorded a notice of consent to use of any particular property pursuant to Section 813 of the Civil Code or has posted signs on such property pursuant to Section 1008 of the Civil Code, except as otherwise provided in subdivision (d), no use of such property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use, made by the owner thereof in the manner prescribed in subdivision (c) of this section, which has been accepted by the county, city, or other public body to which the offer of dedication was made, in the manner set forth in subdivision (c).”

<sup>2</sup> **California Public Resources Code, Section 30001.5(c)**

<sup>3</sup> **California Public Resources Code, Section 30211**

<sup>4</sup> **California Public Resources Code, Section 30212(a)**

Consistent with these goals, State law provides that properties which lie generally within 1000 yards of the mean high tide line of the Pacific Ocean or between the mean high tide line and the nearest public road, may be subject to prescriptive easement to ensure the public's access to the coast is not impaired<sup>5</sup>.

The responsibility for investigating whether or not a public prescriptive access easement may exist with regard to any given property lies with the California Coastal Commission. If the Coastal Commission determines that such an easement is likely exist, the matter may be referred to the Office of the Attorney General. Acting upon information supplied by the Coastal Commission, the Attorney General may then bring the matter to court. Neither the Coastal Commission nor the Attorney General have authority to determine if a public prescriptive easement actually exists in a specific instance, This determination rests with the judge who serves as the trier of fact.

In 1989, the Attorney General's office prepared a manual for Coastal Commission staff to use in determining the level of public use necessary to establish a prescriptive right<sup>6</sup>. According to the Attorney General, in order to establish a prescriptive right in California the public must have used the land for a prescriptive period of five years before an easement comes into being and (1) if the land is a beach or coastal bluff it must be shown that the land was used as if it were a public recreational area; (2) the use should be substantial rather than minimal; (3) the use must be by the public at large as opposed to a number of persons who belong to some limited identifiable group; and (4) the use must be continual though not continuous.

In addition to these requirements related to the duration and intensity of public use, a prescriptive easement is established only if use by the public occurs with the owner's actual or presumed knowledge and without significant objection or bona fide attempts to halt such use. Finally, a prescriptive easement is created only if the public's use is "hostile" or "adverse" to the owner's interest (i.e., without asking or receiving permission). Sections 1008<sup>7</sup> and 1009(f)<sup>8</sup> of the California Civil Code provides specific measures that an owner of coastal land may take to defeat a claim of hostile use by the public. These include a.) posting signage, publishing notice in a newspaper of record, or filing a statement with the County Recorder to the effect that rights to use the property are by permission and subject to control of the owner, or b.) entering into a written agreement with a governmental agency that provides for public use of the property.

## **Authority for the City of Morro Bay to Conduct an Investigation of Potential Prescriptive Easement**

Many coastal California communities have incorporated the authority, responsibility, and standards for conducting an investigation of a potential prescriptive easement into their adopted and certified Local

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<sup>5</sup> **California Civil Code, Section 1009(e):** Subdivision (b) shall not apply to any coastal property which lies within 1,000 yards inland of the mean high tide line of the Pacific Ocean, and harbors, estuaries, bays and inlets thereof, but not including any property lying inland of the Carquinez Straits bridge, or between the mean high tide line and the nearest public road or highway, whichever distance is less.

<sup>6</sup> **Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters.** Department of Justice, Office of the Attorney General, 1978.

<sup>7</sup> **California Civil Code, Section 1008:** No use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code."

<sup>8</sup> **California Civil Code, Section 1009(f):** No use, subsequent to the effective date of this section, by the public of property described in subdivision (e) shall constitute evidence or be admissible as evidence that the public or any governmental body or unit has any right in such property by implied dedication if the owner does any of the following actions:

(1) Posts signs, as provided in Section 1008, and renews the same, if they are removed, at least once a year, or publishes annually, pursuant to Section 6066 of the Government Code, in a newspaper of general circulation in the county or counties in which the land is located, a statement describing the property and reading substantially as follows: "Right to pass by permission and subject to control of owner: Section 1008, Civil Code."

(2) Records a notice as provided in Section 813.

(3) Enters into a written agreement with any federal, state, or local agency providing for the public use of such land.

Coastal Plan (LCP). The City of Morro Bay's Coastal Land Use Plan does not include such provisions.

However, as the local agency responsible for management and protection of coastal resources in our community, the City is undertaking this investigation at the expressed request of the California Coastal Commission. The investigation will be conducted in accord with the document entitled *Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters* (Department of Justice, Office of the Attorney General, 1978).

While the City of Morro Bay may legitimately inquire as to the facts and circumstances of the public's use of private property adjacent to the beach or waterfront, neither the City nor the California Coastal Commission have the authority to determine whether a public easement does or does not exist. The power to make such a determination is reserved to the courts.

## **Investigation of Potential Public Prescriptive Easement**

### *1. Has there been continual, substantial use by the general public for the required five-year period?*

Immediately prior to and after the initial Planning Commission hearing, on August 18, 2015, to consider issuance of a Coastal Development Permit for construction of a single-family residence on the property at 3420 Toro Lane, the City of Morro Bay received over 70 completed Coastal Commission questionnaires attesting to public use of the beach access trail which crosses this property. The data presented by these has been compiled and summarized by a Morro Bay resident who is not an employee of the City nor an elected or appointed official. The summary is attached to this report as Appendix B. While this investigation has not exhaustively checked the accuracy of this summary, it appears to represent the general sentiment and information provided by the original questionnaires.

Subsequently, direct observation has documented use of this access, at a minimum on weekend days when weather conditions were favorable for beach recreation. Further observation of parked vehicles on Toro Street adjacent to the trail head and of footprints in the beach sand at the foot of the trail would appear to substantiate at least some degree of use of this access route by the general public.

### *2. Did the owners have actual or presumed knowledge of the public's use of their property?*

The California courts have established that, when the public's use of private property is "open and notorious", the owner is presumed to be aware of such activity. In the current case, the presence of a well-worn trail with no evidence of re-vegetation and with footprints leading to the beach would seem to support the concept that the owners knew, or should have known of the public usage.

### *3. Did the owners object to or engage in significant efforts to halt the public's use of their property?*

The owners of this property have not indicated, nor have any records been found to suggest, that any objections to the public use of this beach access route were submitted to the City of Morro Bay or to any law enforcement agency.

Currently at the site there are remnants of a low wood rail fence which, at one time, would have crossed the beach access path. The fence is broken and, at present, presents no obstruction to the use of this access route. There is no evidence of any recent attempts to perform repairs. It is estimated that, even when intact, the fence would have been no more than 2 1/2 feet in height and would not have presented an effective barrier to pedestrian use of the trail. While the owner's actual intent in constructing this fence is not known, it likely would not be considered a substantial or bona fide effort to halt public use of site.

4. *Is the public's use of this property "hostile" or "adverse to the owner's interest" (i.e., without expressed or implied permission)?*

At the present time, signs reading "Right to pass by permission and subject to control of owner: Section 1008, Civil Code" are posted adjacent to the trail at 3420 Toro Lane. The property owners have indicated that the present signage was placed in May of 2015, so all use of this beach access since that date must be considered permissive, rather than hostile. Some individuals have reported, anecdotally, that they recall signs being posted on the property at various times in past years, but are unable to remember the wording of such signs. The question of whether the evidence is sufficient to document a five-year period of continual hostile use by the public is a matter to be determined by the trier of fact (the court).

Another significant issue with regard to the question of whether or not public use of this trail is, or has been in the past, hostile is that of the general pattern which has traditionally existed in the city of Morro Bay with regard to beach access across private, vacant land by members of the public. Morro Bay is a small town with a generally friendly and accommodating atmosphere. In addition, the economy of the town benefits greatly from tourism. It is, in fact, quite usual for the owners of undeveloped property to permit, without objection, public access for a variety of uses related to tourism and the use of the beaches and waterfront. Prominent examples of this practice include the properties now occupied by Bayshore condominiums and by the Morro Cove housing development. It could, therefore, be reasonably be argued that the absence of interference with the public's use of the beach trail at the Toro Lane site is evidence of a friendly and permissive accommodation of the public (implied permission) that is common among the community of Morro Bay. In *Armijo v. Mason*, the trial court denied a claim of private prescriptive easement based on the fact that a use allowed as a "friendly gesture and accommodation cannot ripen to a prescriptive easement". The decision of the trial court in this case was subsequently upheld by the court of appeals.

The issue of whether or not the "hostile use" standard has been met with regard to the Toro Lane property is a question of fact, reserved to judicial determination (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 36 Cal 3d. 564, 570).

### **Potential Inapplicability of the Public Prescriptive Easement Process**

As noted previously, the prescriptive easement process is based upon California Public Resources Code, Section 30001.5(c), which indicates that one of the "basic goals of the state for the coastal zone", is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners"<sup>2</sup>. The stated goal, therefore, is not an absolute protection of public access. The Legislature, in adopting this language specifically defined two instances in which maximization of public access is not required:

- a.) When such public access would be inconsistent with "sound resources conservation principles"; and
- b.) When such public access would conflict with "constitutionally protected rights of private property owners".

An important and universally recognized such constitutionally protected property right is the prohibition against taking of private property for public use without just compensation. This principle is rooted in the Fifth Amendment to the Constitution of the United States:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the

militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ***nor shall private property be taken for public use, without just compensation.***” (emphasis added)

Additionally, the California Constitution, Article 1, Section 19(a) provides that:

“Private property may be taken or damaged for a public use and ***only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.***” (emphasis added)

Case law interpreting these provisions is voluminous at both the State and Federal level, and an extensive review of this material is beyond the scope of this study. As a general rule, however, an unlawful taking will be deemed to have occurred when an action undertaken by or on behalf of a governmental agency deprives an owner of all commercially viable use of his or her property.

In analyzing how this principle might apply to the property at 3420 Toro Lane, it is necessary to be mindful that prescriptive access easements convey only the right to the use of a specific portion of a subject property, namely, the portion which has been demonstrably used for access during the five-year period in which the easement was established. In this case, the beach access trail that has been utilized by the public is readily apparent, and a prescriptive easement would permit future public access only along this specific route. Significantly, the prescriptive easement process would not establish a right of public access across any other portion of the property and would not allow for relocation of public access to another location.

In consideration of these restrictions, the possible ramifications of an action to establish a public access easement at this site must be evaluated in the context of other constraints on the use and development of the property:

- a.) The designated zoning for this property is R-1, with s.2a and ESH overlays. Under this designation, the only financially viable use for the property is construction of one or more single-family residences.
- b.) The existence of buffers related to environmentally sensitive habitats (both stream and coastal dunes) preclude development on approximately 2/3 of the property.
- c.) The area of the potential public access easement roughly bisects the portion of the lot that is currently available for development.
- d.) Preservation of eastern end of the existing beach access trail would preclude construction of a driveway and garage required by the Morro Bay Zoning Ordinance

Considering these various restrictions, it appears quite likely that the establishment of a public easement for use of the existing beach access trail would render infeasible any economically viable use of the property.

While it is beyond the purview of this investigation to determine whether California Public Resources Code, Section 30001.5(c) precludes any action to establish a prescriptive public access easement at the 3420 Toro Lane site, there does appear to be a significant likelihood that the courts will eventually determine that, in this specific instance, constitutional prohibitions against the seizure of private property without just compensation supersede the prescriptive public access easement provisions of the California Civil Code.

## **Relevance of Potential Public Prescriptive Easement to City Regulatory Process**

Although the City of Morro Bay has, on request of the California Coastal Commission, undertaken this investigation into the potential for a public prescriptive easement, the actual issue before the Planning

Commission as of this writing is an application for Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383.

The issue of potential prescriptive easement has, in actuality, little bearing on the task currently before the City. In a 2007 case, *LT-WR, LLC. v. California Coastal Commission*, the California Court of Appeals, Second District ruled that determination by the Coastal Commission of the existence of a potential prescriptive easement on a property is insufficient grounds to justify denial of a Coastal Development Permit for that site. The relevant text of that decision is as follows:

“We recognize one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas. Public Resources Code section 30210 provides: ‘In carrying out the requirement of Section 4 of Article X of the California Constitution [access to navigable waters], maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.’ .... However, the Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property. In denying LT-WR a permit for the gates and no trespassing signs due to the possibility of prescriptive rights, the Commission in effect gave credence to the claimed prescriptive rights. The Commission’s denial of a permit for the gates and signs, premised on the existence of ‘potential’ prescriptive rights, was speculative and properly was overturned by the trial court.”

Reasonable inference from this decision dictates that the City of Morro Bay should provide such information as it may have on the issue of a potential prescriptive easement to the Coastal Commission to be acted upon as is seen fit, but should proceed to formulate a decision on CP0-419 and UP0-383 based upon the City’s own local Coastal Land Use Plan, General Plan, and Zoning Ordinance and without consideration of any potential prescriptive public access easement at this site.

## **Possible Alternatives to Public Prescriptive Easement**

### **Alternative 1: Condition the Applicant’s Coastal Development Permit on Providing Public Beach Access Improvements**

Given the potential difficulties of proceeding with a prescriptive easement claim, the City could further the goal of maximizing the public’s access to the sea by requiring, as a condition of approval of the requested Coastal Development Permit (CDP), that the applicants provide mitigation for any loss of access that would occur due to this project. Such mitigation could, for example, be in the form of:

- a.) Construction of alternative, equivalent public access onsite
- b.) Construction of new public access on public lands offsite
- c.) Improvement to existing public accessways offsite that would increase the capacity of such access
- d.) Payment of monies to be used exclusively to improve and increase usability of public beach access

It should be noted, however, that the City’s actions in imposing a mitigation requirement on any permit are subject to the significant limitations imposed by several rulings that have been handed down by the United States Supreme Court and which define the manner in which the Fifth Amendment applies to the local permitting process:

- a.) There must be a nexus between the impact of the project and the required mitigation measures (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)) – In this case, it has been asserted

that the project will have a negative impact on the public's ability to physically access the beach and the ocean. Any required mitigation measures, therefore, must be imposed for the purpose of directly facilitating such access.

- b.) The required mitigation must be “roughly proportional” to the negative impact of the project (*Dolan v. City of Tigard*, 512 U.S. 374 (1994), *Koontz v. St. Johns River Water Management District*, 568 U.S. \_\_\_\_ (2013)) – The improvement in public access expected from the required mitigation measures cannot greatly outweigh the amount of access that is impaired by the project. The City could not, for example, require that the applicants provide a freeway interchange at Yerba Buena Street as mitigation for the loss of an informal dirt beach access path.

It is unlikely that the City can legally specifically compel the applicant in this instance to provide alternate beach access onsite as a condition of CDP. Imposition of such a condition would deprive the property owners of the right to exclude others, which, as Chief Justice Rehnquist stated in *Dolan v. Tigard*, is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” It is unlikely, therefore, that a requirement for onsite access could pass the “rough proportionality” test, especially when other, less onerous mitigations are effective.

### **Alternative 2: Accept an Offer of Dedication**

The applicant has indicated, in this case, that he may be willing to dedicate property to the City for the purpose of establishing an alternative access. This could mitigate any adverse impacts of the proposed project on public beach access, but may burden the City with construction and maintenance costs and expose the City to liability.

In addition, it would be essential to ensure that the offer of dedication is made willingly by the applicant, with no sense of obligation or coercion.

### **Alternative 3: No Action Alternative**

As noted previously in this report, the area of the City including and adjacent to 3420 Toro Lane currently provides a high density and wide variety of beach access points, both formal and informal. The City may, therefore conclude that loss of the trail at the proposed project site would not conflict with the objective of maximizing public access to the beach and ocean, as persons who have previously used this trail would simply choose another of many readily-available alternatives.

If such an assessment is made, the City may elect not to require mitigation and to decline any offer of dedication made by the applicant.

**Investigation as to Potential Prescriptive Easement  
Appendix B  
SUMMARY OF PUBLIC QUESTIONNAIRES**

*This summary was prepared by an interested Morro Bay resident and is presented as received*



# EXHIBIT G

## 3420 Toro Lane Public Path Prescriptive Easement Survey Results Summary

### Process:

Questionnaires were developed according to specifications and a sample obtained from the California Coastal Commission. Questionnaire requirements were also discussed with a Commission staff member who specializes in prescriptive easements.

The questionnaires were distributed by one individual over a two-week period. Distribution was done as follows:

- At the trailhead, on two weekend days, for about 2 hours each day
- At a farmer's market, on two consecutive Thursday afternoons
- Door-to-Door on three streets (Zanzibar, Yerba Buena, Vashon) east of Highway One
- To some persons with whom the person distributing the questionnaires was acquainted

Completed questionnaires were delivered to the City of Morro Bay Planning and Building department.

### Results:

75 questionnaires were completed by persons who use the path.

The earliest documented path use was by a respondent who used it in the 1950's. Two respondents began using the path in the 60's, seven began using it in the 70's, thirteen in the 80's, seven in the 90's, and 13 began using the path between 2000 and 2010. The remainder either began using it within the last five years, or misunderstood the question and gave the dates of their most recent uses.

The primary reason given for path use is beach access. Additional uses specified include birding, surfing, walking, biking, dog walking and clamming (clamming was in the 1950's).

More than a third of the responding path users state they are 61 or older. Age groups of respondents are as follows:

20 and under:	3
21 – 30:	9
31 – 40:	4
41 – 50:	6
51 – 60:	15
61 – 70:	19
71 – 80:	8
over 80:	1
No age given:	10

Fifteen respondents said they had used the path 100 times or more (of those, one said "100?"). Within that group, three said they had used it 1,000 or more times over the years. Three said their uses were "too many to count". Four said "numerous", "many", or "frequently". Some said they used it a specific number of times per week, month, or year. Others gave numbers of uses between 2 and 50+.

According to the California Coastal Commission, the following are the basic criteria for determining prescriptive rights to use a property:

- Use is substantial rather than minimal
- Use is continual, although it need not be continuous
- Use must be without asking or receiving permission from the owner
- Use must be with the actual or presumed knowledge of the owner
- There must be no significant objection or bona fide attempts by the fee owner to prevent or halt the use.

# EXHIBIT G

Only one respondent stated she had asked for permission to use the path; all others stated that they had never sought nor received permission. One respondent said that within the two week period prior to completing his questionnaire, someone had tried to interfere with his use of the path; one stated that in the last year, signs have been put up. All others stated that their path use had never been interfered with. Many respondents specifically stated on questionnaire page 2 that they believed the path was public property.

Respondents provided significantly more information than that compiled in the table below. The data provided here was chosen because it is a meaningful subset of that data which specifically addresses the California Coastal Commission criteria.

Respondent		Path Usage Duration	Approximate Number of Uses	Used Path Openly?	Asked and/or Received Permission?	Did Anyone Ever Try to Prevent Path Use?	Observed Others Using the Path?
Betty W.	63	1986 to present	35 - 40	Yes	No	Not until the last year, when signs were put up	Frequently
J. Gary W.	72	Last 3 years	20+	Yes	No	No	Frequently
F. Paul W.	56	1999 to present	20+	Yes	No	No	Frequently
James W.	53	1975 to present	Not specified	Yes	No	No	Whenever I was there
Robert S.	80	not specified	6	Yes	No	No	Frequently
Michael S.	70	1981 to present	100+	Yes	No	No	Whenever I was there; frequently
Chris S.	56	Since July, 2015	10+	Yes	No	No	Whenever I was there
Gail Q.	72	Since January, 2014	20	Yes	No	No	Whenever I was there
Daniel P.	66	Since 2001	4 times a year	Yes	No	No	Occasionally
Charlene P.	68	Since 2001	4 times a year	Yes	No	No	Occasionally
Daniel O.	25	Within last 6 months	4 or 5	Yes	No	No	Occasionally
Jonathan O.	34	Since 1981	100 ?	Yes	No	No	Frequently
Jeff O.	63	Since 1971	not specified	Yes	No	No	Frequently
Jacque O.	---	Since 1971	many	Yes	No	No	Frequently and Occasionally
Lynda M.	---	Since 1980	50	Yes	No	No	Occasionally
Frank M.	77	Since 1987	6	Yes	No	No	Occasionally
Denise H.	54	Since the 70's	whenever in town	Yes	Yes	No	Frequently

# EXHIBIT G

Robert L.	54	Since 1998	Too many to count - 100+	Yes	No	No	Frequently
Damien H.	43	yesterday	numerous	Yes	No	No	Whenever I was there
Susan H.	---	Since 2014	3 or 4	Yes	No	No	Occasionally
Janith G.	70	Since July, 2007	once a month	unspecified	No	No	Whenever I was there
Jill G.	51	For 15 years	numerous	Yes	No	No	Whenever I was there
Kevin F.	55	Since 2000	2 – 3 times weekly	Yes	No	No	Whenever I was there
Cherry F.	31	Since 2012	2 – 3 times weekly	Yes	No	No	Whenever I was there
Megan E.	29	Since 2010	More than 50	Yes	No	No	Whenever I was there
Brigid C.	63	8/2/15	12 / year	Yes	No	No	Whenever I was there
Tom C.	68	unspecified	Frequently	Yes	No	No	Frequently
Tim B.	---	Since 1989	30+	Yes	No	No	Whenever I was there
Kelly B.	58	Since 4/10/15	3 times	Yes	No	No	Frequently
Michele A.	65	Since 1970	4,000 times plus	Yes	No	No	Whenever I was there
Nancy B.	76	Since 1980	50+	Yes	No	No	Frequently
Linda J. B.	---	Since August 10, 2015	7	Yes	No	No	Whenever I was there
David B.	42	8/16/15	5 - 6	Yes	No	No	Whenever I was there
Joan C.	older	2000	100	Yes	No	No	Occasionally
Brandon C.	30	2008	Every week	Yes	No	No	Whenever I was there
Lindsey C.	31	For the last 2 years	20+	Yes	No	No	Frequently
Kim S. D.	30	June	5	Yes	No	No	Whenever I was there
Sandy F.	63	Since 1989	100	Yes	No	No	Whenever I was there
Carol G.	68	Since 1989	100's	Yes	No	No	Frequently
Jeanne H.	55	5/5/14	30	Yes	No	No	Frequently
Betsy K.	47	Since 1999	not sure – more than 10	Yes	No	No	Occasionally
Michael K.	51	6/1999	10	Yes	No	Yes – in last 2 weeks	Whenever I was there
Miriam L.	42	unspecified	unspecified	unspecified	unspecified	unspecified	unspecified
Susan and Dennis M.	----	2014	10 – 12 times	Yes	No	No	Frequently
Makena M.	22	2000	Hundreds	Yes	No	No	Frequently
Jeffrey M.	30	2 years	20	Yes	No	No	Frequently
Chris N.	46	2002	Too many to count	Yes	No	No	Whenever I was there

## EXHIBIT G

David N.	67	1990	2 – 3 times a week	Yes	No	No	Whenever I was there
Monique N.	---	Roughly 1995	varied over years but now 2 – 3 times/week	Yes	No	No	Frequently
Ruby N.	9	2006	Too many to count	Yes	No	No	Whenever I was there
Bill N.	68	2000	50	unspecified	No	No	Occasionally
Ava R. P.	9	2006	100's	Yes	No	No	Whenever I was there
Leanne	57	unspecified	2	Yes	No	No	Frequently
Logan R.	25	2010	? – looks like 101s!	Yes	No	No	Frequently
Michele S.	43	40 years	100's	Yes	No	No	Whenever I was there
Nine T.	62	every day	7 days a week	unspecified	No	No	Whenever I was there
Ben W.	37	7-1-4	100	Yes	No	No	Whenever I was there
Alice Y.	72	3 x week	100's	Yes	No	No	Frequently
Diane and Ralph S.	---	1980	1000 +	Yes	No	No	Whenever I was there, and Frequently
Margie P.	70	1989	weekly	Yes	No	No	Whenever I was there
Abe P.	84	1989	On and off since 1989	Yes	No	No	Whenever I was there
Barbara W.	71	1987	Well over 3000	Yes	No	No	Frequently
Cynthia H.	---	August 2015 and in 1950's	20	Yes	No	No	Whenever I was there
Lisa K.	55	1986	20 – 30 years	Yes	No	No	Frequently
Kirk K.	65	1975	100	Yes	No	No	Frequently
Flora K.	27	1990	unspecified	Yes	No	No	Whenever I was there
Francesca K.	17	1998	unspecified	Yes	unspecified	No	Frequently
Nancy K. B.	65	2005	25	Yes	No	No	Occasionally
Chase C.	23	many, many years	? partially crossed out	Yes	No	No	Whenever I was there
Dennis C.	67	1968	50	Yes	No	No	Frequently
Natalia M.	---	1968	50	Yes	No	No	Frequently
Melinda J. U.	52	July, 2015	30	Yes	No	No	Frequently
Jackie R.	75	August, 2012	Twice a month	Yes	No	No	Frequently
Debbie H.	65	8/1/15	Several	Yes	No	No	Frequently
Helen G. A.	52	unspecified	unspecified	unspecified	unspecified	unspecified	unspecified
Christine B.	54	1996	20 times	Yes	unspecified	unspecified	occasionally



AGENDA NO: B-2

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 30, 2015

**FROM:** Cindy Jacinth, Associate Planner

**SUBJECT:** Review and Adopt Draft Funding Recommendations for the 2016 Community Development Block Grant (CDBG) Program

### **RECOMMENDATION**

Staff recommends the City Council review and adopt draft funding recommendations for the 2016 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors for inclusion with the other draft funding requests from the Urban County Consortium. The funding requests are for the City are the Pedestrian Accessibility Sidewalk (ADA) project estimated at \$62,151 and program administration of \$5,438 for a total funding allocation of \$67,589. Additionally, staff recommends the City Council authorize the City Manager to make pro rata adjustments to the allocation based on final funding amount from San Luis Obispo County based on the approval of the federal budget and HUD's final grant amount to the County. Staff also recommends Council direct staff to pursue an advance of CDBG funds for the 2017-2019 program years to execute additional ADA Accessibility improvements using the existing Sidewalk Gap Closure construction contract with Williams Concrete & General Engineering.

### **ALTERNATIVES**

The City Council may move to adopt draft funding recommendations to forward to the Urban County Consortium, which would fund CAPSLO's Prado Day Center application for the amount of \$8,600 and fund the City's Pedestrian Accessibility Project for \$53,551 and Program Administration amount of \$5,438.

### **FISCAL IMPACT**

Approving staff recommendations would allow for \$62,151 in accessibility improvements (sidewalk and curb ramps), along with \$5,438 to offset City administrative costs, including planning and engineering. Overall CDBG administration, including compliance with Federal regulations, is now performed by County staff pursuant to the City's 2015-2018 Urban County Participation Agreement.

Projects that receive over \$2,000 in CDBG funds are subject to prevailing wage requirements under Davis-Bacon and Related Acts (DBRA).

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Prepared By:  CJ  Dept Review:  SG

City Manager Review:  DWB

City Attorney Review:  JWP

**SUMMARY**

Since 2011, the City of Morro Bay has been a member of the Urban County, which is a consortium of participating local jurisdictions that includes San Luis Obispo County and the cities of Paso Robles, Atascadero, San Luis Obispo, Pismo Beach and Arroyo Grande for the purpose of receiving and allocating CDBG funds.

In the past four funding cycles, the City has been awarded funding to two categories: the City’s pedestrian accessibility/sidewalk project and public services grants to social service agencies.

<i>Cumulative Past Funding Awards</i>	<i>Total Cumulative Award Amount</i>
City of Morro Bay – <i>Handicapped Accessibility - Barrier Removal Projects</i>	\$165,062
<b><i>Public Services- *limited to 20% of annual allocation</i></b>	
CAPSLO	8,600
Senior Nutrition Program of SLO County	17,192

The 2016 CDBG award process began in the fall of 2015. The first of two workshops was held throughout the County to solicit public comment on community needs. A needs workshop was held at Atascadero City Hall on September 8, 2015, with the cities of Morro Bay, Atascadero and Paso Robles participating. The County published a request for CDBG proposals and the City received three applications. Total funding is anticipated to be approximately \$77,689, approximately 20% more than last year. Final funding amounts are subject to change and will be released by the Department of Housing and Community Development (HCD) in early 2016.

In addition to the 2016 CDBG funding allocation made available for draft funding recommendations, County staff has approached the City about an option to take an advance on future year CDBG allocations, potentially years 2017, 2018 and 2019. The County as the recipient of the HUD funding administers subrecipient agreements with each City and per Federal regulations is required to meet annual expenditure deadlines, or risk penalties by HUD for non-performance. With these expenditure deadlines in mind, County staff has informed City staff that the City of Atascadero has an allocation of funds that they may not be able to expend by the deadline and has proposed a yet to be negotiated advance of CDBG funds, if Morro Bay can expend by April 30, 2016. The advance of CDBG funds, anticipated to be between \$100,000 - \$177,000, could be made to the City for the Pedestrian Accessibility Project. The Public Works Department has indicated their scope of work for sidewalk improvements is large enough to expend this amount but in order to meet these tight timelines, staff will need to obligate these funds this month.

Should the Council be interested in pursuing an advance, or loan arrangement, staff recommends that Council direct staff to work with County staff to finalize terms. The minimum terms would require repayment from 2017, 2018 and potentially 2019 allocations to which County staff would be responsible for grant administration. Agreement to this advance of CDBG funds would not impact the 2016

allocation process currently underway. Terms could also include a portion of 2017-2019 funding be reserved for future public services grants and City administration with the repayment timeline adjusted accordingly. The City’s participation agreement with the County currently expires with the 2017 program year on June 30, 2018 and would likely need to be extended.

**BACKGROUND/DISCUSSION**

The CDBG Fund is a flexible program providing communities with resources to address a wide range of unique community development needs. The program works to ensure decent, affordable housing, to provide services for members of our community and to create jobs through expansion and retention of businesses. CDBG funds are available for community development activities, which meet at least one of the three national objectives:

1. A benefit to low- and moderate-income persons;
2. Aid in the prevention or elimination of blight;
3. Address urgent needs that pose a serious and immediate threat to the health or welfare of the community.

In order for a program to qualify under the low- and moderate-income objective, at least 51% of the persons benefiting from the project or program must earn no more than 80% of the area median. Additionally, at least 70% of the CDBG funds must be spent toward that objective.

The following criteria should also be used to guide selection of CDBG programs:

1. The proposal is consistent with the national objectives and eligibility criteria of the HUD CDBG program;
2. The proposal is consistent with the Urban County Consolidated Plan;
3. The proposal is consistent with the General Plan and other City codes/ordinances;
4. The proposal will achieve multiple community development objectives;
5. The proposal can be implemented in a timely manner, without significant environmental, policy, procedural, legal, or fiscal obstacles to overcome; and
6. The project is not financially feasible without CDBG funding.

The City received four applications for the 2016 funding cycle, which are included in the below table along with a snapshot of the staff recommendation:

<b><i>Public Facilities</i></b>	<b>Amount Requested</b>	<b>Amount Recommended</b>
<i>City of Morro Bay – Handicapped Accessibility - Barrier Removal Projects</i>	\$100,000	\$62,151
<i>Sunny Acres / SLO Housing – Get Inside Program</i>	20,000	0
<b><i>Public Services – Limited to 15% of 2016 Allocation (or a maximum of \$11,653)</i></b>		
<i>CAPSLO – Prado Day Center Operation</i>	8,600	0

<i>expenses</i>		
CASA of SLO County - <i>Advocacy Services</i>	8,000	0
<b><i>Administration – Limited to 20% of 2016 Allocation</i></b>		
City Program Administration Costs (Required County Administration Costs)	5,438 (10,100)	5,438 (10,100)
<b>Total Funds Requested</b>	<b>\$142,038</b>	
<b>Estimated Total Funding Available</b>		<b>77,689</b>

Applications received exceed anticipated funding. In addition, there are limits related to categories of funding, as described below. As part of the CDBG process, Council must adopt a draft recommendation for the 2016 grant year that meets the funding criteria while adhering to the category limits.

In addition, City staff received guidance from the County upon their review of all received applications County-wide. Of the four applications submitted to the City of Morro Bay, the County determined only two applications are both eligible projects and meet Federal national objectives. The County initially determined the proposed application by CASA for advocacy services is not an eligible activity with the current application. Subsequent direction from the County informed the cities the activity could be eligible on the basis that only costs that provide a direct benefit are eligible under federal regulations. The application by Sunny Acres/ SLO Housing Connection been determined not to be eligible based on conflict with San Luis Obispo County Land Use and Building Code ordinances. Due to zoning and land use restrictions, the County informed the City they are unable to consider that application for CDBG funding.

A copy of all applications and funding regulations have been provided with your agenda packet (Attachments 1 through 4). Copies are also available at the Community Development Department for public review. Upon approval, the draft funding recommendations will be forwarded to the County for publishing, along with recommendations from all participating jurisdictions. The public notice starts a 30-day review and comment period during which a second public workshop will be held to allow questions from applicants regarding the draft recommendations after which the draft allocations, plus any workshop comments, will be forwarded to City Council for final approval at a duly noticed public hearing anticipated to be approximately February/March 2016. After that meeting, final funding recommendations would then be forwarded to the County Board of Supervisors in order to adopt the 2016 Action Plan. The following is a brief explanation of the funding groups and applications within each:

**Public Facilities**

Public Facilities are defined as activities relating to real property, including the acquisition, construction, rehabilitation or installation of public improvements. Those activities can be carried out by a grantee, sub-recipient or other nonprofit.

- *City of Morro Bay – City Facilities and Infrastructure – Barrier Removal*  
Funds Requested: \$100,000  
This project provides for the removal of accessibility barriers citywide. Project will include, in part, sidewalk modifications, infill of sidewalk gaps, visual and tactile warning systems, curb ramp, and addresses access to facilities. (Attachment 1)
- *Sunny Acres / SLO Housing – “Get Inside Program” Homeless Services*  
Funds Requested: \$20,000  
Original application received was incomplete as to what specific activity was seeking CDBG funding. Clarification regarding proposed activity was received on 11/2/2015. The application materials received state the application is under the Federal category of “housing services” and “code enforcement.” However, the project presented in the application would be a joint partnership between Sunny Acres and SLO Housing Connection at 11660 Los Osos Valley Road in San Luis Obispo that would seek funding for building code upgrades that would provide housing solutions for homeless individuals. Consultation with County Planning staff determined the project would fall under the category of “public facilities.” Also, in an email dated November 6, 2015, County guidance regarding this application stated, after staff review of the project, the County finds the project, as described, to conflict with County Land Use and Building Code ordinances. Due to zoning and land use restrictions, the County is unable to consider this application for CDBG funding. (Attachment 4).

**Public Services** – The 15% Federal cap on percentage of award from this category is estimated at \$11,653. Two applications were received under this category. The City’s Cooperation Agreement with the County requires any funding of public services activities must be a minimum amount of \$8,000 or more. That is a result of direction from HUD not to award CDBG funds that cost more to administer than the award itself.

CDBG regulations allow for a wide range of public service activities, including, but not limited to: employment services, crime prevention, child care, health services, substance abuse services, fair housing counseling and recreational services.

- *CAPSLO –Prado Day Center Operation Expenses*  
Funds Requested: \$8,600  
CAPSLO is requesting CDBG funds to assist with operation expenses of the Prado Day, which is located in San Luis Obispo but serves homeless men, women and children county-wide. The Prado Day Center provides day services that complement the MLM Shelter night services. CDBG funds will enable the Day Center to maintain the current level of services. (Attachment 2).
- *CASA of San Luis Obispo County – Advocacy Services for Court-Dependent Children*  
Funds Requested: \$8,000  
CASA provides advocacy services to court-dependent children who have been abused and neglected in San Luis Obispo County. Requested CDBG funds will be used to leverage other local funding to CASA. CASA volunteers are provided to do case management for court-

dependent children. CDBG assistance will enable the advocacy services CASA provides to abused and neglected children to increase. CDBG funding would serve to increase the number of trained CASA volunteers and children served. CDBG funds would be required to provide direct benefit to children. County review of this application has determined that the project is not eligible with the current application. (Attachment 3).

**Administration** –The 20% cap on percentage of award from this category is estimated at \$15,538 this cycle (with 65% of administration reserved for County grant administration which includes compliance with Federal regulations).

- *City of Morro Bay – CDBG Program Administration*

**Funds Requested:** \$5,438 for City administration

Pursuant to the City's 2015-2017 Cooperation Agreement with the County, the twenty-percent cap on administration allowed under HUD regulation is split between City and County staff administration. Of the 20 percent, the City is eligible to apply for 35 percent (or \$5,438) with the balance to be forwarded to the County (\$10,100). Those are for costs associated with the administration of the Community Development Block Grant Program. That includes staff time from Administration, Public Works and Administrative Services, and Planning Divisions required for grant administration, payment processing and coordination with County Planning staff. If administration costs exceed the funding allocation, then remaining costs of administering the program will need to be paid from the General Fund.

**CONCLUSION**

The total estimated 2016 allocation for Morro Bay, as released by the County, is \$77,689. With the County's administrative share of \$10,100, the net amount available to the City for funding recommendations is anticipated to be \$67,589. The City's Cooperation Agreement with the County requires any awards in the category of public service activities be no less than \$8,000 with a Federal cap at no more than 15% of an allocation, which can be spent on public service activities.

With previously established City Council goal to improve City streets, staff recommends Council approve the draft funding recommendation for the requests from the City of Morro Bay for sidewalk accessibility improvements and program administration. Funding of the request by the City allows the continuation of accessibility improvements at street locations throughout the City.

However, if Council modifies this recommendation to make an award to a public service activity, then the maximum available to award is \$11,653. In reviewing submitted CDBG applications, staff consulted with County Planning staff regarding eligibility relative to Federal requirements for the CDBG Program. County direction regarding Federal eligibility requirements is all projects must provide a direct benefit to low- and moderate-income persons for public service activities and meet national objectives. . In reviewing the applications, staff considered those requirements in combination with City Council established goals. The alternative staff recommendation recommends, if Council moves to make an award to a public service activity, then CAPSLO be awarded CDBG funding. In any event, the CDBG grant administration for public service and public facility activities will be borne by County staff.

**ATTACHMENTS**

1. City of Morro Bay – Pedestrian Accessibility Project– Barrier Removal
2. CAPSLO –Prado Day Center Operation Expenses
3. CASA of San Luis Obispo County – Advocacy Services
4. Sunny Acres / SLO Housing –“Get Inside Program”

**ONLINE LINK:**

1. Community Development Block Grant (CDBG) Fact Sheet  
<https://www.hudexchange.info/resource/3878/cdbg-fact-sheet/>

**RESOLUTION NO. 75-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING COMMUNITY DEVELOPMENT BLOCK GRANT  
PROJECTS FOR YEAR 2016**

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

**WHEREAS**, via a Cooperation Agreement with County of San Luis Obispo (hereafter referred to as “County”), a political subdivision of the State of California, executed by the City of Morro Bay (hereafter referred to as “City”) a municipal corporation, on September 9, 2014, the City agreed to become a participant for a period of three years with the County and other cities therein as an “Urban County” under the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, under the Cooperation Agreement, the City retains the authority to determine which projects are to be funded with its allotment of CDBG Program funds; and

**WHEREAS**, the Program will promote the public health, safety and welfare by providing grant funds to be used by the City and County to improve housing opportunities for low- and moderate-income households, to encourage economic reinvestment, to improve community facilities and public services, and to provide other housing-related facilities, or services; and

**WHEREAS**, the City expects to receive \$77,689 in CDBG funds in 2016; and

**WHEREAS**, in 2015, the County published a “Request for Proposals” for projects to be funded under the 2016 CDBG Programs, which provided proposals were to be submitted by October 23, 2015; and

**WHEREAS**, on September 11, 2014, the County conducted a public workshop with the City of Morro Bay to ascertain the housing and community development needs to be addressed in the document entitled the “One-Year Action Plan for Program Year 2015; and

**WHEREAS**, at its meeting on December 8, 2015, the City Council gave approval for draft funding recommendations to be forwarded to the County Board of Supervisors for 2016 CDBG projects.

**WHEREAS**, the County has informed the City of an option to seek an advance of future CDBG program year allocations in order to meet County expenditure deadlines.

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

1. Submit draft funding recommendations to the Board of Supervisors for the County of San Luis Obispo, which shall include the programs listed in Exhibit "A," attached hereto and incorporated herein by this reference, to be funded with the City's allocation of CDBG Program funds.
2. Direct staff to pursue an advance of CDBG funds for the 2017-2019 CDBG program years subject to County approval and authorize the City Manager to enter into a loan agreement for said purpose.

**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 December, 2015 on the following vote:

AYES:

NOES:

ABSENT:

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

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

EXHIBIT "A"  
DRAFT FUNDING RECOMMENDATIONS  
TO FORWARD TO THE  
COUNTY BOARD OF SUPERVISORS

MORRO BAY ALLOCATION OF PROGRAM YEAR 2016 COMMUNITY DEVELOPMENT  
BLOCK GRANT FUNDS

<i>Public Facilities</i>	2015 Allocation	2016 Requested	2016 Amount Recommended
City of Morro Bay – <i>Handicapped Accessibility - Barrier Removal Projects</i>		\$100,000	\$62,151
Sunny Acres / SLO Housing Connection		20,000	0
<b><i>Public Services – Limited to 15% of 2016 Allocation (or a maximum of \$11,653)</i></b>			
CAPSLO – Prado Day Center <i>Operation expenses</i>		8,600	0
CASA Program of SLO County – <i>Senior Nutrition Program</i>		8,000	0
<b><i>Administration – Limited to 20% of 2016 Allocation (includes County share)</i></b>			
City Program Administration Costs (Required County Administration Costs)		\$5,438 (10,100)	\$5,438 (10,100)
<b>Total Funds Requested</b>		<b>\$142,038</b>	
<b>Estimated Total Funding Available</b>	<b>\$77,689</b>		<b>\$77,689</b>



COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM  
APPLICATION FOR THE 2016 PROGRAM YEAR

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING  
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

*Promoting the Wise Use of Land • Helping to Build Great Communities*

The County of San Luis Obispo is pleased to announce the availability of funds for the CDBG program. The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

To be considered for CDBG assistance, a completed application with any necessary exhibits, budgets or beneficiary data is required. Applications must be received by the County of San Luis Obispo. Please email grant applications to [ActionPlan@co.slo.ca.us](mailto:ActionPlan@co.slo.ca.us) by the application deadline of 5:00 P.M., Friday, October 23, 2015. Please label your email subject by adding the grant program name and the agency name (Example: CDBG – CAPSLO).

RECEIVED  
OCT 23 2015  
City of Morro Bay  
Community Development Dept.

CONTACT INFORMATION

1. Qualifying Information

Organization Name: City of Morro Bay DUNS number: 060890571

Contact person/title/ Cindy Jacinth, Associate Planner

Phone: 805-772-6577 Fax: 805-772-6268 Email: cjacinth@morro-bay.ca.us

Address (mailing and physical address requested if different): \_\_\_\_\_  
595 Harbor Street, Morro Bay, CA 93442

Is your agency currently participating in Homeless Management Information System (HMIS)?

Yes  No  If not currently participating, does your agency have the capacity to participate in HMIS? If yes, how so?

Does the proposed project or activity meet one of the three national objectives of the CDBG program? Note: More specifics on question 9, on page 4 of the application.

Yes  No

Total amount of CDBG funds requested: \$ 100,000

Note: Please attach additional sheets for more detailed information of your proposed project or program for any of the questions below.

**PROJECT DESCRIPTION**

**2. Title/name/address of proposed project or program:**

Morro Bay Pedestrian Accessibility Project FY16/17

**3. Please describe the proposed project or program.** Include a brief project/program description, the groups who will benefit and an explanation of how they will benefit from the proposed project or program. For projects, describe the location of the project (be as specific as possible, e.g. street address). For programs, state the location from which the program will be operated and describe the geographic area served by the program. Also, please include a schedule of project/program milestones.

Installation and repair of sidewalk and curb ramps throughout the City of Morro Bay will provide an accessible path of travel for those disabled low and very low income residents throughout the County. Project will include installation of curb ramps and sidewalk and repair of curb ramps and sidewalk so that this infrastructure meets current accessibility requirements. Streets include: Dunes (from Morro to Market), Dunes (Main to Morro), Main (Anchor), Monterey (Dunes S), Morro (South to Driftwood), Morro (Harbor to Beach), Harbor (Monterey to Main), Piney Way (Morro Bay Blvd to Harbor), Napa (Dunes to Harbor).

**4. Will the services offered by your organization increase or expand as a result of the CDBG assistance? If yes, please answer the following questions:**

a. What new programs or services will be provided?

n/a

b. Describe how existing programs or services will be expanded and what percentage of an increase is expected?

**5. Check any of the following eligible activity categories that apply to the proposed project or program:** (Refer to CDBG regulations and the Guide to Eligible CDBG Activities).

- Acquisition of real property\*
- Disposition of real property
- Public facilities and improvements (may include acquisition, construction, reconstruction, rehabilitation or installation)\* and/or \*\*
- Privately owned utilities
- Clearance and remediation activities\*\*
- Public services
- Interim assistance
- Relocation of individuals, families, businesses, non-profit organizations, and/or farms
- Loss of rental income
- Removal of architectural barriers
- Housing rehabilitation\*\*
- New housing construction (under limited circumstances)
- Homeownership assistance
- Housing services
- Code enforcement
- Historic preservation\*\*
- Commercial or industrial rehabilitation\*\*
- Special economic development
- Technical assistance and planning studies

\* Relocation  
\*\* Lead-Based Paint  
(See note 8 and 9 on page 9)

6. Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?

Removal of barriers through the construction and rehabilitation of sidewalks and curb ramps will remove the restriction that disabled and elderly face in accessing the City's pedestrian facilities.

7. Please describe the specific organizational method used to implement the proposed project or program (*single or multiple group, public agency, non-profit, for-profit, experience in operating similar programs, etc.*):

The City of Morro Bay will be implementing the program.

8. Does the project require the issuance of a permit (*from local, state or federal agencies*)?

Yes  No

- a. If yes, please identify the permits necessary to complete the project.

Encroachment permits will be required prior to construction.

- b. Have the necessary permits been issued? Please provide proof of permit issuance.

No.

- c. If permits are required but not yet obtained, when will the permits be issued?

Permits will be issued during implementation.

**NATIONAL OBJECTIVES CRITERIA**

9. Does the proposed project or activity meet one of the three national objectives of the CDBG program? Please check one of the objectives below that applies to the proposal, and explain how the project or activity meets that national objective.

Note: To meet this national objective, the proposed activity must benefit a specific clientele or residents in a particular area of the County or participating city, at least 51 percent of who are low- and moderate-income persons.

**a. Objective One**

Select one:

**Low/Moderate-Income Area Benefit** – The project serves only a limited area which is proven by 2000 Census data or survey to be a predominately (51% or more) low/moderate-income area. Applicants choosing this category must be able to prove their project/activity primarily benefits low/moderate-income households.

**Low/Moderate-Income Limited Clientele** – The project benefits a specific group of people (rather than all areas in a particular area), at least 51% of whom are low/moderate-income persons;. Note: Income verification for clients must be provided for this category. The following groups are presumed to be low/moderate-income: abused children; elderly persons; battered spouses; homeless persons; adults meeting census definition of severely disabled; persons living with AIDS; and migrant farm workers.

**Low/Moderate-Income Housing** – The project adds or improves permanent residential structures that will be/are occupied by low/moderate-income households upon completion.

**Low/Moderate-Income Jobs** – The project creates or retains permanent jobs, at least 51% of which are taken by low/moderate-income persons or considered to be available to low/moderate-income persons.

*Explain:*

The project provides for, increases, and improves barrier-free pedestrian accessibility at key locations throughout the city.

**b. Objective Two**

Assists in the prevention or elimination of slums or blight. Note: To meet this national objective, the proposed activity must be within a designated slum or blighted area and must be designed to address one or more conditions that contributed to the deterioration of the area.

*Explain:*

N/A

Select one:

**Addressing Slums or Blight on an Area Basis -**

**Addressing Slums or Blight on a Spot Basis -** This project will prevent or eliminate specific conditions of blight or physical decay. Activities are limited to clearance, historic

preservation, rehabilitation of buildings, but only to the extent necessary to eliminate conditions detrimental to public health and safety.

**c. Objective Three**

Meets community development needs having a particular urgency where existing conditions pose a serious and immediate threat to the health or welfare of the community, and no other funding sources are available, i.e., a major catastrophe such as a flood or earthquake. **Note:** To meet this national objective, the proposed activity must deal with major catastrophes or emergencies such as floods or earthquakes.

*Explain:*

**10. If the project or program is designed to meet the national objective of providing benefit to low- and moderate-income persons, please estimate the number of unduplicated number of persons (or households) to benefit from the project and break that estimate down by income group. Note:** Unduplicated means the number who are served, i.e., the grant will allow 25 children to participate in preschool – not 25 children x 5 days x 52 weeks = 6,500.

a. Total number of persons or households who will benefit from the project or program (regardless of income group):

#  Persons/households (circle the applicable unit)

b. Of the total number of persons or households entered above, how many will be low-income (earning 51% - 80% or less of the County median-income)?

#  Persons/households (circle the applicable unit)

c. Of the total number of persons or households entered above, how many will be very low-income (earning 50% or less of the County median-income)?

#  Persons/households (circle the applicable unit)

**11. Who are the clients of your organization? (Example: low- to moderate-income persons, elderly persons, severely disabled persons, migrant farm workers, battered spouses, etc.)**

Low to Moderate-Income Persons

**12. How will the clients benefit from this project?**

Provides for, improves and maintains barrier free access to sidewalk and services clients use.

**13. If your project serves homeless households, please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to Homelessness.**

N/A

**BENEFICIARY DATA**

14. How do you collect demographic data on the beneficiaries of the proposed project or program? (Example: racial/ethnic characteristics)

Demographic data on the beneficiaries of the proposed program is collected by City staff utilizing US Census data and projections.

15. How do you document and maintain income status of each client in compliance with HUD regulations? (Example: very low ( $\leq 30\%$  AMI), low ( $\leq 50\%$  AMI) and moderate-income ( $\leq 80\%$  AMI)) Area Median Income (AMI)

The City documents and maintains income status utilizing US Census definitions ie: (very low ( $\leq 30\%$  AMI), low ( $\leq 50\%$  AMI) and moderate-income ( $\leq 80\%$  AMI))

16. Provide the following information for the persons in your organization responsible for the preparation and submittal of the quarterly reports and for collecting and reporting the beneficiary data to the Urban County.

Contact Person/Title: Cindy Jacinth, Associate Planner

Phone/email: 805-772-6577 / cjacinth@morro-bay.ca.us

**FINANCIAL INFORMATION**

For CDBG applications to the County of San Luis Obispo involving acquisition, construction or rehabilitation projects please provide the required additional budget information on BUDGET FORM A and BUDGET FORM B attached to the back of this application.

17. Total amount of CDBG funds requested: \$ 100,000

18. Please identify the cities to which you are applying. If you are applying to one or more cities, please provide a copy of the application to the County by the application deadline. If you are requesting CDBG funds from more than one city, please break down the amount shown above by the city listed below. The minimum requested CDBG amount is \$8,000 for public services from one or more jurisdictions.

City of Arroyo Grande:	_____	City of Paso Robles:	_____
City of Pismo Beach:	_____	City of San Luis Obispo:	_____
City of Atascadero:	_____	County of San Luis Obispo:	_____
City of Morro Bay:	<u>100,000</u>		

19. Please describe the budget for the proposed project or program. Itemize all sources of funding expected to be available and used for this project

**a. Revenues:**

- |  |    |                |
|--|----|----------------|
| 1. CDBG Funds requested                          | \$ | <u>100,000</u> |
| 2. Other Federal fund(s) (please describe below) | \$ | _____          |
| 3. State source(s) (please describe below)       | \$ | _____          |
| 4. Local source(s) (please describe below)       | \$ | _____          |
| 5. Other funds (please describe below)           | \$ | _____          |

Total Revenues

\$ 100,000

b. Expenditures: List below by item or cost category.

Construction Management	\$10,000.00
Construction Contract	\$90,000.00

20. How do you plan to fund the operation and maintenance costs (if any) associated with this project? Are these funds available now? If not, when will they be available? And from what sources?

The operation and maintenance costs associated with this program will be funded through City of Morro Bay general fund and will be available upon award through act of City Council.

21. Will CDBG funds be used to match/leverage other funds? List below funding sources and amounts and identify award dates of these sources.

No

I certify that the information in this application is true and accurate to the best of my knowledge and ability.

  
Signature

10-22-2015  
Date

Rob Lwrick, PE/PLS Public Works Director/City Engineer  
Printed or typed name Title

**Notes to applicant:**

The County and cities require all of the grant recipients to maintain general liability, automobile and workman's compensation insurance with limits of not less than \$1 million\*\*\*. If you are successful in obtaining an award, you will be asked to provide documentation regarding ability to provide the required coverage.

\*\*\* Liability coverage may vary by jurisdiction. Please call the City/County contact to verify limits.

Prior to HUD's release of grant funds for the CDBG-funded project, a review of the project's potential impact on the environment must be conducted by the awarding jurisdictions and approved by the County of San Luis Obispo **prior to obligating or incurring project costs**. The County must certify to HUD that it has complied with all applicable environmental regulations and requirements. If project costs be obligated or incurred prior to the completion of the necessary environmental review, the project **shall not** benefit from the grant funds. The level of environmental review required depends on the nature of the project. Title 24 CFR Part 58 is available at <http://www.hud.gov/offices/pih/ih/codetalk/onap/docs/24cfr58.pdf>.

1. Please review the CDBG regulations and guidelines and the Request for Proposals before completing your proposal. The CDBG regulations, under 24 CFR 570, are available at [www.sloplanning.org](http://www.sloplanning.org) under "Federal HUD Grants."
2. HMIS Reporting for 2015 homeless services, housing and shelter - All homeless service providers applying for ESG funds to assist, house or shelter the homeless must identify and demonstrate its capacity to participate in the County of San Luis Obispo Homeless Management Information System (HMIS) to provide: personnel for data entry, user licensing, and hardware and software necessary for compatibility with HMIS. HMIS is an electronic data collection system that stores client level information about persons who access the homeless services system in a Continuum of Care, and reports aggregate data for the County as per the U.S. Department of Housing and Urban Development's (HUD) Data Standards. HUD updated its data standards in 2014, and the new standards are in effect starting October 1, 2014. . More information can be found at <https://www.hudexchange.info/resources/documents/HMIS-Data-Standards-Manual.pdf> and <https://www.hudexchange.info/resources/documents/HMIS-Data-Dictionary.pdf>.
3. Affirmative Marketing: Quarterly and annual reports shall be submitted by the project / program manager to the County. Each report shall describe the clientele served (i.e. total number of clients served with respect to race, ethnicity, sex and disability status). Affirmative steps shall be taken (i.e. targeted marketing) with respects to increasing the participation of any underserved or under-represented group(s). Public / government infrastructure projects will not be required to submit clientele reports.
4. Section 504 of the Rehabilitation Act of 1979: The County does not discriminate on the basis of disability in admission to, access to, or operation of its federally assisted programs and activities. The Section 504 Coordinator maintains a Grievance Procedure that receives and responds to Section 504 grievances / complaints. However, it applies only to County programs and activities that are funded by HUD. You may reach the contact person named above, at the beginning of this application, if you would like more information or wish to contact the Section 504 Coordinator.
5. The Project Proposal submitted to the County of San Luis Obispo shall be examined in relation to the County's community development goals and funding priorities as presented in the Urban County of San Luis Obispo 2015-2019 Consolidated Plan. The draft Consolidated Plan will be available at [www.sloplanning.org](http://www.sloplanning.org) in February 2015. The Housing and Economic Development team will make draft funding recommendations using the rating criteria stated in the 2016 Request for Proposals as

well as other information including but not limited to: the County Board of Supervisors, recommendations from the Homeless Services Oversight Council, online "needs" survey, other participating jurisdictions of the Urban County of San Luis Obispo, identified needs that could be addressed by the grant funds, consistency with goals and priorities in the upcoming 2015-2019 Consolidated Plan and the Ten Year Plan to End Homelessness, results of the Needs Workshops, working knowledge of the project and organization, and availability of limited funds.

6. If you are awarded CDBG funds or your proposal involves economic development, i.e., directly benefit a business, private property owner, business, involves façade improvements, provide technical assistance to a new or existing business, job creation, loan guarantee, the beneficiary must obtain a Dun and Bradstreet (DUNS) number that must be reported to HUD. Please contact Suzan Ehdaie, (805) 781-4979, sehdaie@slo.co.ca.us for information on how to obtain a DUNS number prior to incurring and obligating the federal funds.
7. Those awarded grants are required to provide beneficiary data at the end of each quarter and year end data of the fiscal year.
8. \* Relocation: Any project that involves the acquisition of property and/or rehabilitation and is funded in whole or in part with federal funds, even if the federal funds are not used for the acquisition itself, is subject to federal requirements connected to acquisition and relocation. A project cannot be broken into separate "projects" in order to avoid the federal requirements connected with property acquisition and relocation. Any questions concerning whether the relocation regulations apply to a specific property acquisition project should be directed to the County Housing and Economic Development staff before any action is taken on the project.

If HUD funded project will cause a household or a business to move, even temporarily, the relocation regulations will apply. Along with application submit:

- Estimate of relocation cost (moving costs, subsidy amount for suitable replacement dwelling)
  - Letter to owner of voluntary acquisition, plus proof of delivery to owner.
  - General Information letter to tenants (both business and residential tenants), plus proof of delivery to all).
  - List of tenants (both business and residential tenants) at the time of application submittal.
  - Refer to [http://www.slocounty.ca.gov/planning/Housing\\_and\\_Economic\\_Development/ura.htm](http://www.slocounty.ca.gov/planning/Housing_and_Economic_Development/ura.htm) for sample relocation letters under the downloadable manuals.
9. \*\* Lead-Based Paint (LBP): If HUD funded project involves acquisition or rehabilitation of a residential units that was built in 1978 or earlier, then LBP regulations will apply.
    - Along with application submit an estimate of costs for LBP work, provided by certified LBP consultant. Or statement by LBP consultant explaining that project is exempt.
    - Include any temporary housing costs.



# COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM APPLICATION FOR THE 2016 PROGRAM YEAR

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING  
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

*Promoting the Wise Use of Land • Helping to Build Great Communities*

The County of San Luis Obispo is pleased to announce the availability of funds for the CDBG program. The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

To be considered for CDBG assistance, a completed application with any necessary exhibits, budgets or beneficiary data is required. Applications must be received by the County of San Luis Obispo. Please email grant applications to [ActionPlan@co.slo.ca.us](mailto:ActionPlan@co.slo.ca.us) by the application deadline of 5:00 P.M., Friday, October 23, 2015. Please label your email subject by adding the grant program name and the agency name (Example: CDBG – CAPSLO).

### CONTACT INFORMATION

#### 1. Qualifying Information

Organization Name: \_\_\_\_\_ DUNS number: \_\_\_\_\_

Contact person/title/ \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Address (mailing and physical address requested if different): \_\_\_\_\_

#### Is your agency currently participating in Homeless Management Information System (HMIS)?

Yes  No  If not currently participating, does your agency have the capacity to participate in HMIS? If yes, how so?

#### Does the proposed project or activity meet one of the three national objectives of the CDBG program? Note: More specifics on question 9, on page 4 of the application.

Yes  No

Total amount of CDBG funds requested: \$ \_\_\_\_\_

**Note:** Please attach additional sheets for more detailed information of your proposed project or program for any of the questions below.

**PROJECT DESCRIPTION**

- 2. Title/name/address of proposed project or program:**
- 3. Please describe the proposed project or program.** Include a brief project/program description, the groups who will benefit and an explanation of how they will benefit from the proposed project or program. For projects, describe the location of the project (be as specific as possible, e.g. street address). For programs, state the location from which the program will be operated and describe the geographic area served by the program. Also, please include a schedule of project/program milestones.
- 4. Will the services offered by your organization increase or expand as a result of the CDBG assistance? If yes, please answer the following questions:**
- What new programs or services will be provided?
  - Describe how existing programs or services will be expanded and what percentage of an increase is expected?
- 5. Check any of the following eligible activity categories that apply to the proposed project or program:** (Refer to CDBG regulations and the Guide to Eligible CDBG Activities).
- Acquisition of real property\*
  - Disposition of real property
  - Public facilities and improvements (may include acquisition, construction, reconstruction, rehabilitation or installation)\* and/or \*\*
  - Privately owned utilities
  - Clearance and remediation activities\*\*
  - Public services
  - Interim assistance
  - Relocation of individuals, families, businesses, non-profit organizations, and/or farms
  - Loss of rental income
  - Removal of architectural barriers
  - Housing rehabilitation\*\*
  - New housing construction (under limited circumstances)
  - Homeownership assistance
  - Housing services
  - Code enforcement
  - Historic preservation\*\*
  - Commercial or industrial rehabilitation\*\*
  - Special economic development
  - Technical assistance and planning studies

\* Relocation

\*\* Lead-Based Paint

(See note 8 and 9 on page 9)

6. Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?

7. Please describe the specific organizational method used to implement the proposed project or program (*single or multiple group, public agency, non-profit, for-profit, experience in operating similar programs, etc.*):

8. Does the project require the issuance of a permit (*from local, state or federal agencies*)?

Yes  No

a. If yes, please identify the permits necessary to complete the project.

b. Have the necessary permits been issued? Please provide proof of permit issuance.

c. If permits are required but not yet obtained, when will the permits be issued?

**NATIONAL OBJECTIVES CRITERIA**

9. Does the proposed project or activity meet one of the three national objectives of the CDBG program? Please check one of the objectives below that applies to the proposal, and explain how the project or activity meets that national objective.

**Note:** To meet this national objective, the proposed activity must benefit a specific clientele or residents in a particular area of the County or participating city, at least 51 percent of who are low- and moderate-income persons.

**a. Objective One**

Select one:

**Low/Moderate-Income Area Benefit** – The project serves only a limited area which is proven by 2000 Census data or survey to be a predominately (*51% or more*) low/moderate-income area. Applicants choosing this category must be able to prove their project/activity primarily benefits low/moderate-income households.

**Low/Moderate-Income Limited Clientele** – The project benefits a specific group of people (*rather than all areas in a particular area*), at least 51% of whom are low/moderate-income persons;. **Note:** Income verification for clients must be provided for this category. The following groups are presumed to be low/moderate-income: abused children; elderly persons; battered spouses; homeless persons; adults meeting census definition of severely disabled; persons living with AIDS; and migrant farm workers.

**Low/Moderate-Income Housing** – The project adds or improves permanent residential structures that will be/are occupied by low/moderate-income households upon completion.

**Low/Moderate-Income Jobs** – The project creates or retains permanent jobs, at least 51% of which are taken by low/moderate-income persons or considered to be available to low/moderate-income persons.

*Explain:*

**b. Objective Two**

Assists in the prevention or elimination of slums or blight. **Note:** To meet this national objective, the proposed activity must be within a designated slum or blighted area and must be designed to address one or more conditions that contributed to the deterioration of the area.

*Explain:*

Select one:

**Addressing Slums or Blight on an Area Basis -**

**Addressing Slums or Blight on a Spot Basis -** This project will prevent or eliminate specific conditions of blight or physical decay. Activities are limited to clearance, historic

preservation, rehabilitation of buildings, but only to the extent necessary to eliminate conditions detrimental to public health and safety.

**c. Objective Three**

Meets community development needs having a particular urgency where existing conditions pose a serious and immediate threat to the health or welfare of the community, and no other funding sources are available, i.e., a major catastrophe such as a flood or earthquake. **Note:** To meet this national objective, the proposed activity must deal with major catastrophes or emergencies such as floods or earthquakes.

Explain:

**10. If the project or program is designed to meet the national objective of providing benefit to low- and moderate-income persons, please estimate the number of unduplicated number of persons (or households) to benefit from the project and break that estimate down by income group. Note:** Unduplicated means the number who are served, i.e., the grant will allow 25 children to participate in preschool – not 25 children x 5 days x 52 weeks = 6,500.

a. Total number of persons or households who will benefit from the project or program (regardless of income group):

#  **Persons**/households (circle the applicable unit)

b. Of the total number of persons or households entered above, how many will be low-income (earning 51% - 80% or less of the County median-income)?

#  **Persons**/households (circle the applicable unit)

c. Of the total number of persons or households entered above, how many will be very low-income (earning 50% or less of the County median-income)?

#  **Persons**/households (circle the applicable unit)

**11. Who are the clients of your organization?** (Example: low- to moderate-income persons, elderly persons, severely disabled persons, migrant farm workers, battered spouses, etc.)

**12. How will the clients benefit from this project?**

**13. If your project serves homeless households, please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to Homelessness.**

**BENEFICIARY DATA**

14. How do you collect demographic data on the beneficiaries of the proposed project or program? (Example: racial/ethnic characteristics)
15. How do you document and maintain income status of each client in compliance with HUD regulations? (Example: very low ( $\leq 30\%$  AMI), low ( $\leq 50\%$  AMI) and moderate-income ( $\leq 80\%$  AMI)) Area Median Income (AMI)
16. Provide the following information for the persons in your organization responsible for the preparation and submittal of the quarterly reports and for collecting and reporting the beneficiary data to the Urban County.

Contact Person/Title:

Phone/email:

**FINANCIAL INFORMATION**

For CDBG applications to the County of San Luis Obispo involving acquisition, construction or rehabilitation projects please provide the required additional budget information on BUDGET FORM A and BUDGET FORM B attached to the back of this application.

17. Total amount of CDBG funds requested: \$ \_\_\_\_\_

18. Please identify the cities to which you are applying. If you are applying to one or more cities, please provide a copy of the application to the County by the application deadline. If you are requesting CDBG funds from more than one city, please break down the amount shown above by the city listed below. The minimum requested CDBG amount is \$8,000 for public services from one or more jurisdictions.

City of Arroyo Grande: _____	City of Paso Robles: _____
City of Pismo Beach: _____	City of San Luis Obispo: _____
City of Atascadero: _____	County of San Luis Obispo: _____
City of Morro Bay: _____	

19. Please describe the budget for the proposed project or program. Itemize all sources of funding expected to be available and used for this project

**a. Revenues:**

- |  |          |
|--|----------|
| 1. CDBG Funds requested                          | \$ _____ |
| 2. Other Federal fund(s) (please describe below) | \$ _____ |
| 3. State source(s) (please describe below)       | \$ _____ |
| 4. Local source(s) (please describe below)       | \$ _____ |
| 5. Other funds (please describe below)           | \$ _____ |

**Total Revenues** \$ \_\_\_\_\_

**b. Expenditures:** List below by item or cost category.


20. How do you plan to fund the operation and maintenance costs (*if any*) associated with this project? Are these funds available now? If not, when will they be available? And from what sources?

21. Will CDBG funds be used to match/leverage other funds? List below funding sources and amounts and identify award dates of these sources.

---

I certify that the information in this application is true and accurate to the best of my knowledge and ability.

\_\_\_\_\_  \_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Printed or typed name Title

## Attachment A—Narrative Responses

**6. Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?**

The Prado Day Center is heavily utilized, demonstrating the ongoing need for services. In the 12 months ending December 31, 2014, Prado provided one or more days of respite and services to 1,497 unduplicated persons; 32% were women and 7.5% children; 56% of all adults were disabled. Daily attendance averaged 100 people per day. Each month more than 2,064 breakfasts were served. The day center also hosts the People's Kitchen, which served an average of 73 persons a day over the same period (2,210 lunches per month).

The 2015 Homeless Enumeration counted approximately 1,500 homeless individuals living in San Luis Obispo County. While this is a decrease from the 2013 count, San Luis Obispo County's high cost of living and high cost of housing are heavily impacting the local homeless who are experiencing longer spans of homelessness and are in need of greater levels of support to become successfully re-housed. The outcomes achieved in our homeless programs represent incremental progress toward increased personal and community well-being. At the personal level this means a homeless person facing their problems, accepting help, developing a life-changing plan, and working in partnership with shelter staff to take a series of small, manageable steps that lead to positive change. At the community level this means reducing the impacts on agencies and systems such as law enforcement, the courts, hospital emergency rooms, mental health and drug/alcohol resources, and child welfare services.

**If not funded:** The Friends of Prado Day Center is responsible for community fundraising to support the Center, and CAPSLO is responsible for raising public funding. Without CDBG funding from the County of San Luis Obispo and General Funds (in lieu of CDBG funds) from the City, the Prado Day Center would be forced to reduce days and/or hours of operation thereby limiting services at the county's only day center for homeless individuals.

Without the day center, homeless men, women, and families would have no option but to return to the more public areas of the city during the daytime hours, where they often go without food, basic services, and assistance to maintain and re-establish their lives.

***13. If your project serves homeless households, please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to Homelessness.***

CAPSLO's Homeless Services Division works closely with other agencies that provide supplemental services, including: Tri-Counties Regional Center, Department of Social Services, Independent Living

Resource Center, Salvation Army, Catholic Charities, SLO Housing Authority, County of SLO VSO, and local churches. Being the provider for a complement of services enables our clients to seamlessly receive the benefits within one organization, as well as having the ability to be referred to multiple agencies as needed. As a member the County Continuum of Care (CoC) CAPSLO is an active participant in the implementation of the 10 year plan to end homelessness. The “Housing through Case Management” services are consistent with the Consolidated Plan. CAPSLO also has developed other CoC projects that dovetail with this program and aides in the continued effort to help homeless individuals and families moved toward self-sufficiency.

No single person, agency or government body can bring an end to homelessness – it will take a comprehensive and coordinated approach among all organizations that serve this population. This is evident in the national strategy through the US Interagency Council on Homelessness and HUD. CAPSLO and its local partners seek to emulate this collaborative approach. Each of the partners has its specific expertise in dealing with homeless individuals and families. CDBG funding enables us to build on this expertise and continue the services we provide. The end result will be a more client centered, “wraparound” service aimed at helping homeless individuals and families moved toward self-sufficiency, stability, and subsequent success.

The program looks to support all of the national priorities. The goals of CAPSLO’s “Housing through Case Management” program are in sync with the key components of HUD’s mandate to fund programs that promote moving homeless clients into housing and ensuring that they receive public benefits and develop the skills needed to live independently. CAPSLO’s Homeless Services programs (Maxine Lewis Memorial Shelter, Prado Day Center and Case Management) work with HUD’s target population on a countywide basis and have an established program of cooperation and linkages with other agencies and organizations that provide services to homeless persons.

## Attachment B: Budgets

**Community Action Partnership of SLO County, Inc.  
Prado Day Center  
Budget 2015-2016**

<b>I. Revenues:</b>	<b>Budget</b>
SLO County CDBG	\$ 29,354
SLO County ESG	33,278
SLO County General Fund	18,825
City of SLO General Fund	53,700
Donations	9,037
Friends of Prado	<u>202,082</u>
<b>Total Funds</b>	<u><u>\$ 346,276</u></u>
<b>II. Expenditures:</b>	
Salaries	\$ 186,347
Fringe Benefits	78,816
Office Supplies	1,545
Utilities	17,425
Telephone	1,610
Laundry	1,085
Maintenance and Repairs	14,786
Program Supplies	15,765
Advertising, Recruiting and Training	1,000
Miscellaneous	639
Indirect and Administrative	<u>27,258</u>
<b>Total Expenditures</b>	<u><u>\$ 346,276</u></u>

Attachment B: Budgets

**Community Action Partnership of SLO County, Inc.  
Prado Day Center  
Proposed Budget 2016-2017**

<b>I. Revenues:</b>	<b>Budget</b>
SLO County CDBG	\$ 29,354
City of Morro Bay CDBG	8,600
SLO County ESG	39,075
SLO County General Fund	33,900
City of SLO General Fund	53,700
Donations	8,637
Friends of Prado	<u>181,745</u>
<b>Total Funds</b>	<b><u><u>\$ 355,011</u></u></b>
<b>II. Expenditures:</b>	
Salaries	\$ 191,474
Fringe Benefits	81,777
Office Supplies	1,545
Utilities	17,425
Telephone	1,610
Laundry	1,085
Maintenance and Repairs	14,786
Program Supplies	15,765
Advertising, Recruiting and Training	1,000
Miscellaneous	639
Indirect and Administrative	<u>27,905</u>
<b>Total Expenditures</b>	<b><u><u>\$ 355,011</u></u></b>



## COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM APPLICATION FOR THE 2016 PROGRAM YEAR

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING  
976 OSOS STREET ♦ ROOM 200 ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600

*Promoting the Wise Use of Land ♦ Helping to Build Great Communities*

The County of San Luis Obispo is pleased to announce the availability of funds for the CDBG program. The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

To be considered for CDBG assistance, a completed application with any necessary exhibits, budgets or beneficiary data is required. Applications must be received by the County of San Luis Obispo. Please email grant applications to [ActionPlan@co.slo.ca.us](mailto:ActionPlan@co.slo.ca.us) by the application deadline of 5:00 P.M., Friday, October 23, 2015. Please label your email subject by adding the grant program name and the agency name (Example: CDBG – CAPSLO).

### CONTACT INFORMATION

#### 1. Qualifying Information

Organization Name: CASA of San Luis Obispo County DUNS number: 19-869-2803

Contact person/title/ Susan Graves, Grants & Development Coordinator

Phone: 805-541-6542 Fax: 805-541-5637 Email: sgraves@slocasa.org

Address (mailing and physical address requested if different): \_\_\_\_\_

P.O. Box 1168, San Luis Obispo, CA 93406; 75 Higuera Street, Suite 180, San Luis Obispo, CA 93401

Is your agency currently participating in Homeless Management Information System (HMIS)?

Yes  No  If not currently participating, does your agency have the capacity to participate in HMIS? If yes, how so?

Does the proposed project or activity meet one of the three national objectives of the CDBG program? Note: More specifics on question 9, on page 4 of the application.

Yes  No

Total amount of CDBG funds requested: \$ 40,000

Note: Please attach additional sheets for more detailed information of your proposed project or program for any of the questions below.

**PROJECT DESCRIPTION****2. Title/name/address of proposed project or program:**

Child Advocacy Program; Court Appointed Special Advocates of San Luis Obispo County (CASA); 75 Higuera Street, #180, San Luis Obispo, CA 93401

**3. Please describe the proposed project or program.** Include a brief project/program description, the groups who will benefit and an explanation of how they will benefit from the proposed project or program. For projects, describe the location of the project (be as specific as possible, e.g. street address). For programs, state the location from which the program will be operated and describe the geographic area served by the program. Also, please include a schedule of project/program milestones.

(See Attachment A)

**4. Will the services offered by your organization increase or expand as a result of the CDBG assistance? If yes, please answer the following questions:**

a. What new programs or services will be provided?

(See Attachment A)

b. Describe how existing programs or services will be expanded and what percentage of an increase is expected?

(See Attachment A)

**5. Check any of the following eligible activity categories that apply to the proposed project or program: (Refer to CDBG regulations and the Guide to Eligible CDBG Activities).**

- Acquisition of real property\*
- Disposition of real property
- Public facilities and improvements (may include acquisition, construction, reconstruction, rehabilitation or installation)\* and/or \*\*
- Privately owned utilities
- Clearance and remediation activities\*\*
- Public services
- Interim assistance
- Relocation of individuals, families, businesses, non-profit organizations, and/or farms
- Loss of rental income
- Removal of architectural barriers
- Housing rehabilitation\*\*
- New housing construction (under limited circumstances)
- Homeownership assistance
- Housing services
- Code enforcement
- Historic preservation\*\*
- Commercial or industrial rehabilitation\*\*
- Special economic development
- Technical assistance and planning studies

\* Relocation

\*\* Lead-Based Paint

(See note 8 and 9 on page 9)

6. Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?

(See Attachment A)

7. Please describe the specific organizational method used to implement the proposed project or program (*single or multiple group, public agency, non-profit, for-profit, experience in operating similar programs, etc.*):

(See Attachment A)

8. Does the project require the issuance of a permit (*from local, state or federal agencies*)?

Yes  No

a. If yes, please identify the permits necessary to complete the project.

b. Have the necessary permits been issued? Please provide proof of permit issuance.

c. If permits are required but not yet obtained, when will the permits be issued?

**NATIONAL OBJECTIVES CRITERIA**

9. Does the proposed project or activity meet one of the three national objectives of the CDBG program? Please check one of the objectives below that applies to the proposal, and explain how the project or activity meets that national objective.

**Note:** To meet this national objective, the proposed activity must benefit a specific clientele or residents in a particular area of the County or participating city, at least 51 percent of who are low- and moderate-income persons.

**a. Objective One**

Select one:

- Low/Moderate-Income Area Benefit** – The project serves only a limited area which is proven by 2000 Census data or survey to be a predominately (51% or more) low/moderate-income area. Applicants choosing this category must be able to prove their project/activity primarily benefits low/moderate-income households.
- Low/Moderate-Income Limited Clientele** – The project benefits a specific group of people (rather than all areas in a particular area), at least 51% of whom are low/moderate-income persons;. **Note:** Income verification for clients must be provided for this category. The following groups are presumed to be low/moderate-income: abused children; elderly persons; battered spouses; homeless persons; adults meeting census definition of severely disabled; persons living with AIDS; and migrant farm workers.
- Low/Moderate-Income Housing** – The project adds or improves permanent residential structures that will be/are occupied by low/moderate-income households upon completion.
- Low/Moderate-Income Jobs** – The project creates or retains permanent jobs, at least 51% of which are taken by low/moderate-income persons or considered to be available to low/moderate-income persons.

*Explain:*  
(See Attachment A)

**b. Objective Two**

Assists in the prevention or elimination of slums or blight. **Note:** To meet this national objective, the proposed activity must be within a designated slum or blighted area and must be designed to address one or more conditions that contributed to the deterioration of the area.

*Explain:*

Select one:

- Addressing Slums or Blight on an Area Basis -**
- Addressing Slums or Blight on a Spot Basis -** This project will prevent or eliminate specific conditions of blight or physical decay. Activities are limited to clearance, historic

preservation, rehabilitation of buildings, but only to the extent necessary to eliminate conditions detrimental to public health and safety.

**c. Objective Three**

Meets community development needs having a particular urgency where existing conditions pose a serious and immediate threat to the health or welfare of the community, and no other funding sources are available, i.e., a major catastrophe such as a flood or earthquake. **Note:** To meet this national objective, the proposed activity must deal with major catastrophes or emergencies such as floods or earthquakes.

Explain:

**10. If the project or program is designed to meet the national objective of providing benefit to low- and moderate-income persons, please estimate the number of unduplicated number of persons (or households) to benefit from the project and break that estimate down by income group. Note:** Unduplicated means the number who are served, i.e., the grant will allow 25 children to participate in preschool – not 25 children x 5 days x 52 weeks = 6,500.

a. Total number of persons or households who will benefit from the project or program (regardless of income group):

#  
16 children

**Persons**/households (circle the applicable unit)

b. Of the total number of persons or households entered above, how many will be low-income (earning 51% - 80% or less of the County median-income)?

#  
Approx. 90%

**Persons**/households (circle the applicable unit)

c. Of the total number of persons or households entered above, how many will be very low-income (earning 50% or less of the County median-income)?

#  
unknown

**Persons**/households (circle the applicable unit)

**11. Who are the clients of your organization? (Example: low- to moderate-income persons, elderly persons, severely disabled persons, migrant farm workers, battered spouses, etc.)**

(See Attachment A)

**12. How will the clients benefit from this project?**

(See Attachment A)

**13. If your project serves homeless households, please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to Homelessness.**

(See Attachment A)

**BENEFICIARY DATA**

14. How do you collect demographic data on the beneficiaries of the proposed project or program? (Example: racial/ethnic characteristics)

Demographic data to include ethnicity, age, gender of the children served by CASA is provided by the Department of Social Services upon assignment of the child's case to CASA for advocacy. This information is entered into CASA's database.

15. How do you document and maintain income status of each client in compliance with HUD regulations? (Example: very low (≤30% AMI), low (≤50% AMI) and moderate-income (≤80% AMI)) Area Median Income (AMI)

We do not document or maintain income status of the children CASA serves. However, approximately 90% of the children served come from families who qualify to receive public assistance due to their low incomes.

16. Provide the following information for the persons in your organization responsible for the preparation and submittal of the quarterly reports and for collecting and reporting the beneficiary data to the Urban County.

Contact Person/Title: Teresa Tardiff, Executive Director

Phone/email: 805-541-6542; ttardiff@slocasa.org

**FINANCIAL INFORMATION**

For CDBG applications to the County of San Luis Obispo involving acquisition, construction or rehabilitation projects please provide the required additional budget information on BUDGET FORM A and BUDGET FORM B attached to the back of this application.

17. Total amount of CDBG funds requested: \$ 40,000

18. Please identify the cities to which you are applying. If you are applying to one or more cities, please provide a copy of the application to the County by the application deadline. If you are requesting CDBG funds from more than one city, please break down the amount shown above by the city listed below. The minimum requested CDBG amount is \$8,000 for public services from one or more jurisdictions.

City of Arroyo Grande:	<u>-0-</u>	City of Paso Robles:	<u>\$8,000</u>
City of Pismo Beach:	<u>-0-</u>	City of San Luis Obispo:	<u>\$8,000</u>
City of Atascadero:	<u>\$8,000</u>	County of San Luis Obispo:	<u>\$8,000</u>
City of Morro Bay:	<u>\$8,000</u>		

19. Please describe the budget for the proposed project or program. Itemize all sources of funding expected to be available and used for this project

a. Revenues:

- |  |                              |
|--|------------------------------|
| 1. CDBG Funds requested                          | \$ <u>40,000</u>             |
| 2. Other Federal fund(s) (please describe below) | \$ <u>(See Attachment B)</u> |
| 3. State source(s) (please describe below)       | \$ <u>(See Attachment B)</u> |
| 4. Local source(s) (please describe below)       | \$ <u>(See Attachment B)</u> |
| 5. Other funds (please describe below)           | \$ <u>(See Attachment B)</u> |



## ATTACHMENT A

**Question 3: Please describe the proposed project or program** - Children served by CASA have been removed from their homes due to abuse and neglect. Their parents have failed them and they are under the jurisdiction of the Juvenile Dependency Court. Most are living in foster care. CASA recruits, screens, trains and closely supervises committed community volunteers to provide advocacy for these children. They serve to provide each child a voice in court. After intensive background screening, completion of 30-hours of training, and swearing in by the court, the CASA volunteer is assigned the case of a child or sibling group. The volunteer meets weekly with the child, maintains contact with significant adults in their life (teachers, therapists, doctors, social workers, parents and foster parents), attends meetings with other collaborative agencies and reports regularly to the court. The CASA volunteer's reports provide crucial information to the court that make the child's needs and status known. The CASA volunteer also makes recommendations to the court in the child's best interest. Often times, the CASA also becomes certified to assume educational rights for the assigned child. When the child's parents are either unable or unwilling to be involved in educational decisions for the child, it is the CASA who helps in developing an Individual Education Plan (IEP) for the child and closely monitors the child's educational progress. As the CASA builds a trusting relationship with their assigned child, they often become the only stable and consistent adult in their life. Because the court system and social workers often have extremely large caseloads, it is the CASA's information and recommendations that are sought after to make the best decisions for the child's welfare. The CASA volunteer is truly the "eyes and ears" of the court.

The CASA volunteer is provided mandated and ongoing supervision by a CASA staff Advocate Supervisor. At present, CASA employs four full-time Advocate Supervisors. Each Advocate Supervisor is assigned 30 CASA volunteers. They meet regularly with the CASA volunteer, provide case management, assist in navigating an often complex legal and child welfare system, assist them in preparation of reports, attend meetings with collaborative agencies, and make court appearances as needed. The CASA Advocate Supervisor is also available to the CASA volunteer on a 24/7 emergency basis by telephone. The CASA program of San Luis Obispo County serves children throughout the entire county and is operated from the CASA office located at 75 Higuera Street, #180, San Luis Obispo, CA 93401.

**Question 4: Will the services offered by your organization increase or expand as a result of the CDBG assistance?**

- a. What new programs or services will be provided – CDBG assistance will enable the advocacy services CASA provides to abused and neglected children to increase. At present, \$2,500 will provide a trained CASA volunteer to a child for a period of one year. Therefore, additional funding would serve to increase the number of trained CASA volunteers and children served.
- b. On average, during the past 4 years, approximately 200 children are served yearly by CASA volunteers. At present 103 CASA volunteers are assigned to the cases of 146 court-dependent children. Receipt of the CDBG funding requested (\$40,000), would enable CASA to increase the number of children served by approximately 12% (an additional 16 children countywide would be served).

**Question 6: Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?** - All children served by CASA have

been failed by their parents, most are living in foster care often changing placements multiple times, and all have experienced lives of fear and uncertainty. There is an urgent need to advocate for these children, youth, and young adults (ages newborn to 19 years) to ensure they have a voice in court, that their best interests are being met, and that they have the opportunity to grow up in a safe, nurturing and permanent home, eventually becoming productive and responsible adults. CASA advocacy can also help to break the often familial cycle of child abuse and neglect. It is the dedicated CASA volunteer who works diligently to reach these goals for this very vulnerable population.

These children and youth come from homes throughout San Luis Obispo County. At present 474 children are under the jurisdiction of the Juvenile Dependency Court in San Luis Obispo County. CASA now has 103 trained volunteers assigned to advocate for 146 of them, however 328 are still on the waiting list to receive help from a CASA volunteer. Monies provided through CDBG grants would enable children now on the court's wait list to be assigned a CASA volunteer. It is also important to note that approximately 25% of the children served by CASA are infants and toddlers ages newborn to 3 years. This group is especially vulnerable to developing long term mental and physical conditions because of the abuse and neglect they have experienced so early in their life. Their brains are developing rapidly, therefore early intervention and assessment is critical to identify any problems. The CASA advocate is instrumental in noting problems in the assigned infant or toddler, reporting on the situation and advocating for immediate assessment and treatment. Without the CASA volunteer's advocacy early on, infants and toddlers are far more likely to have undetected physical and mental health issues that could plague them into adulthood, and also make them more likely to spend a greater number of years in foster care.

Our CASA program defines a successful result/outcome when the child or youth who has been abused and neglected and removed from home finds permanency in a safe and nurturing home. In this instance, the child's case has been successfully closed and dismissed by the court. CASA has prepared a recent economic impact study on the cost savings for children's cases closed in 2014 where the overall plan for the child had been long-term foster care. In this study, 10 youth were identified wherein the plan had been for them to remain in long-term foster care throughout their youth. With the help of CASA advocates assigned to the cases of these 10 children, all found permanent homes. These children no longer faced years of long-term foster care. Noting that foster care sites receive \$675-\$820 in monthly stipends per foster child, the savings to the County of San Luis Obispo by removing these 10 children/youth from foster care, saved \$556,580 in monthly stipend costs alone. That does not include savings in court expenses, lawyers, social workers, medical and mental health services. The CASA program helps tremendously in reducing the overall costs of foster care and child welfare costs. Due to the efforts of their CASA volunteers, they were able to leave foster care for permanency such as adoption or guardianship. The cost savings to the county were significant. Of greater importance is that these 10 children were spared a total of over 61 years in foster care! They all have "forever families" to love and support them in a permanent home due to the advocacy of CASA volunteers. Of the 201 children/youth service by CASA in 2014, 39 of those cases were closed by the year's end. Of those 39 cases, 100% of the children gained permanent legal placements.

**Question 7: Describe the specific organizational method used to implement the proposed project or program? –**

CASA of San Luis Obispo County is a 501(c)3 non-profit organization registered in the State of California. CASA of San Luis Obispo County was established in 1993. At present, CASA employs 11 staff members and is fortunate to also have the services of 8 volunteer staff. CASA also currently employs a full time AmeriCorps member. The CASA Board of Directors meets monthly and is also charged with making policy, formulating long-term plans and working on fund development. The Executive Director reports directly to the Board and supervises the CASA staff. Attached as **Attachment C** is a copy of the CASA of San Luis Obispo County organizational chart.

After a potential volunteer is recruited by CASA, they undergo an extensive background screening, which includes assessment by Live Scan, DOJ, FBI, DMV, the Child Abuse Centralized Index (CACI), and local law enforcement. They must also submit three personal references and participate in interviews conducted by CASA staff. Following determination of a successful background investigation, the volunteer must complete a 30-hour training curriculum

before being sworn in by a judge as an officer of the court. The CASA volunteer then meets with a CASA Advocate Supervisor to review pending cases and is then assigned to a child, youth or sibling group (between the ages of newborn and 19 years) as their advocate. The volunteer works closely with their CASA Advocate Supervisor throughout the duration of their work with the assigned child. The average length of a CASA volunteer's case is approximately 1.4 years at this time. The CASA volunteer is the heart of the CASA program. They develop a trusting relationship with the child and meet with them at least weekly. They have access to and review all court documents, medical, therapeutic, and educational records. They also maintain regular contact with significant adults in the child's life such as teachers, doctors, social workers, therapists, parent(s) and foster parents. By cultivating all of these relationships and gathering valuable information and reporting to the court, the CASA volunteer is not only able to act as the "eyes and ears" of the court, but also provides the child with a strong and positive role model who is also a friend and mentor. It is not unusual for the CASA volunteer and child or youth to maintain a relationship long after the case has been dismissed by the court.

**Question 9: Objective One; Low/Moderate-Income Limited Clientele** – This project benefits abused and neglected children in San Luis Obispo County who have been removed from their homes and are under the jurisdiction of the Juvenile Dependency Court. Approximately 90% are receiving public assistance such as Medi-Cal benefits and therefore qualify as low-income. Most of the children served by CASA are living in foster care. They are therefore considered to be homeless; and many of those come from families who have been or are currently homeless.

**Question 11: Who are the clients of your organization?** – The clients served by CASA are infants, toddlers, children, and youth ages newborn to 19 years of age. All have experienced abuse and neglect, have been removed from their parents care, and are under the jurisdiction of the Juvenile Dependency Court. Most are living in foster care.

**Question 12: How will the clients benefit from this project?** - According to the San Luis Obispo County Department of Social Services, 92% of children in San Luis Obispo County entering foster care have one or more health problems that require immediate treatment. Although these children are assigned social workers and placed in licensed homes, multiple moves, lack of records, inability of parents to provide full medical histories, as well as the sheer number of children assigned to social workers and foster parents, can result in delays in identifying medical needs and treatment. Children in foster care have medical, developmental and mental health needs far surpassing those of children in the general population. For example, a 2006 study by Casey Family Programs and Harvard Medical School found that over 50% of former foster youth will have at least one major mental health problem and 1 in 4 will suffer from post-traumatic stress disorder, more than double the rate of returning war veterans. Compared with children from the same socio-economic backgrounds, children in foster care have much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delays and poor school achievement.

Children require more than safety and shelter while they are in foster care. Their needs are complicated, involving mental health issues, remedial education needs and chronic health concerns. Our child welfare system is designed in some ways to attend to only one need at a time. CASA advocacy helps ensure access for abused and neglected children under the court's jurisdiction to appropriate health, mental health and dental services. Additionally, CASAs provide excellent role models for the children. With numerous studies documenting the positive impact that mentoring has on reducing negative behaviors, including substance abuse, violence, school failure, gang participation and delinquency, the CASA's positive relationship to the child is essential. Through weekly visits, CASA volunteers provide a consistent adult friend that influences the child's ability to make appropriate choices, to form trusting relationships, and behave

responsibly. The advocate's interactions with the child help to empower them to overcome the negative consequences of their abuse and neglect.

Effective advocacy is needed to help fill the gap between the need and provision of services for children in our county. Often, vulnerable children do not receive attention they deserve because resources are not utilized, or guidelines for provision of service exclude therapeutic services to children who fall outside certain criteria. CASA routinely intervenes to obtain mental health, medical, and dental care for the children. The CASA volunteer is also an integral part of the child's educational progress, by monitoring attendance reports, maintaining contact with teachers and other school personnel and recommending tutoring or special education consideration when needed. CASA helps to ensure children do not get lost in the system and brings their needs and circumstances to the attention of the court so that needed services can be ordered by the court.

Our dedicated volunteers provide quality advocacy for abused and neglected children within standards mandated by the National CASA organization. By encouraging and modeling responsible adult behavior, CASAs help to create a safe life for the child until the case is resolved in court, while also acting as a friend and mentor.

A dedicated CASA volunteer recently shared her story of meeting with her assigned youth for the first time: He is 13 and came from a home of intense domestic violence, with both parents dependent on methamphetamines, and had no regular school attendance. After his father's deportation and his mother completing her court ordered plan, the court agreed to reunite him with his mother. He now lives with her and two siblings at a local homeless shelter. The CASA first met the family at a park and learned they board a bus from the shelter every afternoon at 4:30pm and are taken to an undisclosed church where they sleep for the night. At 7am each morning, they ride the bus back to the shelter, eat breakfast, shower and head off to school. This cycle begins again each afternoon. This is a life of chaotic environments, uncertainty, no room or desk to complete homework and lacks the warmth of a safe home with routines and comforts. There are no "frills" in the life of this 13 year old boy. During this first meeting, the boy was sullen and failed to engage with the CASA volunteer. At the second meeting, the CASA volunteer asked him if there was a special he would like to go. Because of his behavior at their first meeting, she was unsure if she would be able to break the ice. After some thought, he said he would like to go to Morro Bay, had never been there and had heard it was a "cool" place. They went to Morro Bay, had lunch, looked through shops, saw seals, crabs and squirrels, and she learned he loved animals. He was very gentle while trying to feed a squirrel and was exhilarated when the squirrel touched his hand! This was completely unexpected from a boy who has been described as angry, defiant, and depressed. The highpoint of the afternoon came when they met a man at the base of Morro Rock who was a falcon expert. The boy was able to view nesting falcons using his powerful telescope. It was a great experience for him. This visit became the gateway to the CASA helping a youth greatly in need.

**Question 13: Please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to End Homelessness** – CASA has several local collaborative partners with whom client referrals, requests for services, and case management is often shared. CASA has strong relationships with child welfare agencies, committees, and private organizations countywide and statewide to aid in providing services to court dependent children. CASA is a member of the San Luis Obispo Child Abuse Prevention Council whose director provides mandated reporter training to all CASA volunteers. CASA staff and volunteers meet with Child Welfare Services staff to plan/advocate for services for the children and their families. Additionally CASA staff/volunteers work with the County Mental Health Department, Drug & Alcohol Services, Martha's Place, schools, County Counsel and public defenders to ensure the best interests of children served are met. CASA staff participate in the Foster & Homeless Youth Advisory Committee; Dependency Stakeholder Committee; Juvenile Delinquency Stakeholder Committee; Multi-Agency Transition Team; United Way Agency Advisory Group; Human

Services Network and Atascadero Youth Task Force. Services and information regarding children being served by CASA are also at times coordinated with the San Luis Obispo County Office of Education, Family Care Network, Aspiranet, and the Housing Authority of the City of San Luis Obispo.

The CASA program aligns with the guiding principles of the San Luis Obispo Countywide 10-Year Plan to End Homelessness as a community partner offering a system of care to advocate for abused and neglected children in the homeless population. Children served by CASA upon entering the child welfare system have specific housing needs that may temporarily be addressed by their foster care placement. However, addressing their long term housing needs and ultimate need for a permanent, loving and safe home is the mission of the CASA program.

## ATTACHMENT B

**CASA of San Luis Obispo County**  
**Board of Directors Approved Budget**

	Approved Budget <u>Jul '15 - Jun '16</u>
<b><u>Income</u></b>	
Donation	82,000.00
Ambassador Program	20,000.00
Corporate Sponsorship	40,000.00
Fund Raising	224,000.00
Restricted Contributions	5,000.00
4040 · In-Kind	4,200.00
4061 · Grants	235,450.00
4076 · Fees For Service	25,000.00
4170 · Program Fees	1,875.00
4190 · Reimbursed Expenses	0.00
<b><u>Total Income</u></b>	<b><u>637,525.00</u></b>
<b><u>Expenses</u></b>	
Personnel	437,858.07
5010 · Rent	44,100.00
5020 · Insurance	14,000.00
5160 · Travel	7,850.00
5165 · Mentor Employee	12,000.00
5400 · Office Supplies	3,850.00
5510 · Training	2,530.00
5620 · Dues, Fees & Subs.	3,600.00
5805 · Deve/Recruit.	6,000.00
5806 · Fund Raising Exp.	39,450.00
5821 · Professional Fees	18,914.57
5823 · Miscellaneous	0.00
5824 · Bank Service Chrgs	6,500.00
5825 · Supplies	1,800.00
5830 · Postage and Delv.	1,800.00
5832 · Printing and Repro.	3,000.00
5835 · Taxes	300.00
5836 · Outside Services	2,900.00
5840 · Telephone	3,050.00
5841 · Utilities	3,100.00
5850 · Volunteer Expense	3,550.00
6200 · Int. & Penalty Exp.	0.00
6300 · Repairs	16,000.00
6700 · Bad Debts	
6310 · Restr. Contrib.Exp	5,000.00
<b>Total Expenses</b>	<b><u>637,152.64</u></b>
<b>EBITDA</b>	<b>372.36</b>
4070 · Other Income	
7010 · Interest Income	1,500.00
7520 · Realized Gain/Loss	
<b>Net Profit/Loss</b>	<b><u>1,872.36</u></b>





COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM  
APPLICATION FOR THE 2016 PROGRAM YEAR

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING  
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

The County of San Luis Obispo is pleased to announce the availability of funds for the CDBG program. The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

To be considered for CDBG assistance, a completed application with any necessary exhibits, budgets or beneficiary data is required. Applications must be received by the County of San Luis Obispo. Please email grant applications to [ActionPlan@co.slo.ca.us](mailto:ActionPlan@co.slo.ca.us) by the application deadline of 5:00 P.M., Friday, October 23, 2015. Please label your email subject by adding the grant program name and the agency name (Example: CDBG – CAPSLO).

**CONTACT INFORMATION**

**1. Qualifying Information**

Organization Name: Sunny Acres/SLO Housing DUNS number: 614505506  
Contact person/title: Judie Najarian Sunny Acres / Dee Torres SLO HC  
Phone: 440-6760 Fax: 439-4041 Email: deetorresslo@hotmail.com  
Address (mailing and physical address requested if different): 10660 Los Osos Valley Road SLO 93405

Is your agency currently participating in Homeless Management Information System (HMIS)?  
Yes  No  If not currently participating, does your agency have the capacity to participate in HMIS? If yes, how so?

Does the proposed project or activity meet one of the three national objectives of the CDBG program? Note: More specifics on question 9, on page 4 of the application.  
Yes  No

Total amount of CDBG funds requested: \$ 100,000

Note: Please attach additional sheets for more detailed information of your proposed project or program for any of the questions below.

**PROJECT DESCRIPTION**

**2. Title/name/address of proposed project or program:**  
"Get Inside Program"

**3. Please describe the proposed project or program.** Include a brief project/program description, the groups who will benefit and an explanation of how they will benefit from the proposed project or program. For projects, describe the location of the project (be as specific as possible, e.g. street address). For programs, state the location from which the program will be operated and describe the geographic area served by the program. Also, please include a schedule of project/program milestones.  
See attached

**4. Will the services offered by your organization increase or expand as a result of the CDBG assistance? If yes, please answer the following questions:**

- a. What new programs or services will be provided?  
See attached
  
- b. Describe how existing programs or services will be expanded and what percentage of an increase is expected?  
See attached

**5. Check any of the following eligible activity categories that apply to the proposed project or program:** (Refer to CDBG regulations and the Guide to Eligible CDBG Activities).

- Acquisition of real property\*
- Disposition of real property
- Public facilities and improvements (may include acquisition, construction, reconstruction, rehabilitation or installation)\* and/or \*\*
- Privately owned utilities
- Clearance and remediation activities\*\*
- Public services
- Interim assistance
- Relocation of individuals, families, businesses, non-profit organizations, and/or farms
- Loss of rental income
- Removal of architectural barriers
- Housing rehabilitation\*\*
- New housing construction (under limited circumstances)
- Homeownership assistance
- Housing services
- Code enforcement
- Historic preservation\*\*
- Commercial or industrial rehabilitation\*\*
- Special economic development
- Technical assistance and planning studies

\* Relocation  
\*\* Lead-Based Paint  
(See note 8 and 9 on page 9)

**6. Describe the need and the degree of urgency for the proposed project or program. What would be the consequences if the proposed project or program is not funded in the next year?**

Our project is necessary as we are experiencing a homeless crisis. If funding is not secured within the next year both programs will be unable to grow and most likely even decrease current services.

**7. Please describe the specific organizational method used to implement the proposed project or program (*single or multiple group, public agency, non-profit, for-profit, experience in operating similar programs, etc.*):**

Non-profit. Dee Torres has operated SLO HC for over a year and her successes are undeniable (see attached summary), with 20 years involvement with this population. Sunny Acres as well has demonstrated their ability and commitment to this population for over 15 years.

**8. Does the project require the issuance of a permit (*from local, state or federal agencies*)?**

Yes  No

a. If yes, please identify the permits necessary to complete the project.  
we need county planning help on this...

b. Have the necessary permits been issued? Please provide proof of permit issuance.

c. If permits are required but not yet obtained, when will the permits be issued?

**NATIONAL OBJECTIVES CRITERIA**

9. Does the proposed project or activity meet one of the three national objectives of the CDBG program? Please check one of the objectives below that applies to the proposal, and explain how the project or activity meets that national objective.

**Note:** To meet this national objective, the proposed activity must benefit a specific clientele or residents in a particular area of the County or participating city, at least 51 percent of who are low- and moderate-income persons.

**a. Objective One**

Select one:

**Low/Moderate-Income Area Benefit** – The project serves only a limited area which is proven by 2000 Census data or survey to be a predominately (51% or more) low/moderate-income area. Applicants choosing this category must be able to prove their project/activity primarily benefits low/moderate-income households.

**Low/Moderate-Income Limited Clientele** – The project benefits a specific group of people (rather than all areas in a particular area), at least 51% of whom are low/moderate-income persons;. **Note:** Income verification for clients must be provided for this category. The following groups are presumed to be low/moderate-income: abused children; elderly persons; battered spouses; homeless persons; adults meeting census definition of severely disabled; persons living with AIDS; and migrant farm workers.

**Low/Moderate-Income Housing** – The project adds or improves permanent residential structures that will be/are occupied by low/moderate-income households upon completion.

**Low/Moderate-Income Jobs** – The project creates or retains permanent jobs, at least 51% of which are taken by low/moderate-income persons or considered to be available to low/moderate-income persons.

*Explain:*

Hard to select one as we do job training, placement, housing, supportive services etc.

**b. Objective Two**

Assists in the prevention or elimination of slums or blight. **Note:** To meet this national objective, the proposed activity must be within a designated slum or blighted area and must be designed to address one or more conditions that contributed to the deterioration of the area.

*Explain:*

Select one:

**Addressing Slums or Blight on an Area Basis -**

**Addressing Slums or Blight on a Spot Basis -** This project will prevent or eliminate specific conditions of blight or physical decay. Activities are limited to clearance, historic

preservation, rehabilitation of buildings, but only to the extent necessary to eliminate conditions detrimental to public health and safety.

**c. Objective Three**

Meets community development needs having a particular urgency where existing conditions pose a serious and immediate threat to the health or welfare of the community, and no other funding sources are available, i.e., a major catastrophe such as a flood or earthquake. **Note:** To meet this national objective, the proposed activity must deal with major catastrophes or emergencies such as floods or earthquakes.

*Explain:*

- 10. If the project or program is designed to meet the national objective of providing benefit to low- and moderate-income persons, please estimate the number of unduplicated number of persons (or households) to benefit from the project and break that estimate down by income group. Note:** Unduplicated means the number who are served, i.e., the grant will allow 25 children to participate in preschool – not 25 children x 5 days x 52 weeks = 6,500.

- a. Total number of persons or households who will benefit from the project or program (regardless of income group):

**Persons/households** (circle the applicable unit)

- b. Of the total number of persons or households entered above, how many will be low-income (earning 51% - 80% or less of the County median-income)?

**Persons/households** (circle the applicable unit)

- c. Of the total number of persons or households entered above, how many will be very low-income (earning 50% or less of the County median-income)?

**Persons/households** (circle the applicable unit)

- 11. Who are the clients of your organization?** (Example: low- to moderate-income persons, elderly persons, severely disabled persons, migrant farm workers, battered spouses, etc.)  
homeless, at risk, 290 sexual registrants. Persons not qualifying for any other programs

- 12. How will the clients benefit from this project?**  
Housing, job training, wrap around services. Emotional support etc.

- 13. If your project serves homeless households, please describe how your program coordinates with other continuum of care projects and entities and how it aligns with the San Luis Obispo Countywide 10-Year Plan to Homelessness.**

We work with every single other program county wide, both founders participated in the creation of our county's 10 years plan and as such have demonstrated a solid committment to ending homelessness in our county.



**Total Revenues** \$ \_\_\_\_\_

**b. Expenditures:** List below by item or cost category.

rehabilitation of structures SA	\$80,000
Supportive services SLO HC	\$20,000

**20. How do you plan to fund the operation and maintenance costs (if any) associated with this project? Are these funds available now? If not, when will they be available? And from what sources?**

Yes, we have cash on hand and we are both very dialed in to soliciting community support for our projects!

**21. Will CDBG funds be used to match/leverage other funds? List below funding sources and amounts and identify award dates of these sources.**

Yes if received we've applied for HOME, GEN Fund, ESG, and Bonus COC

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I certify that the information in this application is true and accurate to the best of my knowledge and ability.

**Dee Torres**

10/23/15

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Signature

---

Date

Judie Najarian

---

Printed or typed name

---

Title

**Notes to applicant:**

The County and cities require all of the grant recipients to maintain general liability, automobile and workman's compensation insurance with limits of not less than \$1 million\*\*\*. If you are successful in obtaining an award, you will be asked to provide documentation regarding ability to provide the required coverage.

\*\*\* Liability coverage may vary by jurisdiction. Please call the City/County contact to verify limits.

Prior to HUD's release of grant funds for the CDBG-funded project, a review of the project's potential impact on the environment must be conducted by the awarding jurisdictions and approved by the County of San Luis Obispo **prior to obligating or incurring project costs**. The County must certify to HUD that it has complied with all applicable environmental regulations and requirements. If project costs be obligated or incurred prior to the completion of the necessary environmental review, the project **shall not** benefit from the grant funds. The level of environmental review required depends on the nature of the project. Title 24 CFR Part 58 is available at <http://www.hud.gov/offices/pih/ih/codetalk/onap/docs/24cfr58.pdf>.

1. Please review the CDBG regulations and guidelines and the Request for Proposals before completing your proposal. The CDBG regulations, under 24 CFR 570, are available at [www.sloplanning.org](http://www.sloplanning.org) under "Federal HUD Grants."
2. HMIS Reporting for 2015 homeless services, housing and shelter - All homeless service providers applying for ESG funds to assist, house or shelter the homeless must identify and demonstrate its capacity to participate in the County of San Luis Obispo Homeless Management Information System (HMIS) to provide: personnel for data entry, user licensing, and hardware and software necessary for compatibility with HMIS. HMIS is an electronic data collection system that stores client level information about persons who access the homeless services system in a Continuum of Care, and reports aggregate data for the County as per the U.S. Department of Housing and Urban Development's (HUD) Data Standards. HUD updated its data standards in 2014, and the new standards are in effect starting October 1, 2014. . More information can be found at <https://www.hudexchange.info/resources/documents/HMIS-Data-Standards-Manual.pdf> and <https://www.hudexchange.info/resources/documents/HMIS-Data-Dictionary.pdf>.
3. Affirmative Marketing: Quarterly and annual reports shall be submitted by the project / program manager to the County. Each report shall describe the clientele served (i.e. total number of clients served with respect to race, ethnicity, sex and disability status). Affirmative steps shall be taken (i.e. targeted marketing) with respects to increasing the participation of any underserved or under-represented group(s). Public / government infrastructure projects will not be required to submit clientele reports.
4. Section 504 of the Rehabilitation Act of 1979: The County does not discriminate on the basis of disability in admission to, access to, or operation of its federally assisted programs and activities. The Section 504 Coordinator maintains a Grievance Procedure that receives and responds to Section 504 grievances / complaints. However, it applies only to County programs and activities that are funded by HUD. You may reach the contact person named above, at the beginning of this application, if you would like more information or wish to contact the Section 504 Coordinator.
5. The Project Proposal submitted to the County of San Luis Obispo shall be examined in relation to the County's community development goals and funding priorities as presented in the Urban County of San Luis Obispo 2015-2019 Consolidated Plan. The draft Consolidated Plan will be available at [www.sloplanning.org](http://www.sloplanning.org) in February 2015. The Housing and Economic Development team will make draft funding recommendations using the rating criteria stated in the 2016 Request for Proposals as

well as other information including but not limited to: the County Board of Supervisors, recommendations from the Homeless Services Oversight Council, online “needs” survey, other participating jurisdictions of the Urban County of San Luis Obispo, identified needs that could be addressed by the grant funds, consistency with goals and priorities in the upcoming 2015-2019 Consolidated Plan and the Ten Year Plan to End Homelessness, results of the Needs Workshops, working knowledge of the project and organization, and availability of limited funds.

6. If you are awarded CDBG funds or your proposal involves economic development, i.e., directly benefit a business, private property owner, business, involves façade improvements, provide technical assistance to a new or existing business, job creation, loan guarantee, the beneficiary must obtain a Dun and Bradstreet (DUNS) number that must be reported to HUD. Please contact Suzan Ehdaie, (805) 781-4979, sehdaie@slo.co.ca.us for information on how to obtain a DUNS number prior to incurring and obligating the federal funds.
7. Those awarded grants are required to provide beneficiary data at the end of each quarter and year end data of the fiscal year.
8. \* Relocation: Any project that involves the acquisition of property and/or rehabilitation and is funded in whole or in part with federal funds, even if the federal funds are not used for the acquisition itself, is subject to federal requirements connected to acquisition and relocation. A project cannot be broken into separate “projects” in order to avoid the federal requirements connected with property acquisition and relocation. Any questions concerning whether the relocation regulations apply to a specific property acquisition project should be directed to the County Housing and Economic Development staff before any action is taken on the project.

If HUD funded project will cause a household or a business to move, even temporarily, the relocation regulations will apply. Along with application submit:

- Estimate of relocation cost (moving costs, subsidy amount for suitable replacement dwelling)
  - Letter to owner of voluntary acquisition, plus proof of delivery to owner.
  - General Information letter to tenants (both business and residential tenants), plus proof of delivery to all).
  - List of tenants (both business and residential tenants) at the time of application submittal.
  - Refer to [http://www.slocounty.ca.gov/planning/Housing\\_and\\_Economic\\_Development/ura.htm](http://www.slocounty.ca.gov/planning/Housing_and_Economic_Development/ura.htm) for sample relocation letters under the downloadable manuals.
9. \*\* Lead-Based Paint (LBP): If HUD funded project involves acquisition or rehabilitation of a residential units that was built in 1978 or earlier, then LBP regulations will apply.
    - Along with application submit an estimate of costs for LBP work, provided by certified LBP consultant. Or statement by LBP consultant explaining that project is exempt.
    - Include any temporary housing costs.

**CDBG 2016****3. Please describe the proposed project or program?**

**A) Target population for this funding is the chronically homeless, period.** SLO HC “guerilla case managers” will screen all clients where they are. We do not make homeless people with no transportation often times disabled and all of whom are in crisis situations come to us. We meet with them, spend time getting to know them and make appropriate referrals either by adding them to our case load or helping them to panel back into the shelter, etc... As of the writing of this grant our case manager has been partnering with 5 CHC to get a homeless family on the bus and back to Oklahoma where they have shelter and a job waiting for them. Our guerilla case managers work tirelessly always with two goals at the forefront of each of destroying boundaries and moving people from the streets and into housing as soon as possible. All ages, income level, past participation in previous programs, ethnicities, mental health, drug and alcohol, criminal record are absolutely welcome to the intake process.. All are given support and guidance. We will work with our housing partners Robert Helm of the Wendy Apartments in Pismo Beach, John Belcher mobile home park owner in SLO, and Sunny Acres 72 Acre Ranch owner and operator. Following a housing first model of grabbing clients from the streets and placing them in appropriate housing with complete support.

Sunny Acres will play a key housing role in prioritize our referrals to the top of their housing list. Currently Sunny Acres has the only identified housing set-aside for 290 registrants, paroll and probation often rely on Sunny Acres to house their clients upon release from jail or prison if this service were to end this would be a giant blow to our county. The partnership between HC and SA will provide Clients that are not appropriate for Sunny Acres will be referred to alternative housing situations/providers such as TMHA, ECHO, MLM, TFS, HSP, etc..

**B) The plan for addressing the identified needs/issues of the target population(s)?**

Through an innovative and well-documented approach, we provide individual’s hope, support, with hands on guidance through the system using a new term we’ve coined “guerilla case management”! We work with homeless to empower them to navigate complicated systems and support them through utilizing extensive communications. Often times after the assessment it will be determined that SA is the appropriate facility there clients will receive case management, AA/NA meetings, and help meeting their obligations with law enforcement. Others will be placed in scattered housing throughout the county.

**C) Projected outcomes**

Every single chronically homeless individual in this county will receive the very best care, support, and opportunity at permanent housing possible. Every single one! Clients served by our partnership will report that they we’re treated with respect (as evidenced by attached letters). Every program participant will receive help increasing their income through employment and/or non-employment resources. Please see attached illustration of the creative way in which we play to our clients strengths and abilities. We recently sponsored a booth at the Morro Bay “Gio-fest” craft fair so that one of our clients could

sell her art, which is how she currently supports herself. Now plans are in the works to secure a monthly spot at the local Farmers Market so that this and other clients can express their creativity and increase their income by selling their products as well, 100% of the proceeds go directly to each individual artist. Of course we also work diligently to overturn every rock to ensure all clients apply for and receive all mainstream benefits in which they are eligible and if eligibility is not quite in their grasp but is attainable we ensure that we help get them there! Our volunteers remain knowledgeable by doing, we physically walk clients through the process of attaining benefits and/or employment which means we are always current on what is available and how to access it. program operators have demonstrated the ability to provide Keeping in line with HUD's mandate of getting people off of the streets quickly, respectfully and at the lowest financial cost, that's us!

**D) Coordination with other source(s)/partner(s):** Currently we accept referrals inside and outside of the CoC, agencies such as:

Dee Torres is a voting member of the HSOC and Judie Najarian is her alternate.

Community partners and consistent resources/referrals made to:

County Department of Social Services

County Behavioral Health

Probation/Parole

Law Enforcement

Park Rangers

TMHA

ECHO

TFS

ALPHA

Social Security

Womanade

Cal Poly/Cuesta professors

Business owners/operators

Homeless and Formerly Homeless Individuals

A vast majority of our referrals coming from the homeless themselves which is a terrific indicator that our approach works! We also receive requests for services through our website, FB page, brochures, and public speaking engagements.

**E) Maximum length of assistance:**

Our clients do not time out! Our clients grow and are helped to rise to a level of self-sufficiency that is an on-going process. People who are experiencing homelessness are just that! Homelessness is a situation to be overcome; it does not define who they are. We strive to help each person realize that, overcome it, and then pay it forward! Sunny Acres has a great philosophy that sums this up nicely "each one, teach one" method of getting clients involved in reclaiming a life of accountability. SLO HC has a 100% success rate of housing our chronically homeless folk and helping them to maintain that housing. We expect to carry that success rate over to this partnership with Sunny Acres. Every single chronically homeless individual in this county will receive the very best

care, support, and opportunity at permanent housing possible. Every single one! Clients served by our partnership will report that they we're treated with respect (as evidenced by attached letters). Every program participant will receive help increasing their income through employment and/or non-employment resources. Please see attached illustration of the creative way in which we play to our client's strengths and abilities. We recently sponsored a booth at the Morro Bay "Gio-fest" craft fair so that one of our clients could sell her art, which is how she currently supports herself. Now plans are in the works to secure a monthly spot at the local Farmers Market so that this and other clients can express their creativity and increase their income by selling their products as well, 100% of the proceeds go directly to each individual artist. Of course we also work diligently to overturn every rock to ensure all clients apply for and receive all mainstream benefits in which they are eligible and if eligibility is not quite in their grasp but is attainable we ensure that we help get them there! Our volunteers remain knowledgeable by doing, we physically walk clients through the process of attaining benefits and/or employment which means we are always current on what is available and how to access it. program operators have demonstrated the ability to provide Keeping in line with HUD's mandate of getting people off of the streets quickly, respectfully a

**4.**

**a. What programs or services will be provided?**

We are asking that the county help us bring our existing structures up to code so that we can assist our cities and county in ending homelessness by December 2018. This partnership between SA and SLO HC is a perfect blend of housing and supportive services, following a housing first model and aligned with HUD's wish that counties get creative, be cost efficient and move homeless into housing as quickly as possible.

**b. Describe how existing programs or services will be expanded and what percentage of an increase is expected?**

Currently we provide housing and supportive services on site and SLO HC provides street outreach, housing, and supportive services countywide. We each do this on shoestring budgets and have demonstrated it can be done without high overhead and high barriers to the clients. We will continue these services and with adequate financial support we know we can at minimum double our current capacity.



SLO Housing Connection started 2015 off with a bang by sponsoring a New Years Day Party at the Anderson Hotel.

# SUMMER 2015 CHECK-IN

## MISSION

To aid individuals and families who are homeless, at risk of becoming homeless, and/or having exhausted standard available resources

SLO Housing Connection is an all volunteer 501c(3) committed to ending homelessness in SLO County your tax deductible donation will go directly to help fellow community members get off and stay off of the streets!

Too many homeless people slip through the system. Often they are suffering from a variety of mental and physical illnesses. They need the stability of housing to most effectively case manage them.

That's where SLO Housing Connection comes in. We have the experience and the relationships to do more than advocate—we work non-stop to get clients housed.

But to keep doing this, we need your help. 100% of your donation will go directly to assisting people with housing, furniture, food, and medicine.

Will you please help us help others? Will you make sure our community continues to have a last resort? Your donation of \$200, \$500, or even \$1000 will help people in desperate need get housing and stay in housing.

See some of our success stories on the other side and thank you much for your kindness!

Dee Torres  
SLO Housing Connection

# Tandra



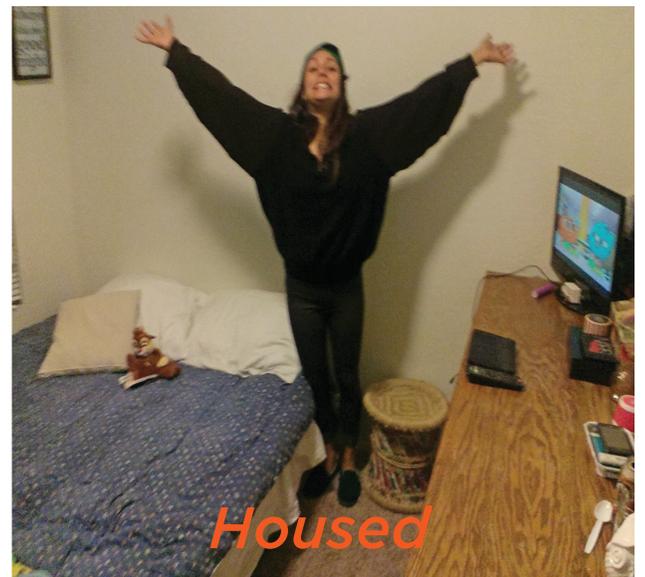
## Attachment 4

Suffering from mental illness and subject to the horrors of being a homeless woman, after two years SLOHC helped get Tandra into an assisted living care facility!

January - June 2015 we've helped 31 adults and children acquire or retain housing!

# Mikayla

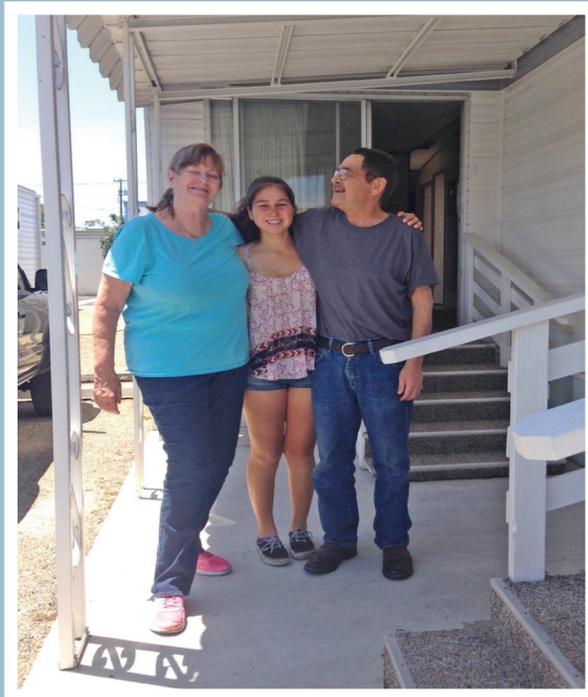
Was living in a tent in a local campground until we helped her into permanent housing! Now she is not only gainfully employed but she's also a full time college student.



*Housed*

# David & Carol

David and Carol are housed! May 7th the Tribune told their heart-wrenching story of battling a terminal illness while living in their vehicle after their house caught on fire.



October 13, 2015

Pamela Kay Bruner  
Wendy Apartment # 12  
300 Dolliver Street,  
Pismo Beach, CA 93449

To Whom it may concern:

I am writing to you concerning SLO Housing Connection and Ms Torres. Wouldn't it be nice to give a program or the homeless that really works, a real chance to prove that someone knows how to handle grants they provide exactly what they are meant for. This woman has given up her heart and her soul, she works morning until night to make sure everything is done for everybody's needs. She provides her resources and their resources to make this work. Everything has been done for me to assist in making my first home since 2007.

It's my home now and I love it! Thanks to all concerned I will get the help that I need from several people working together and working the SLO HC program.

I was stalled at the shelter and then kicked in and out of the shelter for no reason pretending there were real reasons. They were ridiculous accusation they used to make me spend all of my savings to the tune of \$4,000 just to live off of, while they kicked me in and out. What a waste, for them and me!

It's a shame that agencies get away with brutal treatment of the elderly and disabled clients. I won't continue to right the wrong, I'm just happy to be out and Ms Torres was the only one in the whole county with the proper intentions of getting money to the proper spending, "housing." She deserves a great deal of credit for her hard work☺

Thanks you!

Pamela Kay Bruner

Housed 2015!





10/15/15

To Whom it may Concern:

Slo Housing Connection proved to be an invaluable resource for my family. I'm a single mother of seven children who was facing a housing crisis. I received a section 8 voucher for housing, but could not obtain the necessary rental deposit. I had contacted every social service agency and charity that I could locate in my area. It was a very exhausting and frustrating endeavour to try to get help from these sources. There is a real lack of ability for someone to receive help from most of these agencies. I was able to receive a very small amount of financial help from two other agencies, but only after they confirmed that the Slo Housing Connection would be helping with the majority of the assistance. From the

moment I contacted the Slo Housing Connection and spoke to Dee Tores I felt like everything was going to be okay. She was so helpful, friendly, and positive. Slo Housing Connection worked tirelessly to look into every option of help available for me to get the financial help my family needed to not lose the opportunity to move into safe, quality, affordable housing. If it hadn't been for the Slo Housing Connection I would not have received the rental deposit help that I desperately needed. Because of the excellent quality of help that I received my large family now lives in a wonderful home. The Slo Housing Connection is a quality resource agency that lives up to it's goal to help and support those needing help in their community.

Cheryl Roden

805-631-5965



To Whom it may concern:

10/14/15

The SLO Housing Connection is just the right kind of organization that SLO needs. The current approach of institutionalizing the homeless and treating them in demeaning ways is not solving the problem. The current homeless service providers have cultivated a crew of slaves to perpetuate their own selfish agenda. People need to be treated with dignity and respect.

Alan Epperson  
SLO Housing Connection Client

Dee found me through a man named ranger dan. He brought dee down to where I was camping and she said I can help you if you like? So we got things together with the VA and with housing. After all that was done Dee then asked me if I would like a home to live in? I said yes that would be nice. So within 3 days I was in a home. SLO HC helped me so much it has changed my life and I want to thank you Sofi come here once a week with food for me and to see how I am doing. I just want to say thank you very much if it was not for HC I would still be living in the bushes. And not being healthy.

Thank you  
Marc Robb



Dee Torres

I was happy to hear of SLO Housing Connection's partnership with Sunny Acres to end homelessness in our county. Having worked with you over the past ten years and witnessed your dedication in helping the homeless I would be happy to add my personal support to your joint efforts.

You can be sure that the SLO Community Assistance Council will cooperate with your new venture and add our support wherever possible

Robert W. Mulrooney  
President  
SLO Community Assistance Council



# Program Summary

2014-2015

In 2014 we were given \$50,000 with the mandate to “help and house as many people as we could. Not to “compete but to compliment existing services.” We only serve clients who have fallen through the gaps in other local programs the most needy to which other services are not available. All of this work has been carried out by volunteers and all money raised goes directly to the needy and underserved.

## **Total Number Housed:**

SLO Housing Connection has successfully housed 49 chronically homeless and underserved individuals/ families. This total is comprised of **24 households**, which includes **28 adults** and **21 children**.

## **Total Number Served (Using Eviction Prevention dollars):**

We have successfully ensured that 21 individuals comprised of **10 households** stayed in their homes, avoiding eviction. This includes **14 adults** and **7 children**. We’ve successfully partnered with other local agencies such as Womenade, 5 CHC, and the Salvation Army.

## **Food Program:**

Since March 2015 our food program has served **479** hungry men, women, and children; over 8,000 meals at a cost of \$216.82 (**27 cents per meal**), with the help of the Food Bank.

## **Current Clients:**

The current number of clients working with SLO Housing Connection towards housing is 26 individuals comprised of **15 households**. This includes **19 adults** and **7 children**. We would use all future funding to continue this critical and successful work.



AGENDA NO: C-1

MEETING DATE: December 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** December 1, 2015

**FROM:** Dave Buckingham, City Manager  
Joseph W. Pannone, City Attorney

**SUBJECT:** Determination Regarding the Sale of City Property on Mindoro Street (APN 065-113-066)

### **RECOMMENDATION**

Staff recommends the City Council provide direction whether to proceed with the sale of the real property the City owns on Mindoro Street and if so to whom.

### **ALTERNATIVE**

Decide not to sell the Mindoro Property.

### **FISCAL IMPACT**

The immediate financial impact of the sale of the Mindoro Property would be between \$39,000 to \$175,000 in revenue to the General Fund, minus the commission to the City's broker, governmental transfer fees and 50% of the escrow fees. In addition, the City would receive an increase in property tax based on the sales price, since the City does not currently pay property tax on the subject property. Also, depending on any future development of the property, the City would experience an additional increase in property tax.

### **BACKGROUND/DISCUSSION**

The subject property is at the end of Mindoro Street where it abuts the western edge of Highway 1. The City has owned that property for many years and it is vacant. After a recent review at a public meeting of City-owned properties, one of the properties the City directed staff to sell was the Mindoro property. To accomplish that sale, the City hired Ciano Real Estate, Inc., to act as the City's broker. Frankie Ciano has received four offers for the sale of the subject property.

Those four offers are summarized below:

1. Ted and Lisa Schade, abutting neighbors, offered to purchase the property for \$39,000, with a 30-day escrow. They would then combine that property with their existing property through a lot adjustment.

Prepared By: JWP

City Manager Review: DWB

The Schades also would agree to indemnify, defend and hold harmless the City and its officers and employees from any lawsuit alleging that sale is a gift of public funds.

2. Tobin James Shumrick offered to purchase the property for \$160,000, with a 15-day close of escrow.

3. Douglas and Lindsie Castro offered to purchase the property for \$170,000, with a 14-day escrow. He and his family intend to construct a small beach cottage as a second home.

4. Noel Rodman offered to purchase the property for \$175,000, with a 30-day escrow. The offer is contingent on the City approving a building permit, issuing a will serve letter for water and sewer and allowing a single-family home raised on 9-foot concrete piers with parking below. The latter of those contingencies does not meet the City's requirements pertaining to the neighborhood.

At its meeting of November 24, 2015, the Planning Commission determined the sale of the subject property is in conformity with the City's General Plan. Such a determination is required by Government Code section 65402 before the City can sell any real property it owns. The City has also had a survey of the lot completed, with corners set, and the City's waterline was located and the easement area identified for that waterline. All that information is essential for any development of the property. The cost for preparation of that information was \$2,500.

By sale of the property, the City is not committing to any future development or use of the property. Such use and development would be required to proceed through the City and Coastal Commission's land use entitlement procedures.

### **CONCLUSION**

Staff requests the City Council provide direction as to whether the Mindoro Property should be sold, and if so, then to whom.



the economic benefits, risks and feasibility of creating a CCA in SLO County. Other regions in California are also exploring creating a CCA including Monterey, Santa Cruz and San Benito Counties, along with the communities within those counties.

Based on the presentation from SLO Clean Energy, in September 2013, the City Council adopted Resolution 47-13 which stated the City Council's interest in exploring CCA and appointed representation (Mayor Irons/Councilperson Smukler) to participate in the steering committee. It did not commit or otherwise bind the City to participate in a CCA, if one were established; however, it could result in a future request in a contribution from the General Fund if the organization was not able to secure private funds to cover the feasibility study. SLO Clean Energy continues to work to establish a CCA in San Luis Obispo County.

In September of this year, the Council received a presentation from California Clean Power Corporation (CCP) which proposed to contract with the City to provide staff resources to assist the City with operating a new model to establish a CCA. The representative from CCP discussed the economic, local control and environmental benefits of CCA. The economic benefit is achieved by not paying the profit portion for the electric power bill to the for-profit regional provider. The three legs of the CCA stool that need to be balanced are rates, revenue, and renewables; those three legs are balanced locally. CCP is a duly registered California corporation since October 23, 2014, that promotes the triple bottom line social, environmental and financial aspects of projects. CCP provides the technical expertise and support communities need to manage a CCA, which could also be provided by increasing City staffing or other delivery models. CCP purports to be able provide CCA benefits to small communities, which would be otherwise infeasible.

In the draft report prepared by CCP regarding Community Choice, it provided background on CCA and how it has worked in other areas such as Marin and Sonoma counties, along with Community Choice Programs in other states. The report also touches on the financial risks associated with a CCA due to the energy market pricing volatility, regulatory and legislative risk. Financial risk is the primary concern, due to market volatility and if rate increases are required can lead to customer leakage from the CCA program back to PG&E as an energy provider. That risk is somewhat mitigated in that fixed price renewables provide a buffer against wholesale market energy pricing. The report also uses the specific PG&E electric usage data from Morro Bay to determine cost benefit of the CCA program and opines, creating a CCA on its own is not feasible since the energy load of Morro Bay is too small to generate sufficient program revenue to support the required expenses. The report concludes, through regionalization of a CCA either by forming partnerships with other jurisdictions or partnering with a firm such as CCP, Morro Bay could realize the benefits of a CCA.

#### *Other Community Choice Efforts in the County*

In April, the San Luis Obispo City Council passed a resolution in support of exploring a CCA program with other interested municipalities such as other cities and San Luis Obispo County.

On October 6, the County Board of Supervisors voted to look at two options to participate in a CCA program. The first was to prepare a feasibility study being led by Santa Barbara County. Ventura County was also invited and has agreed to participate. Santa Barbara County has requested San Luis

Obispo County contribute \$50,000 to the feasibility study, which would include all of San Luis Obispo County and all cities if they desire to participate. It is not known whether the seven cities would be willing to participate or contribute to the costs for participation. San Luis Obispo County would be an equal partner in the feasibility study. Ventura County has also contributed \$50,000, which includes the unincorporated county and ten cities. The contract with Santa Barbara County and the exact details of the scope of work for the feasibility study would be developed after participation was authorized. The second option the County Board approved was to join with the City of San Luis Obispo to participate in an inter-jurisdictional pre-feasibility study for a CCA program within the county of San Luis Obispo. The pre-feasibility study is offered at no cost by CCP and CCA program partners and includes analysis of regional energy usage data from PG&E.

### **CONCLUSION**

CCA offers many benefits to the community, but is not without its risks and may result in higher energy costs for the community. It is clear by the preliminary analysis provided by CCP, a CCA program for Morro Bay is only feasible and the risk is mitigated through a regional program with other jurisdictions or through partnerships with a firm like CCP, but with the loss of some self determination.

### **ATTACHMENTS**

1. City Council Resolution 47-13
2. Community Choice Program – Feasibility Report, June 2015

**RESOLUTION NO. 47-13**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
CONFIRMING CITY OF MORRO BAY'S PARTICIPATION IN A  
COMMUNITY CHOICE AGGREGATION (CCA) FEASIBILITY STUDY**

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

**WHEREAS**, the Morro Bay City Council has demonstrated its commitment to increasing energy efficiency, and to supporting more broad availability and use of local renewable power sources within the City; and

**WHEREAS**, Community Choice Aggregation (CCA) is a mechanism through which an authority, represented by participating local governments within its jurisdiction, procures electrical power on behalf of its residential and commercial customers; and

**WHEREAS**, Pacific Gas & Electric Company (PG&E) remains an important partner, responsible for reliable delivery of power and enhancement and maintenance of grid infrastructure; and

**WHEREAS**, the Morro Bay City Council has identified CCA as a potential strategy that could be very effective in helping the City meet its AB32 greenhouse gas reduction targets; and

**WHEREAS**, Community Choice Aggregation, if determined to be technically and financially feasible, could provide substantial environmental and economic benefits to all residents and businesses in the City of Morro Bay; and

**WHEREAS**, Community Choice Aggregation provides the opportunity to fund and implement a wide variety of energy related programs of interest to the community; and

**WHEREAS**, in addition to technical and financial feasibility, it is important to determine whether there is adequate public support for Community Choice Aggregation; and

**WHEREAS**, it is intended for the CCA Exploration Advisory Committee (CEAC) to be an advisory group comprised of local agency staff, local elected officials or their designees, and members of the public with expertise in energy, financial and/or organizational mechanisms; with the charge to develop CCA feasibility information and to advise the Morro Bay City Council and participating local agencies; and

**WHEREAS**, determining technical and financial feasibility requires obtaining and analyzing energy load data from PG&E, and conducting public education and outreach.

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

1. The City of Morro Bay agrees to participate in an inter-jurisdictional effort to investigate the feasibility of Community Choice Aggregation (CCA), including support for efforts by a CCA Exploration Advisory Committee (CEAC) to guide preparation of a feasibility study, without obligation of the expenditure of any City Funds unless separately authorized in a future action by the Morro Bay City Council.
2. The Morro Bay City Council authorizes an individual (City staff or City Council member) to participate as a member of the CEAC.
3. The City Manager is authorized to execute the appropriate documentation to allow the CEAC and its technical consultants to request energy usage load data from PG&E so it may be analyzed as part of the feasibility study
4. Adoption of this Resolution in no way binds or otherwise obligates the City of Morro Bay to participate in a Community Choice Aggregation program.

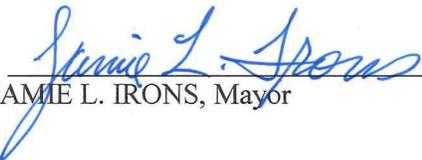
**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10<sup>th</sup> day of September, 2013, by the following vote:

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

NOES: None

ABSENT: None

ATTEST:

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

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

CITY OF MORRO BAY  
COMMUNITY CHOICE PROGRAM  
**FEASIBILITY REPORT**

JUNE 2015

**DRAFT**

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# 1. INTRODUCTION

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Community Choice Aggregation (CCA) is feasible. Community Choice programs are operating successfully in California and in other states. Feasibility reports were done for many of these programs prior to launching; now, existing programs have proven out the benefits of Community Choice for residents and businesses, the environment, and the economy.

Because of this, the analysis of CCA feasibility is different today. In the next generation of Community Choice programs, communities must decide how their program should function, not whether their program can function. Successful Community Choice programs have spurred innovation in how to approach program operations and program services. By law, all Community Choice programs in California must be government programs, without exception, but each community must choose how to staff and support its program, along with the suite of services the program will provide for its residents.

Because of the collective experience with Community Choice in California, the intent of this feasibility report is to provide an overall context and support for Community Choice. This document will also provide foundational information on Community Choice, an analysis of recent electrical load data of the City of Morro Bay in relation to current markets and future projected markets, and will provide different approaches to establishing a Community Choice program in Morro Bay. When structured appropriately, with thoughtful risk management strategies and skilled expertise responsible for daily operations, the operational risks and financial risks of a Community Choice program can be mitigated significantly, and the benefits are real.

## 2. COMMUNITY CHOICE - HISTORY & BACKGROUND

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### 2.1. History of Public Power in California

California has a long and robust tradition of publicly owned electric utilities (“POUs”). Some California POUs have been in operation since as early as 1887, and currently approximately 46 POUs<sup>1</sup> serve close to 25%<sup>2</sup> of all of California’s electric consumption. These public entities

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<sup>1</sup> Information excerpted from: California Energy Commission

represent the entire spectrum of California communities, ranging from the largest provider, Los Angeles Department of Water and Power, which is California's third largest electric utility, to the City of Biggs Electric Utility, which serves a population of approximately 1700 citizens.

The benefits of a government run enterprise, such as access to tax exempt financing, exemption from federal taxation and no need for a profit margin, give most California POU's a considerable advantage over investor owned electric utilities ("IOUs") such as Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E).

Investor owned utilities have substantially increased their electricity rates in recent times. In 2014, SCE raised its residential rates by 8%; in 2015, PG&E raised its electricity rates by 5.9% and SDG&E is planning to increase its rates by 7.5% in 2016. POU's as a group have a comparatively excellent record of providing lower and more stable prices to their communities, making them a highly attractive alternative to IOUs.

Around the beginning of the 20th century, there were over 4,000 individual electric utilities, each operating in isolation. Almost all of them used low-voltage, direct current (DC) connections from nearby generating power plants to the distribution lines serving their local customers. The power industry soon began to favor the adoption of alternating current (AC) technology, which can transmit electricity over longer distances than direct current. The more widespread use of AC electricity allowed the industry to build larger power plants that did not need to be located close to the utilities' customers.

As the demand for electricity grew, particularly in the post-World War II era, electric utilities found it more efficient to interconnect their transmission systems. This enabled utilities to share the benefits of building larger and often jointly owned generating units to serve their combined electricity demand at the lowest possible cost. Interconnection also reduced the amount of extra capacity that each utility had to hold to ensure reliable service. Over time, three large interconnected systems evolved in the United States because growing demand and the

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[www.energy.ca.gov/sb1/pou\\_reports/Publicly\\_Owned\\_Utility\\_Company\\_Programs.pdf](http://www.energy.ca.gov/sb1/pou_reports/Publicly_Owned_Utility_Company_Programs.pdf)

2 The Clean Energy Race. Wisland, Laura and Haya, Barbara. Union of Concerned Scientists (2012). [www.ucsusa.org/sites/default/files/legacy/assets/documents/clean\\_energy/The-Clean-Energy-Race-Full-Report.pdf](http://www.ucsusa.org/sites/default/files/legacy/assets/documents/clean_energy/The-Clean-Energy-Race-Full-Report.pdf)

accompanying need for new power plants provided an increasing need for higher voltage interconnections to transport the additional power longer distances. Today, these three large interconnected systems separately serve the eastern and western halves of the United States and Texas.<sup>3</sup>

Most POU's were, however, were established many years ago and the emergence of new POU's or the expansion of existing territory has been virtually non-existent in recent times. The inability to expand POU service is largely due to the difficult process of municipalization, which includes incurring the cost of either building or acquiring electric facilities that include miles of transmission and distribution wires, substations, generation facilities, metering equipment for every customer, and vast amounts of other infrastructure such as computer systems, service trucks, and call centers.

## 2.2. California Energy Crisis

In 1998, California deregulated the electricity industry through AB 1890, giving all electric consumers served by the IOUs the ability to purchase electric generation from any supplier. The act was hailed as a historic reform that would reward consumers with lower prices, reinvigorate California's then-flagging economy, and provide a model for other states.<sup>4</sup> Referred to as Direct Access, the law required the IOUs to allow third party electric generation suppliers to use all of the existing IOU equipment to deliver, meter and bill for their alternative electricity supply. In many ways, Direct Access is similar to how the telecommunications industry was deregulated, allowing third party providers to use the wires of the telephone companies. Most of the customers who opted for Direct Access paid significantly less for alternative electricity supply, and some opted for energy that had more renewable content.

While the causes and contributing factors to the energy crisis in California in 2000-2001 are manifold and complex, virtually all observers saw the State's deregulation plan as a failure and major reason for the crisis.<sup>5</sup> Following the California energy crisis in 2000, existing Direct

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<sup>3</sup> Information excerpted from: The US Energy Information Administration [www.eia.gov/energy\\_in\\_brief/article/power\\_grid.cfm](http://www.eia.gov/energy_in_brief/article/power_grid.cfm)

<sup>4</sup> The California Electricity Crisis: Causes and Policy Options. Weare, Christopher. Public Policy Institute of California. (2003).

<sup>5</sup> Causes and Lessons of the California Electricity Crisis. Congressional Budget Office (2001).

Access customers were allowed to continue service from alternative providers, but, with the exception of small annual increments over the previous four years, no new Direct Access is currently permitted.

In the aftermath of the energy crisis, and recognizing that the suspension of Direct Access removed a valuable alternative to the very difficult process of municipalizing and that POU's fared the energy crises better than the IOUs, California passed the Community Choice Aggregation law Assembly Bill (AB) 117.

### 2.3. Community Choice Aggregation (CCA), Assembly Bill 117

In 2002, Community Choice Aggregation (AB 117) was signed into law. Community Choice Aggregation (CCA, sometimes referred to as Community Choice Energy – CCE – or simply Community Choice) enables California cities and counties, together under a Joint Powers Authority (JPA) or individually, to supply electricity to customers within their borders. A defining feature of AB 117 is that the IOU continues to own and operate the electric distribution system and provide metering, billing, credit and collection, call center and other customer service functions. In addition, AB 117 and subsequent legislation (SB 790), also established structures to encourage cooperation and to strictly regulate IOU opposition to communities attempting to establish, or already operating, a Community Choice program.

Unlike Direct Access under AB 1890 (Direct Access), which required each customer to specifically choose non-IOU service ("opt-in" to Direct Access), AB 117 gives communities the right to procure their own electric energy as an essential governmental function – like water, sewer, or garbage service. In this way, California established Community Choice as the "default" service. This means all utility customers within the established boundaries are automatically customers of the local government's Community Choice program unless they "opt-out" of the program.

While Community Choice has similarities to local power through POU's, a fundamental difference exists in ownership of critical energy grid and other infrastructure, noted above. Unlike a POU, such as the Los Angeles Department of Water and Power or the Sacramento Municipal Utility District, a Community Choice program does not own the transmission and delivery systems (i.e., the poles and wires). Instead, a Community Choice program is responsible for providing the energy commodity (i.e., the electrons themselves) to its

participants, which may or may not entail ownership of electric generating resources.

## 3. COMMUNITY CHOICE - OVERVIEW & LANDSCAPE

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### 3.1. Proven Benefits

The benefits of Community Choice have been discussed at the conceptual level and proven out in practical terms by operating programs. At the most basic level, these benefits can be organized into the three categories of environmental, economic, and local control.

#### 3.1.1. Environmental Impact

In the category of environmental, particularly within California, Community Choice can increase the use of renewable energy, increase the demand for new renewable energy projects within the state, and provide a new avenue for smaller-scale local renewable projects. Because of this, in part or in combination, Community Choice can be one of the most significant strategies to meet a community's greenhouse gas (GHG) reduction goals. Collectively, therefore, Community Choice can also help to meet the State's GHG reduction goals.<sup>6</sup>

The increase in renewable energy use arises from the community's ability to establish a renewable portfolio as a baseline service level or premium level that exceeds that of the IOU. Although subject to market price realities, existing Community Choice programs, along with analysis of potential Community Choice programs, bares out this point.

While sufficient renewable power currently exists to meet market demand within the State, over the long-run, an increasing market demand for renewable power through Community Choice over the long-run will necessarily spur the development of additional large-scale projects and clean energy jobs to meet the growing demand. In addition, communities interested in local generation projects can leverage Community Choice program revenue to create new projects or provide a stimulus to expand existing community projects in the short run.

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<sup>6</sup> California Governor Jerry Brown issued an executive order to reduce GHG levels by 40 percent below the 1990 levels by year 2030. (April 29, 2015) <http://gov.ca.gov/news.php?id=18938>

### **3.1.2.Economic Impact**

In the category of economic benefits, a fundamental characteristic of Community Choice is that revenue paid by ratepayers for energy generation stays within the community rather than going to the IOU. Numerous studies have demonstrated that keeping revenue local, for example, shopping at locally owned markets, has a profound economic impact on the community. Further, if program revenues are leveraged to invest in local projects, as noted above, those investments can have a positive job-creation impact.

Because Community Choice can lower electricity rates as well as potentially stabilize those rates for years, the economic benefits extend to daily savings for individuals, businesses, and governments as well. Depending on energy use and specific rate reduction, these savings can be minimal to significant. Moreover, Community Choice programs have the ability to target rate reductions to attract business growth in their community or provide larger reductions to low-income residents.

### **3.1.3.Local Control**

In the category of local control, regardless of how the program is structured or operated, Community Choice delivers a level of public participation and control that is not currently available through an IOU. Implicit to this control is the introduction of consumer choice, providing residents and businesses with a choice to support the locally constructed program or remain with the IOU's service – a choice that does not exist without the formation of a Community Choice program.

Community Choice programs are required to have a governing board, with all of the public decision making processes and assurances required of government agencies. Because of this, no matter how the governments staffs or provides for daily operations of the Community Choice program, key policy decisions are necessarily within the public domain.

## **3.2. Existing Community Choice Programs**

As of the date of this report, there are two successfully operating Community Choice programs in California, Marin Clean Energy (MCE) and Sonoma Clean Power (SCP). The City of

Lancaster is nearing an official launch date.<sup>7</sup> As the benefits of Community Choice are proven through successful operation of MCE and SCP, a growing number of jurisdictions in California are evaluating in concept or taking active steps in pursuing Community Choice. Indeed, when considering the individual participating jurisdictions just within MCE and SCP, there are over 20 local communities enjoying the benefits of Community Choice in California.

Founded in 2010, Marin Clean Energy, operated by the Marin Energy Authority, a Joint Powers Authority (JPA), is the first operational Community Choice program in the State. MCE was introduced in phases. The first phase included about 8,000 Marin accounts made up of residential, commercial, and municipal customers. In August 2011, MCE enrolled another 5,500 Marin accounts, the majority of which are residential, with a small number of commercial accounts. MCE completed Marin customer enrollments in July 2012 and began offering electric service to Richmond customers in July 2013, then to unincorporated Napa County, and the cities of Benicia, El Cerrito, and San Pablo, in 2015.

Currently, MCE provides three options of renewable power at varying rates. The baseline service level includes 50% renewable power. Two optional levels of 100% renewable, and 100% of local solar are also available at a premium rate. Currently, SCP provides two options of renewable power for varying rates. The baseline service includes 33% renewable power, with an optional 100% renewable power available at a premium rate.

Like MCE, Sonoma Clean Power is a government agency, independently run by a JPA comprised of Sonoma County and all cities within the County, excluding the City of Healdsburg, which operates a municipal power provider.<sup>8</sup> Unlike MCE, SCP has focused its service area within the jurisdictional boundaries of Sonoma County.

Both MCE and SCP have set the current baseline service rate under that of the IOU, PG&E. In

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<sup>7</sup> For additional information on services, program documents, financial information, and organization see: Marin Clean Energy [www.mcecleanenergy.org](http://www.mcecleanenergy.org); Sonoma Clean Power [www.sonomacleanpower.org](http://www.sonomacleanpower.org); and Lancaster Choice Energy [www.lancasterchoiceenergy.com/index.php](http://www.lancasterchoiceenergy.com/index.php). The Kings River Conservation District on behalf of San Joaquin Valley Power Authority (SJVPA), also explored establishing a Community Choice program.

<sup>8</sup> Participating cities include Cloverdale, Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and the Town of Windsor.

addition, both have offered energy efficiency programs to customers. Reflecting the rates and program offerings, both MCE and SCP have strong support within their respective service areas with differing, but low “opt-out” rates.

Over the prior two years, the City of Lancaster has examined Community Choice, leading to the development of a stand-alone program, Lancaster Choice Energy. Currently, the City anticipates launching the program in a phased approach starting with municipal buildings in May 2015, moving to commercial accounts in late 2015, and then residential service in late 2016. Based on its approved implementation plan, Lancaster Choice Energy will target 35% renewable power as its baseline service.

### 3.3. Community Choice Programs in Other States

In addition to California, five other states have state law authorizing Community Choice, also referred to as Municipal Electricity Aggregation in other states. These states are: Illinois, Massachusetts, Ohio, Rhode Island, and New Jersey. Illinois is leading the nation with more than 700<sup>9</sup> communities setting up Municipal Aggregation programs. At the date of this report, there is pending legislation advocating for Community Choice in a limited number of other states.

While Community Choice in California has embraced a distinct goal to increase renewable power generation and use, the goals of some of other programs are not necessarily in alignment with those of California’s efforts, and are instead primarily focused on decreasing rates.<sup>10</sup> However, despite the different goals, the successful operation of programs in other states further demonstrates the feasibility of Community Choice.

Each of the existing Community Choice programs in other states offers illumination of California’s efforts. Illinois has focused its efforts on decreasing rates with wide adoption by local governments, including the City of Chicago, suggesting that participation is highly influenced by rate setting. Programs in Massachusetts have spurred local generation projects, providing for

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<sup>9</sup> Information excerpted from Plug In Illinois: [www.pluginillinois.org/MunicipalAggregationList.aspx](http://www.pluginillinois.org/MunicipalAggregationList.aspx)

<sup>10</sup> Some Community Choice programs in other states have advanced significant renewable energy projects.

new solar projects throughout Cape Code and Martha’s Vineyard.<sup>11</sup>

## 4. FORMATION PROCESS

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### 4.1. PROGRAM REQUIREMENTS

There are specific legal requirements for establishing Community Choice, as well as operational considerations that will take on varying importance depending on community priorities. The legal requirements for establishing a Community Choice program are detailed in California Public Utilities Code (CPUC), primarily Section 366.2<sup>12</sup> but also in other California statutes and CPUC decisions and guidance.

#### 4.1.1. Discretionary Steps

Existing programs have undertaken a range of public engagement efforts, some extending multiple years. Some of these additional activities have included resolutions of support from city councils, holding public forums and town hall style education forums, conducting feasibility reports, and the establishment of community advisory boards. Much of this work is intended to educate and inform residents and businesses as Community Choice programs had not yet been or had only recently been established.

Aside from the straightforward requirements listed below, a community’s desire to take these discretionary pre-formation steps will depend greatly on local community expectations and conditions, as well as the community’s budget as these activities can require significant resources. While good government practice includes measures of public engagement, Community Choice is growing in familiarity within California and provides direct benefits to the government and community.

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<sup>11</sup> For a brief summary of Community Choice programs by State, see The National Conference of State Legislatures <http://www.ncsl.org/research/energy/community-choice-aggregation.aspx> and LEAN Energy US <http://www.leanenergyus.org/cc-by-state/>

<sup>12</sup> Public Utilities Code (PUC Section 360-380.5): <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=00001-01000&file=360-380.5>

#### 4.1.2. Required Steps

Below is a description of the essential requirements for establishing a Community Choice program:

1. Under nearly all circumstances, once a governing board – such as a City Council or a Board of Supervisors – is prepared to move forward with establishing a Community Choice program, the first step is to pass an ordinance consistent with the PUC Section 366.2(c)(12).
2. After the ordinance is passed, the next step is the preparation of a Community Choice Implementation Plan and Statement of Intent for submission to the CPUC.<sup>13</sup> Pursuant to PUC Section 366.2(c)(3), the Implementation Plan must ultimately be considered and adopted at a duly noticed public hearing of the Community governing body and shall contain all of the following:
  - An organizational structure of the program, its operations, and its funding.
  - Rate setting and other costs to participants.
  - Provisions for disclosure and due process in setting rates and allocating costs among participants.
  - The methods for entering and terminating agreements with other entities.
  - The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
  - Termination of the program.
  - A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.
3. Pursuant to PUC Section 366.2(c)(4), the Statement of Intent must state that the Community Choice program will provide for the following:
  - Universal Access.

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<sup>13</sup> For information related to Implementation Plans and Statements of Intent, see:

[http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430\\_ccaggregation.htm](http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm) as well as MCE

<http://www.mcecleanenergy.org>; Sonoma Clean Power <https://sonomacleanpower.org>; and Lancaster Choice Energy [www.lancasterchoiceenergy.com/index.php](http://www.lancasterchoiceenergy.com/index.php)

- Reliability.
  - Equitable treatment of all classes of customers.
  - Any requirements established by state law or by the commission concerning aggregated service, including those rules adopted by the commission [CPUC] pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of greenhouse gases emission performance standard to community choice aggregators.
4. Concurrent with the preparation of the CPUC submissions, a Community Choice service agreement is executed with the IOU, and a bond or collateral is posted in accord with the IOU service agreement. As indicated in PUC Section 394.25(e), a “re-entry” bond, which is currently set at \$100,000, must be posted with the CPUC to cover costs related to the involuntary return of a community from Community Choice service to utility service.
  5. Executing the IOU service agreement concurrently with work on the Implementation Plan and Statement of Intent is advised because the service agreement must also be submitted to the CPUC. Following the adoption of the Implementation Plan and Statement of Intent, the execution of the utility service agreement along with posting of a bond or collateral with the utility, and the posting of the re-entry bond with the CPUC, the Community Choice program must also formally register with the CPUC.
  6. After all the submissions are deemed complete and sufficient, pursuant to PUC Section 366.2(c)(7), the CPUC has 90 days to certify the receipt of all needed Community Choice submissions, thereby allowing the program to begin service to customers. Consistent with CPUC Decision 05-12-041, the CPUC does not “approve” or “reject” the Implementation Plan, but rather assures that the Community Choice plans and program elements are consistent with law, regulations and CPUC rules designed to protect customers. The CPUC also determines the appropriate costs, known as the Power Charge Indifference Adjustment (PCIA), to be assessed Community Choice customers. Because electric energy is frequently secured through long-term commitments, the essential purpose of the PCIA is to ensure that customers that continue to receive utility electric energy do not pay over market costs that would otherwise be paid by the

departing Community Choice customers.

Completion of all of the above requirements officially establishes the Community Choice program. However, any Community Choice program must also consider the necessary day-to-day activities that are needed to operate a successful program. Broadly categorized, these activities include power procurement and scheduling; financing; regulatory and compliance; customer service and billing; policy and advocacy; and general administration.

## 4.2. Procurement and Scheduling

Related to power procurement and scheduling, prior to launching service, a number of operational functions must be established. Power procurement and scheduling are inextricably linked in that they reference the act of securing power for customers, and that the electric usage of customers is matched with scheduled power.

From both a cost and core service perspective, procurement and scheduling as functions of a Community Choice program hold perhaps the greatest magnitude. For example, power procurement and scheduling related costs can represent 90% of total Community Choice expenses. Considerable cash, collateral or equivalent are needed to securitize power purchasing, and highly experienced professionals should oversee power procurement and scheduling. Depending on the size of the community, the security can range from the low millions of dollars to many millions of dollars. A relationship must also be established with the California Independent System Operator to deliver power to customers (CAISO).<sup>14</sup>

Implicit in the discussion of power procurement is the need for sufficient financing to purchase power as well as sufficient resources to fund the infrastructure needed to operate the Community Choice program itself. The precise amount of financing needed depends greatly on several variables, such as the size of community and amount of power needed, collateral requirements of power sellers, desired size of program staff and infrastructure. The experience of existing programs has shown this initial capital need to be in the multiple millions of dollars, which can eventually be recovered through successful operation of the program over time.

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<sup>14</sup> The CAISO is an independent nonprofit public benefit corporation that serves as the impartial grid operator for the bulk of the state's power grid, and opens access to the wholesale power market that is designed to diversify resources and lower prices

Related to regulatory and compliance activities, PUC Section 366.2(c) provides for noticing requirements. Specifically, prior to launching service, a Community Choice program must provide written notices to all customers twice in the two months prior to the actual start of service and twice in the two months following the start of service. The notices must inform the customer of automatic enrollment in the Community Choice program, the terms and conditions of the services offered, and a mechanism for opting out of the Community Choice program.

A number of other ongoing regulatory and compliance requirements related to procurement (e.g. Resource Adequacy and Renewable Portfolio Standard), customer service (e.g. new and departing customers), and Community Choice in general (e.g. joint rate mailers) also apply. Assistance from highly experienced professionals is also needed in these areas, either as staff of the Community Choice program or via a contractual relationship to ensure the Community Choice program remains in compliance.

### 4.3. Billing

Another central operation to running a Community Choice program is to manage customer service and billing. On behalf of the Community Choice program, the IOU sends a standard bill to Community Choice customers for the electric energy portion of the total utility bill, and then remits the payments to the Community Choice program. The Community Choice program must collect the electric usage data from the IOU, compute the amount of the bill, and relay the billing information back to the utility for inclusion on the utility bill.<sup>15</sup>

### 4.4. Customer Service

While not required by law or regulation, Community Choice programs are well served by providing a call center and a website to assist customers in easily finding information about the program, choosing among the services provided by their community, or opting out of the program. The utility continues to process the vast majority of electric service related customer service inquiries since few functions are entirely within the domain of the Community Choice program. For this reason, providing a call center and a website that addresses areas that are

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<sup>15</sup> The Community Choice program pays the IOU a per-account fee for the billing and related account services. An alternative option is to pay the utility an additional amount per account to compute the bills on behalf of the Community Choice program

strictly within the Community Choice program's purview promotes good will and best customer service practices.

## **5. RISKS & CONSIDERATIONS**

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### **5.1. Policy Support and Advocacy**

While not absolutely critical, policy support and advocacy regarding issues of importance to Community Choice programs is highly advisable. Due to the considerable Community Choice regulatory and compliance requirements, understanding, tracking and responding to changes in these areas is important to the long-term well-being of Community Choice programs.

Prior efforts to establish Community Choice provide a view of the legislative and advocacy landscape in California. Indeed, networks of community activists, non-profit organizations, local governments along with Marin Clean Energy and Sonoma Clean Power, engaged in a number of advocacy efforts to help establish and protect Community Choice as a successful and viable model for local electricity services. Just as it has been important to early success, strong coordination and participation in this area is important to the long-term success of Community Choice.

Community Choice programs should also establish daily administrative and operational oversight of procurement and scheduling, regulatory and compliance, and customer service and billing. This function should include the typical administrative functions needed in most enterprises such as accounting, finance, clerical and information technology support.

### **5.2. Additional Programs and Services**

Community Choice programs are not required to offer services in addition to the provision of electric energy. However, many communities may find additional programming and services desirable. Examples of additional programming and services include energy efficiency programs such as audits or rebates, feed in tariffs and Net Energy Metering (NEM) solar incentives, or leveraging the Community Choice program to encourage the development of small-scale generation projects within the jurisdiction. Administering these programs typically require staff support and coordination in addition to leveraging the Community Choice program's financial resources.

Each of these programs – those listed above or others – can be structured to meet community needs and priorities. There is growing innovation in this area within existing Community Choice programs as well as non-profit and entrepreneurial companies that are seeking opportunities to test new ideas and meet a demand for existing services.

### 5.3. Operational and Other Risks

There are several reports and studies that provide a discussion of operational risks associated with Community Choice.<sup>16</sup> While there is always some level of risk in establishing a Community Choice program – just as there is risk with any endeavor in the public or private sector – these reports call out various strategies to either eliminate or mitigate risks. Although there are various permutations of pre-launch, operational, and other risks, two primary themes arise in financial or market risk and regulatory or legislative risk.

The single greatest risk to any Community Choice program is financial, which is driven primarily by the volatility of the energy market. If energy prices exceed forecasts, leaving a Community Choice program with a revenue shortage, the program will likely need to raise customer rates to cover the shortage. Similar price risks can occur with scheduling that result in over or underestimation of the amount of electric energy needed to serve customers. If the estimate is significantly inaccurate, the Community Choice program can incur expenses related to the cost of buying or selling electric energy in the spot, or real time, market. These risks can also lead to unexpected migration of customers from the Community Choice program back to the utility (thereby decreasing the amount of forecasted revenue from customers).

Proper and prudent risk management strategies along with best management practices help to mitigate these risks. In addition, through Community Choice, local communities can help to further mitigate these risks by creating locally controlled generation projects. It should also be noted, as highlighted at the outset of this report, POUs, have generally been able to manage financial and market risks as successfully – if not more successfully by some measures – than

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<sup>16</sup> Report of the Feasibility of Community Choice Aggregation in Sonoma County, Dalessi Management Consulting/MRW Associates, October 2011; The City of Hermosa Beach: Assessing Community Choice Aggregation, UCLA, June 2014; Community Choice Aggregation Base Case Feasibility Evaluation, Navigant Consulting, May 2005; Community Choice Aggregation: The Viability of AB 117 and Its Role in California Energy Markets, UC Berkeley, June 2005; Community Choice Aggregation, Local Government Commission

the IOUs in California.

Changes to laws and regulations that impose additional burdens on the Community Choice may present a significant risk. In 2014, AB2145 proposed key changes, one of which was to remove the automatic opt-in status that would have dramatically impacted the viability of starting new Community Choice programs. AB2145 died on the California Senate floor, in no small part due to community advocacy that raised awareness of the bill's potential grave impact on the viability of Community Choice Aggregation. While it is impossible to determine what future regulation and legislation might be, the uncertainty is precisely why this remains an ongoing risk. Active and coordinated engagement with State policy makers and regulators, therefore, is an important mitigation strategy.

## **6. JURISDICTION LOAD ANALYSIS - CITY OF MORRO BAY**

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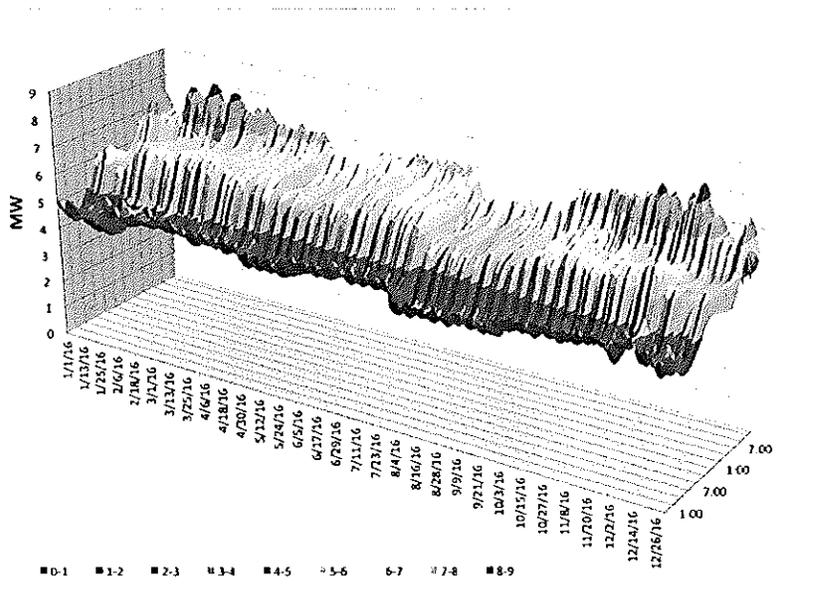
The City of Morro Bay has approximately 6,200 customer accounts across all customer classes and annual energy sales of approximately 50,500 MWh. City load patterns are influenced by two primary factors: customer class make-up and climate. As the table below shows, Morro Bay has somewhat higher residential load as a percentage of total load than that of PG&E's territory overall, and less agricultural load, while commercial and industrial demand represents over half of all energy consumed in the City. Peak demand, which is an important metric used for reliability planning purposes as well as for allocating responsibility to procure Resource Adequacy (a compliance obligation of all CPUC-jurisdictional load serving entities), is approximately 16 MW.

Table 1. City of Morro Bay Electric Load by Class, February 2014 - January 2015

Customer Class	Number of Accounts	Energy Consumption (MWh)	% of Total Energy Consumption	% PG&E Territory-Wide
Residential	5,809	23,527	46.5%	40.1%
Small Commercial & Industrial (C&I)	895	12,785	25.3%	10.2%
Medium/Large C&I	84	13,898	27.5%	38.7%
Agricultural	2	5	0.0%	10.48%
Street Lighting/Traffic	32	346	0.7%	0.5%
<b>Total</b>	<b>6,822</b>	<b>50,561</b>	<b>100%</b>	<b>100%</b>
<b>Peak Demand (MW)</b>		8.55		
<b>Average Demand (MW)</b>		5.74		
<b>Minimum Demand (MW)</b>		3.69		

Figure 1 below shows Morro Bay's hourly projected load profile for 2016. Due to the Central California coastal climate, slightly more energy is consumed in the winter season, as there is only moderate cooling load in Morro Bay. Peak demand occurs in December, in the evening hours from 7 to 9 PM due to the combination of heating and lighting loads. Accurate and granular load forecasting is a critical function for procurement planning, compliance and risk management purposes. In addition to forecasting peak load, understanding minimum, or base-load, consumption supports procurement planning. Minimum load in Morro Bay is approximately 3.7 MW and generally occurs in the summer during the overnight period from 3:00 a.m.-6:00 a.m.

Figure 1. Morro Bay Forecast Hourly Load, 2016



Daily load profiles in Morro Bay are similar to those in the rest of Central California during the winter, with a double peak, first in the late-morning from commercial and industrial daytime loads and a higher evening peak attributable primarily to heating and lighting loads. In the summer season, load profiles are very different from the rest of PG&E territory, due to the lack of significant cooling load. Generally more total energy is consumed in the winter than in the summer, while the winter also experiences the City's peak load, as shown in Table 2 below.

**Table 2. Morro Bay Total Energy and Peak Load, By Month**

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
<b>Total Energy (GWh)</b>	4.1	4.3	4.5	4.2	4.0	4.2	4.4	3.8	3.9	4.3	4.3	4.3
<b>Peak Demand (MW)</b>	7.8	8.4	8.3	7.5	6.8	7.3	7.4	6.5	7.1	7.8	8.3	8.5

## 7. Procurement Requirements and Market Analysis

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This section will cover both the retail and wholesale electric power markets, in order to provide market context for a potential Morro Bay Community Choice program.

Evaluation of the retail rates of the incumbent utility is important for two primary reasons: First, to understand the feasibility of a Community Choice program, it is critical to consider the rates customers will pay if they choose to take service from the program's retail competition, the utility. Experience has demonstrated that relative retail rates are the largest drivers of customer decision-making on whether to participate in a Community Choice program. Rates that compare favorably will tend to drive high participation, allowing for greater confidence in load forecasting scenarios, reducing per-customer program costs and program risk. The second reason to evaluate retail rates, both historically and forward-looking, is to understand what options the community has for allocating program revenue among competing objectives (rate savings, targeted energy profiles, and funding streams for community benefit and programs).<sup>17</sup>

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<sup>17</sup> Having program revenue presumes the margin between wholesale power costs, program operating costs, and retail revenue

The second part of this Market Analysis section will cover wholesale market conditions for various electric power products (system energy, renewable energy, capacity, power grid operating costs, etc.) as well as regulatory and legal constraints in which all Community Choice programs operate, to help illuminate retail rate trends and the profile of Morro Bay.

## 7.1. Retail Rates

Most Morro Bay residents and businesses are presently served by Pacific Gas and Electric Company (PG&E). PG&E's rates<sup>18</sup> are set through a series of regulatory processes in which the California Public Utilities Commission (CPUC) considers and approves a revenue requirement to be collected through rates from PG&E's customers. Much of the revenue requirement is cost-based,<sup>19</sup> though the utility also receives an approved rate-of-return on their historical investments in tangible assets, such as power lines, generation plants, sub-stations, real estate, customer meters, and many more categories.

While PG&E's rates may be changed several times per year, Figure 2 below shows the utility's revenue requirement and blended retail rates for the past ten years, along with the most recent public projections provided by the utility in their bi-annual procurement plan<sup>20</sup>. Importantly, PG&E created several scenarios in the procurement plan from which the projected data were taken, and the projected values shown are from the "Low Gas Price" scenario. Figure 2 clearly indicates an ongoing trend for increased rates through the year 2020.

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forecasts is sufficient to support the program

<sup>18</sup> Data in this section on PG&E's historical rates and rate projections are available in the Annual Electric True-Up Advice Letters (ELEC\_2570-E, ELEC\_2706-E, ELEC\_2895-E, ELEC\_3115-E, ELEC\_3349-E, ELEC\_3518-E, ELEC\_3727-E, ELEC\_3896-E, ELEC\_4096-E, ELEC\_4278-E-B, ELEC\_4484-E-A and ELEC\_4026-E-B) and the Bi-Annual Bundled Procurement Plan (ELEC\_4026-E-B).

<sup>19</sup> Cost-based is also called "pass through", in which PG&E has received prior approval to engage in procurement activities for gas and electric commodity products.

<sup>20</sup> See PG&E's rate projection scenarios beginning on page 121 of [http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC\\_4026-E-B.pdf](http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_4026-E-B.pdf).

Figure 2. PG&E Annual Revenue Requirement and Bundled Retail Rates

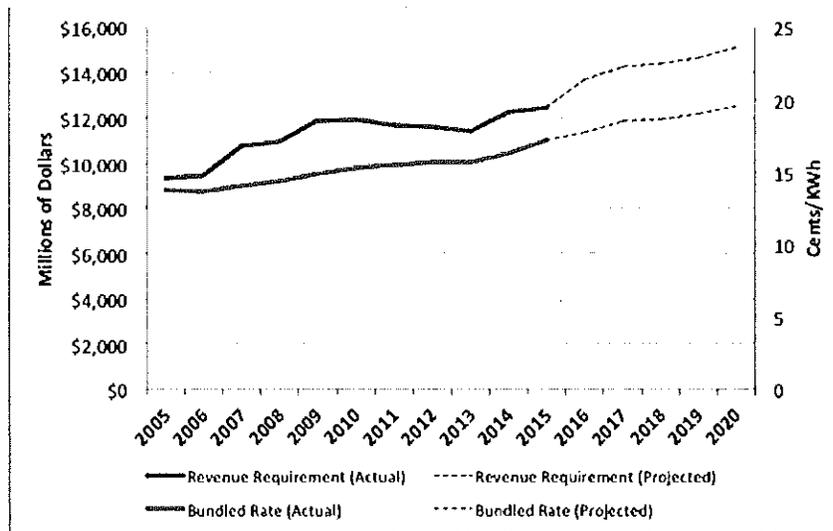


Table 3 below shows factors which comprise PG&E’s blended generation, non-generation and total rates, along with an estimate of this breakdown based on PG&E’s rates projections covering the same period of time as Figure 2 above.

Table 3. Historical and Projected Retail Rates of PG&E, 2005 through 2020 (shaded rows are projections)

Year	PG&E Revenue Req. (\$Billions)	Bundled Rate (Cents/kWh)	Actual Gen. Rate (Cents/kWh)	Non-Gen. Rate (Cents/kWh)	PCIA* (Cents/kWh)	Non-Gen % of Bundled Rate	Rate-To-Beat (Cents/kWh)
2005	\$9,306	13.7	6.0	7.7	1.5	56.4%	4.4
2006	\$9,477	13.6	7.1	6.5	1.5	47.7%	5.6
2007	\$10,781	14.0	7.4	6.6	2.0	47.1%	5.4
2008	\$10,928	14.3	7.7	6.6	1.6	46.2%	6.1
2009	\$11,843	14.9	8.9	6.0	1.7	40.5%	7.2
2010	\$11,955	15.2	7.7	7.6	1.4	49.7%	6.2
2011	\$11,678	15.4	7.2	8.3	1.9	53.7%	5.2
2012	\$11,568	15.6	7.3	8.3	1.9	53.2%	5.4
2013	\$11.431	15.7	7.9	7.8	0.6	49.4%	7.3
2014	\$12.231	16.3	8.6	7.7	1.1	47.0%	7.5
2015	\$12,423	17.2	9.7	7.5	1.2	43.8%	8.5
2016	\$13,679	17.7	8.6	9.1	1.3	48.6%	7.3
2017	\$14,257	18.5	9.0	9.5	1.3	48.6%	7.7
2018	\$14,373	18.6	9.0	9.6	1.3	48.6%	7.7
2019	\$14,678	19.0	9.2	9.8	1.3	48.6%	7.9
2020	\$15,120	19.5	9.5	10.0	1.3	48.6%	8.2

\*In 2005 and 2006 the PCIA did not exist; the analogous charge was called the DWR power charge; for 2016 and beyond, the PCIA may change significantly. This is one of the charges most subject to change from regulatory activities.

Per Table 3, if a CCA's rates are set to match those of PG&E, the program is feasible<sup>21</sup> if all-in costs can meet or beat 7.3 cents/kWh in 2016 growing to 8.2 cents/kWh in 2010; wholesale costs are frequently discussed in \$/MWh units, so the corresponding costs would be \$73/MWh and \$82/MWh. It is important to note that PG&E's projections included in this report are the "Low Gas Price" scenario. As we will see later, although power prices are hovering around the 4 cents/kWh, or \$40/MWh, as of May 2015, gas and power prices can be very volatile. Market conditions will impact both PG&E and the Community Choice program, depending on procurement risk management practices used. Because PG&E is already significantly hedged against market price movements (through market positions and an existing utility-owned-generation fleet), a large jump in gas and power prices before a Community Choice program begins procurement could increase PG&E's generation rate by perhaps 20%<sup>22</sup>, while the cost basis of the CCA could increase by 50% or more.

Additional factors on the retail side, included in Table 3 are departing load and non-generation charges. So-called "departing load" charges are assessed by PG&E to customers who depart from taking bundled utility service. The technical term for this is the Power Charge Indifference Adjustment (PCIA), and historically has ranged from about 0.6 cents/kWh to 1.9 cents/kWh (while the amount can be changed each year and differs among customer classes, for those leaving PG&E service in 2015, the PCIA is 1.16 cents/kWh). Non-generation charges (transmission, distribution, and other categories) are paid by all PG&E customers, both bundled and unbundled (i.e. CCA customers). These vary somewhat by customer class, but historically have comprised between 45% and 60% of the total bundled rate, averaging 49% over the last ten years.

To provide a more robust assessment, however, it is important to identify the factors that will impact both retail rates and the wholesale procurement, regulatory-related and operational costs that form the CCA's cost basis.

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<sup>21</sup> In this case, feasibility assumes a program must only meet or be better than the IOU rate.

<sup>22</sup> See PG&E's rate projection scenarios beginning on page 121 of [http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC\\_4026-E-B.pdf](http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_4026-E-B.pdf).

As shown in

Table 1 and Figure 1 above, the City of Morro Bay's load profile is mostly representative of PG&E's overall profile, with the exception that there is more residential load and less agricultural load. To evaluate Community Choice feasibility, it's important to understand the "rate-to-beat", to compare this with anticipated procurement and operating costs under various scenarios.

## 7.2. Market Analysis

Wholesale procurement activities (and related costs) for a Morro Bay CCA fall into several major categories: System Power, Resource Adequacy, and Renewable Portfolio Standard.

Renewable and low carbon power resources often cost more than system power. To the extent any Community Choice program wants to exceed State RPS targets and use the program to meet local climate goals, the incremental costs of these resources must be balanced against other program goals.

The rest of this section covers details of CCA operations in greater detail, and will provide the necessary context to evaluate the options of how to structure the procurement profile of the CCA. These considerations are very important, as energy and related product costs can represent 90% or more of a CCA's total costs.

### 7.2.1. System Power

As the default service provider for the territory, the CCA is responsible for procuring energy and capacity (Resource Adequacy, explained below) to meet the projected energy needs of its customers at all times. In practice, this means interacting with the California Independent System Operator's wholesale power markets to schedule and settle hourly energy load in both the Day-Ahead and Real-Time markets. To the extent the CCA has procured energy sources well in advance of the service day, the settlement dollar amounts in the CAISO markets are generally due to imbalances (the first kind is due to difference between the forward procurement and the day ahead forecast either because the forward procurement plan did not require 100% forward procurement or due to portfolio changes (either supply or demand) between when the forward energy was procured and the day before the energy is delivered to customers from the CAISO grid; the second kind is errors between what is scheduled Day-Ahead and what the CCA's customers actually use in Real-Time). By participating in the CAISO wholesale market to purchase energy, LSE's are also subject to a number of miscellaneous charges by the CAISO to ensure proper functioning of the market.

As a Load Serving Entity (LSE), the CCA will need to bid and schedule its load and generation resources into the CAISO's wholesale energy market either by becoming its own Scheduling Coordinator or by outsourcing this function. Load is currently only scheduled in the day-ahead timeframe by hour with any differences between the day-ahead scheduled load and the Settlement Quality Meter Data (SQMD) settled in the real-time market as uninstructed imbalance energy (UIE). While there is no requirement that a CCA purchase power outside of the CAISO market (aside from the RPS and Storage requirements discussed below), it is prudent from a risk management perspective to hedge price risks associated with the CAISO wholesale market.

Fixed price renewable supply provides a natural hedge against the CAISO wholesale market price. There will also be time periods where renewable generation may not match load and other power will be needed to balance load. A community can procure residual needs with system power in advance to fix a portion of their costs. The standard products traded on commodity exchanges (such as the InterContinental Exchange, the Chicago Mercantile Exchange and others) are Peak (7AM-10PM Monday through Saturday excluding certain holidays) and Off-Peak (all other hours). Furthermore, within California, the two most commonly traded locations are known as the NP15 Trading Hub (Northern California) and the SP15 Trading Hub (Southern California) with SP15 the more active of the two. For CCAs that are located in Northern California and settle load at the PG&E Default Load Aggregation Point (DLAP), NP15 generally provides a better hedge against CAISO costs but at times SP15 will be the preferred product because there are more sellers.

While trading standard products can significantly reduce risk to the CAISO wholesale market, there will always be some mismatch between load and supply that will be exposed to the CAISO market price risk. Because of this, it is important for the CCA to have appropriate risk policies and tools to effectively monitor exposure to market price movements.

In the CAISO market, the hourly price is set according to marginal cost to serve the next increment of demand. The typical marginal unit is a natural gas fired power plant and as such, the wholesale market price is highly and positively correlated with natural gas price movements. Figure 3 below shows daily average wholesale CAISO electricity prices and daily natural gas prices at the Northern California Citygate delivery point over the last year.



Q2 2013	\$41.02	--	\$4.48	--
Q3 2013	\$42.54	3.71%	\$4.29	-4.33%
Q4 2013	\$44.39	4.35%	\$4.62	7.66%
Q1 2014	\$53.16	19.75%	\$6.09	31.79%
Q2 2014	\$48.53	-8.70%	\$5.63	-7.51%
Q3 2014	\$49.99	3.00%	\$5.09	-9.53%
Q4 2014	\$44.17	-11.64%	\$4.74	-6.92%
Q1 2015	\$32.67	-26.03%	\$3.36	-29.19%
Q2 2015	\$33.23	1.71%	\$3.33	-0.75%

Because generators that use natural gas as an input to production face a compliance obligation under the Air Resource Board's Cap and Trade Program, wholesale power prices are also correlated with carbon allowance prices.

Given the penetration of solar generation in California, the operation of conventional power plants is shifting and the marginal unit and consequently market pricing is shifting from traditional patterns. The "duck curve"<sup>23</sup> as it is sometimes called highlights potential challenges that the grid will face with over-generation when supply exceeds demand in the middle of the day, "the belly of the duck" and the need for significant ramping capability in the evening when solar production phases out, "the neck of the duck." Careful portfolio planning should consider the impact of changing hourly prices on evaluation of long-term contracts, benefits of technology diversification and the market risks for the procurement of residual system power.

### 7.2.2.Resource Adequacy

In addition to meeting the energy needs of its customers, the CCA is also responsible for meeting Resource Adequacy compliance obligations set by the CPUC. Resource Adequacy is a complex topic, and requirements even change year to year.

As a Load Serving Entity (LSE), the CCA will need to comply with the CPUC Resource Adequacy (RA) program. The objectives of the Resource Adequacy program are to ensure safe and reliable operation of the grid by the California Independent System Operator (CAISO) and to

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<sup>23</sup> Information Excerpted from CAISO: [www.caiso.com/Documents/FlexibleResourcesHelpRenewables\\_FastFacts.pdf](http://www.caiso.com/Documents/FlexibleResourcesHelpRenewables_FastFacts.pdf)

provide incentives for the development of new resources needed for reliability in the future.

There are currently three requirements that each LSE must meet with respect to RA.

1. The LSE must secure sufficient System RA to cover 115% of its forecasted peak demand for each month.<sup>24</sup> With respect to this requirement, each LSE must make an annual filing on or before October 31<sup>st</sup> to show that it has obtained at least 90% of the System requirements for the summer months (May through September). Subsequently, the LSE must submit a filing for each month 45 days ahead of the start of the month that demonstrates that it has met its full requirement for that month.
2. The LSE must secure sufficient Local RA to ensure there is sufficient capacity in the local area for a 1 in 10 load. There are currently two local requirements in the PG&E service territory, Bay Area and Other PG&E areas. Roughly speaking, the Local RA requirements are typically about half of the August System RA requirements in the PG&E service territory.<sup>25</sup> With respect to the Local RA requirement, the LSE must demonstrate it has met 100% of its requirement in the annual filing.
3. The LSE must secure sufficient Flexible RA that is based on the maximum 3-hour ramp analysis performed by the CAISO for each month. The CPUC determines each LSE's responsibility is based on the CAISO study. Similar to the System RA requirement, the LSE need only show 90% of their monthly requirement in the year ahead filing, but for all months, not just the summer months. The full requirement must be met in the 45 day ahead filing. The Flexible RA requirement currently peaks in December.<sup>26</sup>

Since RA is traded bilaterally, there is limited transparency into current pricing. However, the

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<sup>24</sup> The actual requirement may be less due to coincident peak adjustments, allocations for demand response, energy efficiency, distributed generation, cost allocation mechanism (CAM), and reliability must run (RMR) contracts

<sup>25</sup> Information Excerpted from CAISO: [www.caiso.com/Documents/Draft2016LocalCapacityTechnicalAnalysis.pdf](http://www.caiso.com/Documents/Draft2016LocalCapacityTechnicalAnalysis.pdf)

<sup>26</sup> Information Excerpted from CAISO: [www.caiso.com/Documents/Apr8\\_2015\\_Draft2016\\_FlexCapacityNeedsAssessment\\_R14-10-010.pdf](http://www.caiso.com/Documents/Apr8_2015_Draft2016_FlexCapacityNeedsAssessment_R14-10-010.pdf)

CPUC publishes an excellent report each year that includes aggregated pricing information.<sup>27</sup>

The most recent report discusses RA pricing during 2012. Based on the report, during 2012, 2016 RA products traded at a weighted average price of \$2.95/kW-month, the lowest of the years discussed in the report. In contrast, 2014 RA products had the highest weighted average price of \$3.46/kW-month.

Some notable changes in market conditions since 2012 include the retirement of San Onofre Nuclear Generating Station (SONGS) and the installation of significant solar capacity driven by Renewable Portfolio Standard requirements. On balance, the CAISO has larger supply to meet System needs than it has in the past. According to the CAISO's 2014 summer assessment, the planning reserve margin for the ISO system is 34.4% and an even higher 36.3% for the Northern part of the state indicating ample supply to meet System RA requirements.<sup>28</sup>

Another key change is that since 2012, the Flexible RA requirement has been introduced. It is widely accepted that the system has sufficient flexible capacity currently but will need additional flexibility with larger penetration of variable energy resources (both utility scale and distributed generation) and with upcoming Once Through Cooling (OTC) retirements. The additional flexibility needs will likely be met through upgrades to existing facilities, construction of new conventional generators and storage. In order to incent such investments, resources able to provide Flexible RA will charge a premium over generic System RA. Future CPUC reports on RA Pricing may provide insight on how much of a premium these resources receive.

### **7.2.3. Renewable Portfolio Standard**

The Morro Bay CCA, as an LSE subject to CPUC jurisdiction, must meet the California Renewable Portfolio Standards. Generally, RPS-qualified energy is procured from resources on a medium- or long-term basis (1-3 years and as many as 25 or 30 years). Depending on the specifics of the contract, either the CCA or the supplier will be responsible for scheduling the renewable generation into the CAISO markets on a daily basis in the same way that load is

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<sup>27</sup> Information Excerpted from CPUC: [www.cpuc.ca.gov/NR/rdonlyres/94E0D083-C122-4C43-A2D2-B122D7D48DDD/0/2012RARReportFinal.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/94E0D083-C122-4C43-A2D2-B122D7D48DDD/0/2012RARReportFinal.pdf)

<sup>28</sup> Information Excerpted from CAISO: [www.caiso.com/Documents/2014SummerAssessment.pdf](http://www.caiso.com/Documents/2014SummerAssessment.pdf)

scheduled.

Established in 2002 under Senate Bill 1078, accelerated in 2006 under Senate Bill 107 and expanded in 2011 under Senate Bill 2, California's Renewables Portfolio Standard (RPS) is one of the most ambitious renewable energy standards in the country. The RPS program requires IOUs, electric service providers, and CCAs to increase procurement from eligible renewable energy resources to 33% of total procurement by year 2020. The California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) jointly implement the RPS program.<sup>29</sup>

The CPUC's responsibilities include: Determining annual procurement targets and enforcing compliance; Reviewing and approving each IOU's renewable energy procurement plan; Reviewing IOU contracts for RPS-eligible energy; Establishing the standard terms and conditions used by IOUs in their contracts for eligible renewable energy.

The CEC's responsibilities include: Certify renewable facilities as eligible for the RPS; Design and implement a tracking and verification system to ensure that renewable energy output is counted only once for the purpose of the RPS and for verifying retail product claims in California or other states.

Senate Bill X1-2 increased CEC's role with responsibilities specific to POUs: Direct the Energy Commission to adopt regulations specifying procedures for enforcement of the RPS for publicly owned utilities; Requires the Energy Commission to certify and verify eligible renewable energy resources procured by publicly owned utilities and to monitor their compliance with the RPS.<sup>30</sup>

In addition to the Resource Adequacy (RA) requirements, the CCA will need to comply with the CPUC's Renewable Portfolio Standard (RPS) requirements. 2016 marks the final year of Compliance Period 2 where LSEs are required to have on average 21.7% of 2014, 23.3% of

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<sup>29</sup> For more information, the California Energy Commission's RPS Guidebook is available at:

<http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF-REV.pdf>

<sup>30</sup> Information taken from California Public Utilities Commission and California Energy Commission websites:

<http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.energy.ca.gov/portfolio/index.html>

2015 and 25% of 2016 retail sales delivered by eligible renewable resources.<sup>31</sup> By year 2020, the CCA will need to procure 33% of its retail sales from renewable resources year by year.

In order to meet these requirements, a Load Serving Entity can procure from three Categories of Renewable Energy Certificates (RECs) with certain volume restrictions.

**Category 1 RECs** are often referred to as bundled RECs because they include both the energy and the environmental attributes associated with the energy produced by the facility. Additionally, the energy must be contracted for prior to delivery and be delivered to California without substitution by another resource. For Compliance Period 2, at least 65% of the RPS used for compliance must be Category 1. Beginning in 2017, at least 75% of RPS procurement used for compliance must be Category 1.

**Category 2 RECs** are often referred to as firmed and shaped renewable energy. In this case, the LSE signs a contract for delivery with an eligible facility that is not directly connected to a California Balancing Authority (CBA) and may at times require substitution from another resource. The energy used for substitution must be incremental to the LSEs existing portfolio. Category 2 has no minimum requirement but is capped at the residual of the compliance requirement and the minimum amount of Category 1.

**Category 3 RECs** are often referred to as unbundled RECs. A contract for Category 3 RECs does not include the energy or if it does include the energy may not be eligible for Category 1 or 2. An example would be certain distributed generation resources that produce RECs but are ineligible for Category 1 status. Category 3 is limited to 15% for Compliance Period 2 and beginning in Compliance Period 3 (2017-2020) will be capped at 10% of retail sales.

California has experienced a significant boom in solar development resulting from and due to declining prices for solar photovoltaic panels, and an Investment Tax Credit (ITC) of up to 30% of the cost of developing the project that is completed and operational by December 31, 2016. Absent a change in law, the current solar ITC would be reduced from 30% to 10% for utility scale solar. Given this landscape, the projects that are awaiting a power purchase agreement (PPA) to move forward with construction may generate competitively priced solar for years to

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<sup>31</sup> Information Excerpted from CPUC: [www.cpuc.ca.gov/PUC/energy/Renewables/hot/33RPSProcurementRules.htm](http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/33RPSProcurementRules.htm)

come. In order to benefit from such an opportunity, developers with “shovel ready” projects will want to secure a buyer within 12-18 months lead time depending on the size of the project. This timing suggests that a CCA seeking to benefit from current market conditions from solar will need to move quickly to have a reasonable chance to secure solar supply at current prices or partner with an entity willing to procure on their behalf given some commitment on behalf of the community.

There have been numerous articles about the pricing for solar with the levelized cost of energy ranging from \$50-\$75/MWh, with those on the lower end of the spectrum typically located outside of California in areas such as Texas. The decrease in ITC credit from 30% to 10% could increase the costs by \$10-\$15/MWh for solar energy after 2016.

California Governor Jerry Brown has announced a push to increase the level of renewables in California to 50% by the year 2030. Depending on if such a legislation passes and how it is structured, that may place continued upward pressure on renewable energy pricing reinforcing that there is a great opportunity for a community to take advantage of market conditions at this time.

#### **7.2.4. Additional Renewable and Low Carbon Considerations**

Pursuant to AB 2514, CCAs are to procure storage equal to 1% of their 2020 annual peak load with installation no later than 2024. Furthermore, starting January 1, 2016, and every two years after that, CCAs must file a Tier 2 Advice Letter demonstrating their efforts to comply with the target including a discussion of the cost-effectiveness methodology used to evaluate projects. For this community, it is estimated that procuring or developing a 160 kW storage facility will fulfill this requirement.

One of the motivating factors for the existing CCA programs has been to increase renewables and reduce the carbon footprint for the customers it serves related to purchased electricity. Using PG&E as a baseline, we compare the carbon impact for three scenarios, a 33% RPS, 50% RPS and 100% RPS.

PG&E is among the cleanest utilities in the country resulting from its RPS procurement as well as carbon free nuclear and large hydro. According to its 2013 Power Source Disclosure Report, PG&E sources 22% of its power from eligible renewable, 22% from Diablo Canyon Nuclear

Power Plant (which is located on the coast approximately 15 miles south of Morro Bay) and 10% from large hydroelectric for a total of 54% from carbon free sources. The remaining 46% is comprised of natural gas (28%) or unspecified sources (18%). In the future, PG&E is expected to have an even cleaner portfolio. According to their own estimation, PG&E will have a carbon intensity of 0.168 metric ton / MWh in 2016 declining to 0.131 metric ton / MWh in 2020.<sup>32</sup>

For Morro Bay that consumes 50,561 MWh annually the associated emissions for purchased electricity through PG&E would be 8,494 MT of CO<sub>2</sub>e in 2016 declining to 6,623 MT of CO<sub>2</sub>e in 2020. Eliminating these emissions is equivalent to removing 1,788 and 1,394 passenger cars from the road respectively<sup>33</sup>.

Assuming that RPS eligible facilities are carbon free and that the remaining System Power or Unspecified Sources have a carbon content of 0.428 MT/MWh<sup>34</sup>, Morro Bay would have the following carbon emissions for the three scenarios (see Table 5).

**Table 5. Annual Carbon Emissions**

RPS Percentage	Annual Carbon Emissions (MT CO <sub>2</sub> e)
33%	14,499
50%	10,820
100%	0

It is worth noting that a 50% carbon free scenario would still not match PG&E’s emission rate for 2016. The equivalent carbon free portfolio for PG&E’s 2016 emission estimate is ~60% and for 2020 it is ~70%. Again, a significant portion of PG&E’s carbon free portfolio is Diablo Canyon Nuclear Power Plant, the only remaining nuclear facility in CA. Unit One is licensed to operate until November 2, 2024 and Unit Two is licensed to operate until August 20, 2025. It is

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32 PG&E estimated emissions factor for 2016 and 2020 based on document found at:  
[http://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge\\_ghg\\_emission\\_factor\\_info\\_sheet.pdf](http://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge_ghg_emission_factor_info_sheet.pdf)

33 Conversion of metric tons to automobiles based on the following EPA calculator: <http://www.epa.gov/cleanenergy/energy-resources/calculator.html#results>

34 Assumed emissions factor for unspecified power based on ARB Guidance Document:  
<http://www.arb.ca.gov/cc/capandtrade/guidance/chapter7.pdf>

uncertain whether or not the licenses will be extended.

### 7.3. High-Level Comparison, Retail and Wholesale Market Assessment

While precise estimates of program costs and utility rates are challenging to make, we can build scenarios for considerations knowing what we have learned in the previous two sections on load analysis, procurement requirements and market analysis.

Table 6-8 below show two scenarios of procurement costs, based on current market intelligence from public sources. The first assumes a base case given current market conditions, using PG&E’s “Low Gas Price” scenario for comparison. The second shows a very adverse scenario in which gas prices double, and contrasts this with PG&E’s “High Gas Price” scenario. Keep in mind that these scenarios of procurement costs do not include operating costs such as staff, billing, call center, etc.

**Table 6. Procurement Costs Scenario, Low Gas Prices (33% RPS)**

Year	Retail Rate-to-Beat (\$/MWh)	Forward Energy Prices (\$/MWh)	System Energy Costs (67% of Load)	Resource Adequacy Costs	RPS Costs (33% of load)	Projected Morro Bay Energy Load (GWh)	Implied Procurement Cost-per-MWh
2016	\$73	\$41.10	\$1.40M	\$0.34M	\$1.09M	50.7	\$55.79
2017	\$77	\$42.34	\$1.45M	\$0.35M	\$1.09M	51.0	\$56.62
2018	\$77	\$43.80	\$1.50M	\$0.35M	\$1.10M	51.2	\$57.59
2019	\$79	\$44.94	\$1.55M	\$0.35M	\$1.10M	51.5	\$58.36
2020	\$82	\$45.98	\$1.59M	\$0.35M	\$1.11M	51.7	\$59.06

**Table 7. Procurement Costs Scenario, High Gas Prices (33% RPS)**

Year	Retail Rate-to-Beat (\$/MWh)	Forward Energy Prices (\$/MWh)	System Energy Costs (67% of Load)	Resource Adequacy Costs	RPS Costs (33% of load)	Projected Morro Bay Energy Load (GWh)	Implied Procurement Cost-per-MWh
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	Beat (\$/MWh)	Prices (\$/MWh)	(67% of Load)	Costs	load)	Energy Load (GWh)	Cost-per- MWh
2016	\$89	\$79.21	\$2.69M	\$0.34M	\$1.67M	50.7	\$92.87
2017	\$92	\$81.69	\$2.79M	\$0.35M	\$1.68M	51.0	\$94.53
2018	\$94	\$84.59	\$2.90M	\$0.35M	\$1.69M	51.2	\$96.48
2019	\$97	\$86.88	\$3.00M	\$0.35M	\$1.70M	51.5	\$98.01
2020	\$99	\$88.97	\$3.08M	\$0.35M	\$1.71M	51.7	\$99.41

**Table 8. Comparing Low and High Gas Price Scenarios**

Year	Low Gas Price Retail Rate-to-Beat (\$/MWh)	Low Gas Price Procurement Cost (\$/MWh)	Low Gas Prices, Margin on Procurement Costs (\$/MWh)	High Gas Price Retail Rate-to-Beat (\$/MWh)	High Gas Price Procurement Cost (\$/MWh)	High Gas Prices, Margin on Procurement Costs (\$/MWh)
2016	\$73.00	\$55.79	\$17.21	\$89.00	\$92.87	(\$3.87)
2017	\$77.00	\$56.62	\$20.38	\$92.00	\$94.53	(\$2.53)
2018	\$77.00	\$57.59	\$19.41	\$94.00	\$96.48	(\$2.48)
2019	\$79.00	\$58.36	\$20.64	\$97.00	\$98.01	(\$1.01)
2020	\$82.00	\$59.06	\$22.94	\$99.00	\$99.41	(\$0.41)

### 7.4. Program Finances

While procurement cost is the largest cost category in a CCA’s operations, understanding multiple cost categories in relation to gross program revenues provides a more complete assessment of program feasibility. Many costs will scale with the size of the CCA; others will not. For example, while some services are set as per-account charges, such as PG&E service fees, requirements such as regulatory compliance activities, monthly CAISO load forecast updates, quarterly CEC filings, and monthly EIA filings occur regardless of the CCA’s size.

Excluding energy procurement and one-time start-up costs, core ongoing operating categories include: Data Management and Call Center Services; PG&E Service Fees; Personnel and Technical Consulting; and General Administration, Outside Legal and Accounting Support.<sup>35</sup>

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<sup>35</sup> Another factor relevant for CCAs is collateral or credit required by energy suppliers or new power plant project developers to protect against a CCA’s default.

- Data Management and Call Center Services: Usually charged on a per-account basis, and would scale to the size of the CCA.
- PG&E Service Fees: Charged per-account to perform consolidated billing, combining the CCA's bill component with the total PG&E utility bill.
- Personnel and Technical Consulting: An estimated minimum core team of qualified individuals with experience in management, legal affairs, procurement, and regulatory activities should be in place for a CCA. This cost category does not scale and should be in place for both small and large CCA programs.
- General Administration, Outside Legal and Accounting Support: While these costs will vary to a degree with the size of the CCA, there is less variability to account for in general feasibility estimates.

Each jurisdiction should create its own program, shaped to meet community priorities and climate goals. Because of this, exact overhead costs, including those costs that scale on a per unit basis, are not available with complete certainty. However, based on the initial operating costs of currently operational CCAs, we can estimate the annual minimum expense at approximately \$1.81M million dollars. The table below shows projected program finances for a single year, under favorable low natural gas price scenario and an unfavorable high natural gas price scenario, using procurement costs from the previous section and assuming rates set to match PG&E's.

In addition to ongoing fees, there are several categories of mandatory one-time start-up fees and bonds that would be incurred in the months preceding program launch and in the first year. These include writing an Implementation Plan, customer noticing, CPUC bond, data requests, and mass enrollment costs payable to PG&E.

The noticing requirement, which is mandated by the regulations governing CCAs, is subject to costs of design, printing, and postage charges, with a low total estimate of approximately \$20,000. An Implementation Plan, also required by law, can cost anywhere from \$25,000 to \$200,000 to hire a qualified consultant; the significant range in Implementation Plan costs is attributable to the relatively small market for these services. Additionally, the CPUC requires posting of a \$100,000 bond. The CAISO also requires a \$500,000 bond be posted for any entity registering as a market participant to schedule load, though Morro Bay likely would outsource the scheduling coordination function, and so would not be subject to this cost.

The calculations in Tables 9 and 10 assume an 80% participation rate with 5,458 participating customers using 40,545 MWh/Year. Personnel costs assume 4 full-time qualified staff and leadership with appropriate industry experience at an average all-in cost of \$225,000 per person, including base salary, taxes and benefits combined with \$300,000 for technical consulting to support staff in the myriad regulatory and compliance activities, as well as resource planning and procurement. General administration, legal and accounting is estimated at \$400,000, because many of the costs in this category scale down only partially with a smaller staff and customer base.<sup>36</sup>

**Table 9. One Year Financial Projection for a Morro Bay Standalone CCA, No Rate Reduction**

Scenario	Program Revenue at PG&E Rates	Procurement Costs	Data Management and PG&E Fees	Personnel and Consulting Services	Administration, Legal and Accounting	Net Revenue
Low-Gas Price	\$2,900,000	\$2,260,000	\$121,000	\$1,200,000	\$400,000	\$-1,081,000
High Gas Price	\$4,025,000	\$3,750,000	\$121,000	\$1,200,000	\$400,000	\$-1,446,000

**Table 10. One Year Financial Projection for a Morro Bay Standalone CCA, 2% Rate Reduction**

Scenario	Program Revenue at Rates 2% Below PG&E	Procurement Costs	Data Management and PG&E Fees	Personnel and Consulting Services	Administration, Legal and Accounting	Net Revenue
Low-Gas Price	\$2,700,000	\$2,260,000	\$121,000	\$1,200,000	\$400,000	\$-1,281,000
High Gas Price	\$3,850,000	\$3,750,000	\$121,000	\$1,200,000	\$400,000	\$-1,621,000

For the City of Morro Bay, with a population of 10,461, creating a new agency to operate its own CCA is not feasible; the energy load of Morro Bay is simply too small to generate sufficient

<sup>36</sup> For comparison, these services comprise approximately \$1.1M for Sonoma Clean Power (FY 2015/2016 budget).

program revenue to support qualified staff, consultants and contractors, cover the various scalable program costs, and provide for rate reductions.

However, Morro Bay can realize the benefits of Community Choice Aggregation by participating in a regional effort – either by joining an existing program or by forming a new regional program with neighboring jurisdictions – or by using the services of a firm, such as California Clean Power, to benefit from economies of scale created by spreading certain operating function costs across the energy loads of Morro Bay and multiple other partner communities.

## 7.5. Local Resources

San Luis Obispo County has significant solar energy potential, and in fact is currently home to the world’s largest operating solar farm, Topaz, operated by First Solar. Table 11 shows the four largest local power plants serving the San Luis Obispo region. Morro Bay is also served by California’s last operating nuclear facility, Diablo Canyon, located approximately 15 miles south of the City, which is owned and operated by PG&E. Additionally, there are a handful of operating small (under 1 MW) hydro facilities in the region as well. More analysis would be necessary to assess the potential for new power plant development in or near Morro Bay, but the record of operating CCAs in California has shown the model to be a strong vehicle for supporting local renewable resources.

**Table 11. 1 MW and Larger Electric Power Resources Local to Morro Bay**

Plant Name	Fuel Type	MW	Status	Notes
<b>Diablo Canyon</b>	Uranium	2,300	Operating	Owned and operated by PG&E.
<b>Meridian</b>	Solar	1.1	Operating	
<b>California Valley Solar Ranch</b>	Solar	250	Operating	Under contract with PG&E.
<b>Topaz Solar Farm</b>	Solar	550	Operating	Currently the world’s largest solar farm. Operated by First Solar; Under contract with PG&E

## 8. Community Choice Program Structure

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AB 117 delimits who is eligible to form Community Choice programs. All programs must be government agencies, which includes single cities or counties, or a combination of cities and/or counties. When multiple cities and/or counties are combined, they may form under what is known as a Joint Powers Authority, or a JPA. The rules governing JPAs are found in the California Government Code. Based on experiences of existing Community Choice programs, communities will need some level of professional services and consulting expertise to establish and operate a Community Choice program on their own.

The role of professional or consulting services has been crucial to the success of early programs, and is expanding within the field of Community Choice. There are many private firms that provide a fee-for-service for specific Community Choice functions, and now an emerging area of innovation providing complete, or turn-key, services for governments.

### 8.1. Single City or County

While many cities in the State are contemplating Community Choice, the City of Lancaster is likely to be the first single city to launch program operations on its own. By acting alone, the City of Lancaster is able to enjoy complete and autonomous control over its program decisions.

As previously noted, a significant hurdle to overcome for any jurisdiction is identifying funding to seed program start up and operation costs, including power purchases. However, the City of Lancaster, like all single cities that launch a program, will be able to use revenue generated from the electricity rates to both repay this initial financing as well as fund and operate the program on an ongoing basis. Based on the City's approved implementation plan, the program will require a limited number of staff with support for more technical services provided by private contractors.

A single city or county may form a Community Choice program alone and later it could expand to include other jurisdictions, including other cities or counties. The expansion could occur with or without a JPA. Alternatively, a program could operate seamlessly alongside similar, but separately governed, Community Choice programs of nearby jurisdictions.

Based on the gross revenue and costs estimates, this is not a feasible option for the City of

Morro Bay.

## 8.2. Joint Powers Authority (JPA)

MCE and SCP operate as a Joint Powers Authority, and other feasibility analysis suggest a JPA has operational advantages. These advantages come primarily from the protection a Joint Powers Authority provides to its participating members. Specifically, a JPA provides a firewall preventing financial risk from extending to the participating agencies.

Just like a single city program, local communities retain complete control over program decisions. In contrast to a single city program, a JPA can generally create a larger Community Choice program. By aggregating several populations, a JPA provides the necessary scale to support a more robust staff infrastructure as well as the creation of increased revenue to develop associated programs. Because a JPA governing board typically includes representatives from each participating agency, there is a potential drawback in that an individual community's unique goals may be diluted by the need to establish cooperative goals for the program.

Experience for both MCE and SCP, just as for the City of Lancaster, demonstrated funding as a critical challenge for program initiation. For MCE, a significant amount of funding came from an anonymous donor; for SCP the majority of funding came from First Community Bank, a Sonoma County based financial institution. However, successful operation of MCE and SCP has generated the necessary revenue to substantially repay debt and become cash-positive.

Based on the gross revenue and costs estimates, joining an existing JPA program or creating a new JPA with neighboring jurisdictions is a feasible approach for Morro Bay. However, feasibility would depend on the willingness of an existing program to incorporate the City of Morro Bay, and a new JPA would likely require participation from virtually all of the County of San Luis Obispo's population.

## 8.3. Public-Private Partnership

All existing Community Choice programs use some level of service from private companies. Private companies with deep experience in the utility industry, including Community Choice and other non-utility energy service providers, typically bring a level of expertise and experience not customarily present in existing government staff. Leveraging these strengths provides a benefit

to the program. With the success of MCE and SCP, there is a growing private sector field to provide services, such as billing, utility relations, customer services, power scheduling, settlements and others, to Community Choice programs.

There are a number of consulting firms and other professional services firms that provide discrete or a full range of fee-for-service support. Currently, there is one firm, California Clean Power, which provides a full service option for Community Choice programs. California Clean Power, a public benefit corporation, provides many of the benefits of the approaches described above, such as providing a financial firewall for the government, because of its unique full-service approach while alleviating some of the critical challenges to launching a program, such as developing the expertise and funding needed.

Based on the load and market analysis provided in this report, a public-private partnership with California Clean Power is feasible and could provide a range of rate, revenue, and renewable portfolio benefits.

## **9. Appendix**

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### **9.1. Related Legislation**

State legislation is dynamic in its evolution from original proposed language to final language. Information presented in this report reflects the most current public information as of the date of the report; amendments and actions that have happened after the date of this report related to the proposed legislation summarized below could significantly alter the information included below.

Perhaps the most prominent piece of legislation currently is SB 350 (D-De Leon), which was introduced following Governor Jerry Brown's State of the State address given in January of 2015. During his inaugural address, Governor Brown called upon legislators to take bold action on climate change by drafting ambitious legislation to meet his target goals. Shortly thereafter, Senate President Kevin De Leon introduced SB 350, which is one of four pieces of climate change legislation introduced by Senate Democrats.

There are three parts to the SB 350 bill:

- First, the bill would require California to reduce petroleum use by 50%.
- Second, this legislation would require existing buildings to increase their energy efficiency by 50% to reduce electricity consumption.
- Third, SB 350 will require both IOUs and POUs, (Community Choice programs included), to increase renewable energy generation and/or procurement to at least 50% by the year 2030.

Although raising the minimum amount of renewables generated in California will increase the demand for renewable energy, many renewable energy projects and initiatives are expected to launch in the next few years that are expected to keep pace with the rising demand and keep prices stable. One such example is the Stateline Solar Farm Project in San Bernardino County that is expected to generate 300 megawatts of renewable energy.<sup>37</sup> Moreover, establishing Community Choice could help safeguard communities from potential price increases through direct control over procurement of renewable and other energy.

Bill ID/Topic	Location	Summary
<b>AB33</b> <b>Quirk D</b>  California Global Warming Solutions Act of 2006: Energy Integration Advisory Council.	SENATE RLS. 6/3/2015 - In Senate. Read first time. To Com. on RLS. for assignment.	The California Global Warming Solutions Act of 2006 establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. The act requires the state board to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions. The California Renewables Portfolio Standard Program requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources for all retail sellers to achieve the targets and goals of the program. This bill would establish the Energy Integration Advisory Council in state government and would require the council to develop recommendations for inclusion in the scoping plan prepared by the state board, including, among others, an analysis of the various strategies necessary for the energy grid to integrate specified annual procurement targets as part of the California Renewables Portfolio Standard Program. <b>Last Amended on 6/1/2015</b>
<b>AB175</b>	ASSEMBLY 2	The Warren-Alquist State Energy Resources Conservation and

37 Stateline Solar Farm Project. U.S. Bureau of Land Management. web. 04/29/2015 April 29, 2015. [http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS\\_\\_REALTY\\_\\_AND\\_RESOURCE\\_PROTECTION\\_/energy/priority\\_projects.Par.51088.File.dat/Stateline%20Solar%20Farm%20Project%20fact%20sheet.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/priority_projects.Par.51088.File.dat/Stateline%20Solar%20Farm%20Project%20fact%20sheet.pdf)

<p><b>Mathis R</b>  Electricity.</p>	<p>YEAR 5/15/2015 - Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 1/26/2015)</p>	<p>Development Act establishes the State Energy Resources Conservation and Development Commission and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for electricity in that commission's most recent forecast of statewide and service area electricity demand. This bill would make nonsubstantive revisions to the State Energy Resources Conservation and Development Commission's certification requirements. This bill contains other related provisions and other existing laws.</p>
<p><b>AB197</b> <b>Garcia,</b> <b>Eduardo D</b>  Public utilities: renewable resources.</p>	<p>SENATE RLS. 6/2/2015 - In Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>The Public Utilities Act requires the Public Utilities Commission (PUC), in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, including electrical corporations, in accordance with specified objectives. The act further requires each load-serving entity to maintain physical generating capacity adequate to meet its load requirements, including peak demand and planning and operating reserves, deliverable to locations and at times as may be necessary to provide reliable electric service. This bill would require the PUC, in adopting the process, to include consideration of any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 and consideration of capacity and essential reliability services of the eligible renewable energy resource to ensure grid reliability. The bill would require the PUC to require a retail seller of electricity, in soliciting and procuring eligible renewable energy resources, to consider the best-fit attributes of resources types that ensure a balanced resource mix to maintain the reliability of the electrical grid. The bill would revise the authority of an electrical corporation to refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the electrical corporation's cost limitation, as specified. This bill contains other related provisions and other existing laws. <b>Last Amended on 4/29/2015</b></p>
<p><b>AB577</b> <b>Bonilla D</b>  Biomethane: grant program.</p>	<p>SENATE RLS. 6/2/2015 - In Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>Existing law establishes the State Energy Resources Conservation and Development Commission and requires the commission to administer various programs to award grants and other financial assistance for energy-related projects. The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020. The act authorizes the state board to include the use of market-based compliance mechanisms. Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation. This bill would require the commission to develop and implement a grant program to award grants for projects that build or develop collection and purification technology, infrastructure, and projects that upgrade existing biomethane facilities to meet certain requirements. The bill would, upon appropriation, authorize moneys in the fund to be used to fund grants awarded pursuant to the program. <b>Last Amended on 5/28/2015</b></p>
<p><b>AB645</b> <b>Williams D</b></p>	<p>SENATE RLS. 6/3/2015 - In</p>	<p>Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical</p>

<p>Electricity: California Renewables Portfolio Standard.</p>	<p>Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. This bill would additionally express the intent of the Legislature for the purposes of the RPS program that the amount of electricity generated per year from eligible renewable energy resources be increased to an amount equal to at least 50% by December 31, 2030, and would require the PUC, by January 1, 2017, to establish the quantity of electricity products from eligible renewable energy resources to be procured by each retail seller for specified compliance periods sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 50% of retail sales by December 31, 2030, and that retail sellers procure not less than 50% of retail sales in all subsequent years. The bill would require the governing boards of local publicly owned electric utilities to ensure that specified quantities of electricity products from eligible renewable energy resources to be procured for specified compliance periods to ensure that the procurement of electricity products from eligible renewable energy resources achieve 50% of retail sales by December 31, 2030, and that the local publicly owned electric utilities procure not less than 50% of retail sales in all subsequent years. This bill contains other related provisions and other existing laws.</p>
<p><b>AB674</b> <b>Mullin D</b></p> <p>Electricity: distributed generation.</p>	<p>ASSEMBLY 2 YEAR 5/29/2015 - Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/27/2015)</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Existing law authorizes the Public Utilities Commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires the Public Utilities Commission to require each electrical corporation under the operational control of the Independent System Operator as of January 1, 2001, to modify tariffs so that all customers that install new distributed energy resources, as defined, in accordance with specified criteria are served under rates, rules, and requirements identical to those of a customer within the same rate schedule that does not use distributed energy resources, and to withdraw any provisions in otherwise applicable tariffs that activate other tariffs, rates, or rules if a customer uses distributed energy resources. Existing law provides, notwithstanding these requirements, that a customer that installs new distributed energy resources not be exempted from (1) reasonable interconnection charges, (2) charges imposed pursuant to the Reliable Electric Service Investment Act, and (3) charges imposed to repay the Department of Water Resources for electricity procurement expenses incurred in response to the electricity crisis of 2000-01. Existing law requires the Public Utilities Commission, in establishing the rates applicable to customers that install new distributed energy resources, to create a firewall that segregates distribution cost recovery so that any net costs, taking into account the actual costs and benefits of distributed energy resources, proportional to each customer class, as determined by the Public Utilities Commission, resulting from the tariff modifications granted to members of each customer class may be recovered only from that class. This bill would, to the extent authorized by federal law, require the Public Utilities Commission, by July 1, 2016, to do both of the following for those electrical corporation customers that install clean distributed energy resources, as defined, after January 1, 2016: (1) require each electrical corporation to collect all applicable nonbypassable charges fixed, implemented, administered, or imposed by the Public Utilities Commission based only on the actual</p>

		<p>metered consumption of electricity delivered to the customer through the electrical corporation's transmission or distribution system, which charges are to be at the same rate per kilowatthour as paid by other customers that do not employ a clean distributed energy resource, and (2) calculate a reserve capacity for standby service, if applicable, based on the capacity needed by an electrical corporation to serve a customer's electrical demand during an outage of the clean distributed energy resource providing electric service for that customer. The bill would require each electrical corporation to identify the total amount of nonbypassable charges that would be collected each year from customers served by clean distributed energy resources installed after January 1, 2016, based on gross consumption without any adjustment for the generation of the clean distributed energy resources. The bill would require that this total amount be fully recovered from customers in the same customer class as those customers served by clean distributed energy resources installed after January 1, 2016, and would prohibit any amount from being shifted to any other customer class. The bill would require a customer served by a clean distributed energy resource, upon request, to provide relevant data to the Public Utilities Commission and the State Air Resources Board and the facility be subject to onsite inspection, to verify equipment operation and performance, including capacity, thermal output, and usage to verify criteria air pollutant and greenhouse gases emissions performance. The bill would require the State Energy Resources Conservation and Development Commission to report to the Legislature and the relevant policy committees of the Legislature on the impact of its provisions on specified issues by July 1, 2021. This bill contains other related provisions and other existing laws. <b>Last Amended on 5/5/2015</b></p>
<p><b>AB693</b> <b>Eggman D</b></p> <p>Health studio services: cancellation.</p>	<p>SENATE B., P. &amp; E.D. 5/21/2015 - Referred to Coms. on B., P. &amp; E.D. and JUD. 6/15/2015 1 p.m. and upon adjournment of Floor Session - Room 3191 SENATE BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, HILL, Chair</p>	<p>Existing law authorizes a consumer to cancel a contract for health studio services within specified timeframes after the contract is executed, if the health studio fails to provide the specific facilities advertised or offered, or if the health studio eliminates or reduces the scope of the facilities, as specified. The bill would specify that a contract for health studio services may be canceled by the buyer in person, via first-class mail or from an email address. The bill would make other conforming changes. <b>Last Amended on 4/30/2015</b></p>
<p><b>AB793</b> <b>Quirk D</b></p> <p>Energy efficiency.</p>	<p>SENATE E. U., &amp; C. 5/21/2015 - Referred to Com. on E., U., &amp; C.</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law requires the commission to require an electrical or gas corporation to perform home weatherization services for low-income customers if the commission determines that a significant need for those services exists in the corporation's service territory. For these purposes, existing law authorizes weatherization, where feasible, to include certain measures for a dwelling unit. Existing</p>

		<p>law also authorizes weatherization, for these purposes, to include other measures determined by the commission to be feasible, taking into consideration the cost-effectiveness of the measures as a whole and the policy of reducing energy-related hardships facing low-income households. This bill would require weatherization, for the above-specified purposes, to include energy management technology, as defined, determined by the commission to be feasible, taking into consideration the above-described factors. This bill contains other related provisions and other existing laws. <b>Last Amended on 4/16/2015</b></p>
<p><b>AB895</b> <b>Rendon D</b></p> <p>Utility rate refunds: energy crisis litigation.</p>	<p>SENATE RLS. 6/1/2015 - In Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. When the commission orders rate refunds to be distributed, existing law requires the commission to require the public utility to pay refunds to all current utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classifiable as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other type of entity. This bill would prohibit the Public Utilities Commission from distributing or expending the proceeds of claims in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000-02 energy crisis and would require that the proceeds be deposited into the Ratepayer Relief Fund. This bill contains other existing laws.</p>
<p><b>AB1022</b> <b>Obernolte R</b></p> <p>Solar Water Heating and Efficiency Act of 2007.</p>	<p>ASSEMBLY 2 YEAR 5/1/2015 - Failed Deadline pursuant to Rule 61(a)(2). (Last location was U. &amp; C. on 4/6/2015)</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations. The Solar Water Heating and Efficiency Act of 2007 requires the commission, if it determines that a solar water heating program is cost effective for ratepayers and in the public interest, to design and implement a program applicable to the service territories of a gas corporation to achieve the goal of the Legislature to promote the installation of 200,000 solar water heating systems, as defined, in homes, businesses, and buildings or facilities of eligible customer classes, as specified, receiving natural gas service throughout the state by 2017. The act prohibits funding from exceeding \$250,000,000 for the collective service territories of all gas corporations over the 10-year life of the program and requires that the cost of the program be paid through a usage-based surcharge annually established for each class of gas customers, with specified exceptions. The act requires the governing body of each publicly owned utility providing gas service to retail end-use customers to adopt, implement, and finance a solar water heating system incentive program that meets certain requirements. Existing law repeals these requirements on August 1, 2018. This bill would repeal the substantive requirements of the act and would prohibit any additional moneys from being collected from ratepayers to fund the act after December 31, 2015. The bill would require that any loans that are outstanding as of January 1, 2016, that were made pursuant to the act, continue to be repaid in a manner that is consistent with the terms and conditions of the loan agreements, until repaid in full. The bill would authorize moneys to be dispersed after January 1, 2016, that were encumbered on or before December 31, 2015, pursuant to the act and would require that all moneys not encumbered on or before December 31, 2015, that were collected</p>

		from ratepayers pursuant to the act and all loan repayments be refunded to the ratepayers in proportion to the ratepayer classes from which they were collected. This bill contains other related provisions and other existing laws. <b>Last Amended on 3/26/2015</b>
<b>AB1094</b> <b>Williams D</b>  Energy usage: plug-in equipment.	ASSEMBLY 2 YEAR 5/29/2015 - Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/28/2015)	Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), on a biennial basis, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery, and distribution. Existing law requires the Energy Commission, beginning November 1, 2003, and biennially thereafter, to adopt an integrated energy policy report containing an overview of major energy trends and issues facing the state. This bill would require the Energy Commission, in collaboration with the Public Utilities Commission, to conduct an analysis of plug-in equipment electricity consumption, as specified, and set statewide, long-term energy efficiency targets to reduce the amount of electricity consumed by plug-in equipment. The bill would require the Energy Commission, in collaboration with the Public Utilities Commission, to develop, track the progress of, revise, and update an implementation plan to achieve those targets, as specified. The bill would require the Public Utilities Commission, in collaboration with the Energy Commission, to work with stakeholders to address challenges to the achievement of those targets. This bill contains other existing laws. <b>Last Amended on 5/12/2015</b>
<b>AB1144</b> <b>Rendon D</b>  California Renewables Portfolio Standard Program: unbundled renewable energy credits.	SENATE RLS. 5/22/2015 - In Senate. Read first time. To Com. on RLS. for assignment.	Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The existing definition of an electrical corporation excludes from that definition a corporation or person employing landfill gas technology or digester gas technology for the generation of electricity for (1) its own use or the use of not more than 2 of its tenants located on the real property on which the electricity is generated, (2) the use of or sale to not more than 2 other corporations or persons solely for use on the real property on which the electricity is generated, or (3) the sale or transmission to an electrical corporation or state or local public agency, if the sale or transmission of the electricity service to a retail customer is provided through the transmission system of the existing local publicly owned electric utility or electrical corporation of that retail customer. This bill would provide that unbundled renewable energy credits may be used to meet the first category of the portfolio content requirements if (1) the credits are earned by electricity that is generated by an entity that, if it were a person or corporation, would be excluded from the definition of an electrical corporation by operation of the exclusions for a corporation or person employing landfill gas technology or digester gas technology, (2) the entity employing the landfill gas technology or digester gas technology has a first point of interconnection with a California balancing authority, a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source, and (3) where the electricity generated that earned the credit is used at a wastewater treatment facility that is owned by a public entity and first put into service on or after January 1, 2016. This bill contains other existing laws. <b>Last Amended on 4/14/2015</b>
<b>AB1266</b>	SENATE RLS.	Under existing law, the Public Utilities Commission has regulatory

<p><b>Gonzalez D</b></p> <p>Electrical and gas corporations: excess compensation.</p>	<p>6/3/2015 - In Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>authority over public utilities, including electrical corporations and gas corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates. This bill would prohibit an electrical corporation or gas corporation from recovering from ratepayers expenses for excess compensation, as defined, paid to an officer of the utility following a triggering event, as defined, unless the utility obtains the approval of the commission. Following a triggering event and prior to paying or seeking recovery of excess compensation, the electrical corporation or gas corporation would be required to file a Tier 3 advice letter with the commission containing specified information. If the electrical corporation or gas corporation sought or received authorization prior to the triggering event to recover excess compensation in rates, the commission would be required to open a proceeding or expand the scope of an existing proceeding to evaluate the advice letter and, following a duly notice public hearing in the proceeding, to issue a written decision determining whether any expenses for excess compensation that the corporation was authorized to recover in rates should be refunded to ratepayers. This bill contains other related provisions and other existing laws. <b>Last Amended on 5/4/2015</b></p>
<p><b>AB1330</b> <b>Bloom D</b></p> <p>Energy Efficiency Resource Standard Act.</p>	<p>ASSEMBLY THIRD READING 6/3/2015 - Read second time. Ordered to third reading.  6/4/2015 #40 ASSEMBLY ASSEMBLY THIRD READING FILE</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined, while local publicly owned electric utilities, as defined, and local publicly owned gas utilities are under the direction of their governing boards. The Public Utilities Act requires the Public Utilities Commission to review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, including a showing that the electrical corporation will first meet its unmet needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible. The act requires the Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, to identify all potentially achievable cost-effective electricity efficiency savings and to establish efficiency targets for electrical corporations to achieve pursuant to their procurement plan. The act requires the Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, to identify all potentially achievable cost-effective natural gas efficiency savings and to establish efficiency targets for gas corporations to achieve and requires that a gas corporation first meet its unmet resource needs through all available gas efficiency and demand reduction resources that are cost effective, reliable, and feasible. This bill would enact the Energy Efficiency Resource Standard Act. The Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, would be responsible for supervising the implementation of the act by community choice aggregators, electric service providers, electrical corporations, and gas corporations. The governing board of each local publicly owned electric utility and local publicly owned gas utility, in consultation with</p>

		<p>the State Energy Resources Conservation and Development Commission, would be responsible for the implementation of the act by the utility. The bill would require the State Energy Resources Conservation and Development Commission, in a public stakeholder engagement process, to determine how the energy savings goals of the act are measured and reported. The act would require each retail seller of electricity and gas utility, as defined, to establish an energy efficiency resource standard that shall increase the amount of energy efficiency resources of the utility so that the minimum amount of incremental energy savings achieved in any given year amounts to not less than specified amounts. The bill would require the State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, to adopt a cost limitation, as necessary, for each retail seller of electricity for meeting the energy efficiency resource standard. The bill would require the Public Utilities Commission to establish an annual percentage of peak demand reductions that shall be achieved through event-based demand response and would require that annual percentage to be achieved by retail sellers of electricity. The bill would require that the energy savings of a retail seller of electricity or gas utility first come from disadvantaged communities identified by the California Environmental Protection Agency, as specified. The bill would require each retail seller of electricity and gas utility to annually file with the State Energy Resources Conservation and Development Commission, a report that analyzes the energy savings achieved by the utility during the prior year, divided by the energy retail sales in the immediately preceding year. This bill contains other related provisions and other existing laws. <b>Last Amended on 6/2/2015</b></p>
<p><b>AB1332</b> <b>Quirk D</b></p> <p>California Global Warming Solutions Act of 2006: offsets.</p>	<p>ASSEMBLY 2 YEAR 5/1/2015 - Failed Deadline pursuant to Rule 61(a)(2). (Last location was NAT. RES. on 3/23/2015)</p>	<p>The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. The act authorizes the state board to include the use of market-based compliance mechanisms. This bill would require the state board, as part of a market-based compliance mechanism, to create an offset protocol for renewable energy projects that are able to ramp up or down during peak energy demands.</p>
<p><b>AB1333</b> <b>Quirk D</b></p> <p>Energy efficiency programs.</p>	<p>ASSEMBLY 2 YEAR 5/1/2015 - Failed Deadline pursuant to Rule 61(a)(2). (Last location was U. &amp; C. on 4/7/2015)</p>	<p>Existing law requires the Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, to identify all potential cost-effective energy efficiency savings and establish efficiency targets for an electrical or gas corporation. Existing law requires a local publicly owned electric utility, in procuring energy, to acquire all cost-effective energy efficiency and demand response resources that are cost-effective, reliable, and feasible. This bill would require electric and gas corporations and local publicly owned electric and gas utilities to require recipients of rebates or incentives from their residential or commercial energy efficiency or weatherization programs to install demand response infrastructure on the property for which the rebates or incentives are provided. <b>Last Amended on 4/6/2015</b></p>

<p><b>AB1334</b> <b>Quirk D</b></p> <p>Public utilities: research and development projects.</p>	<p>ASSEMBLY 2 YEAR 5/1/2015 - Failed Deadline pursuant to Rule 61(a)(2). (Last location was U. &amp; C. on 3/23/2015)</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, gas corporations, heat corporations, and telephone corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law authorizes the commission to allow inclusion of expenses for research and development in rates. Existing law requires the commission to consider specified guidelines in evaluating the research, development, and demonstration programs proposed by electrical and gas corporations. This bill would require findings supporting a decision to approve the inclusion of expenses incurred for research and development projects or programs in electricity rates be informed by independent expert review.</p>
<p><b>AB1453</b> <b>Rendon D</b></p> <p>Electrical corporations: underground electrical facilities: worker safety.</p>	<p>SENATE RLS. 6/1/2015 - In Senate. Read first time. To Com. on RLS. for assignment.</p>	<p>The Public Utilities Act authorizes the Public Utilities Commission to require public utilities, including electrical corporations, to construct, maintain, and operate their facilities and equipment to promote and safeguard the health and safety of its employees. A violation of the Public Utilities Act, or any decision, rule, direction, demand, or requirement of the commission is a crime. This bill would require the commission, by January 1, 2017, to adopt a rule regulating work performed in underground electrical facilities by, or on behalf of, an electrical corporation that is consistent with certain worker safety protections. Because a violation of the rule would be a crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws. Last Amended on 4/20/2015</p>
<p><b>SB180</b> <b>Jackson D</b></p> <p>Electricity: emissions of greenhouse gases.</p>	<p>SENATE 2 YEAR 5/29/2015 - Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/28/2015)</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities are under the direction of their governing board. Existing law prohibits any load-serving entity and any local publicly owned electric utility from entering into a long-term financial commitment for baseload generation unless that baseload generation complies with a greenhouse gases emission performance standard. Existing law requires the Public Utilities Commission, by February 1, 2007, through a rulemaking proceeding and in consultation with the State Energy Resources Conservation and Development Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities. Existing law requires the State Energy Resources Conservation and Development Commission, by June 30, 2007, at a duly noticed public hearing and in consultation with the Public Utilities Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities. This bill would, on July 1, 2017, replace the greenhouse gases emission performance standards for baseload generation with greenhouse gases emission performance standards for nonpeaking generation and peaking generation. The bill would require the Public Utilities Commission, by June 30, 2017, through a rulemaking proceeding and in consultation with the State Energy Resources Conservation and Development Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all nonpeaking generation of load-serving entities, and a separate standard for peaking generation. The bill would require the State</p>

		<p>Energy Resources Conservation and Development Commission, by June 30, 2017, at a duly noticed public hearing and in consultation with the Public Utilities Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all nonpeaking generation of local publicly owned electric utilities, and a separate standard for peaking generation. The bill would require that, taking into consideration siting factors such as altitude, regional climate, and operating capacity, the greenhouse gases emission performance standard for nonpeaking generation and peaking generation be established at the lowest level that the respective commissions determine to be technologically feasible without putting reliability of the electrical grid and of electric service at risk and without hampering further deployment of renewable generation resources or reductions of greenhouse gases emissions. The bill would require that the commissions update their respective greenhouse gases emission performance standards every 5 years based on new technology. This bill contains other related provisions and other existing laws. <b>Last Amended on 5/5/2015</b></p>
<p><b>SB189</b> <b>Hueso D</b></p> <p>Clean Energy and Low-Carbon Economic and Jobs Growth Blue Ribbon Committee.</p>	<p>ASSEMBLY ASSEMBLY 6/3/2015 - Read third time. Passed. (Ayes 26. Noes 14.) Ordered to the Assembly.</p>	<p>Existing law requires specified state agencies to prepare and submit to the Secretary for Environmental Protection specified information relating to the state agency's greenhouse gas (GHG) emissions, including a list of measures adopted and implemented by the agency to meet GHG emission reduction targets, as defined, and a status report on GHG emissions reduced as a result of these measures. Existing law further requires the California Environmental Protection Agency to provide that information on its Internet Web site in the form of a state agency GHG emission reduction report card. This bill would create the Clean Energy and Low-Carbon Economic and Jobs Growth Blue Ribbon Committee in the California Environmental Protection Agency, comprised of 7 members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules, as provided. The bill would prescribe the terms and qualifications of committee members and would require the committee to advise state agencies on the most effective ways to expend clean energy and GHG-related funds and implement policies in order to maximize California's economic and employment benefits, and to take specified actions in that regard. The bill would also require the committee to provide an annual update to the Governor and the appropriate policy and fiscal committees of the Legislature on its activities, as provided. The bill would require each state agency responsible for implementing clean energy and low-carbon polices and programs to submit an annual progress report to the Governor and the appropriate policy and fiscal committees of the Legislature describing how it implemented or responded to the advice, guidance, and recommendations of the committee. <b>Last Amended on 6/1/2015</b></p>
<p><b>SB286</b> <b>Hertzberg D</b></p> <p>Electricity: direct transactions.</p>	<p>ASSEMBLY ASSEMBLY 6/3/2015 - Read third time. Passed. (Ayes 34. Noes 2.) Ordered to the Assembly.</p>	<p>The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000-01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice</p>

		<p>aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation. This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory by that electrical corporation's share of an aggregate of 8,000 gigawatthours, apportioned as specified. The bill would require that all of an electric service provider's retail sales associated with each 2nd phase direct transaction be procured from eligible renewable energy resources and would require the commission to enforce the bill's renewables procurement requirements as part of the California Renewables Portfolio Standard Program. The bill would require that an electrical corporation continue to provide direct access customers with support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract with the electrical corporation. The bill would prohibit an electric service provider from offering consolidated billing beginning January 1, 2016. This bill contains other related provisions and other existing laws. <b>Last Amended on 6/2/2015</b></p>
<p><b>SB350</b> <b>De León D</b>  Clean Energy and Pollution Reduction Act of 2015.</p>	<p>ASSEMBLY ASSEMBLY 6/3/2015 - Read third time. Passed. (Ayes 24. Noes 14.) Ordered to the Assembly.</p>	<p>Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. This bill would additionally express the intent of the Legislature for the purposes of the RPS program that the amount of electricity generated per year from eligible renewable energy resources be increased to an amount equal to at least 50% by December 31, 2030, and would require the PUC, by January 1, 2017, to establish the quantity of electricity products from eligible renewable energy resources be procured by each retail seller for specified compliance periods sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 50% of retail sales by December 31, 2030. The bill would require the governing boards of local publicly owned electric utilities to ensure that specified quantities of electricity products from eligible renewable energy resources to be procured for specified compliance periods to ensure that the procurement of electricity products from eligible renewable energy resources achieve 50% of retail sales by December 31, 2030. The bill would exclude all facilities engaged in the combustion of municipal solid waste from being eligible renewable energy resources. The bill would require community choice aggregators and electric service providers to prepare and submit renewable energy procurement plans.</p>

		<p>The bill would revise other aspects of the RPS program, including, among other things, the enforcement provisions and would require penalties collected for noncompliance to be deposited in the Electric Program Investment Charge Fund. The bill would require the PUC to direct electrical corporations to include in their proposed procurement plans a strategy for procuring a diverse portfolio of resources that provide a reliable electricity supply. The bill would require the PUC and the Energy Commission to take certain actions in furtherance of meeting the state's clean energy and pollution reduction objectives. This bill contains other related provisions and other existing laws.</p>
<p><b>SB427</b> <b>Fuller R</b></p> <p>Renewable energy resources.</p>	<p>SENATE 2 YEAR 5/15/2015 - Failed Deadline pursuant to Rule 61(a)(3). (Last location was RLS. on 3/5/2015)</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The existing Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The specified minimum quantities of electricity products are based upon a percentage of the utility's total retail sales of electricity in California. The RPS program authorizes an electrical corporation to apply to the commission for approval to construct, own, and operate an eligible renewable energy resource, and requires the commission to approve the application if certain conditions are met. This bill would make technical, nonsubstantive changes to the RPS program authorization for electrical corporations to apply to the commission for approval to construct, own, and operate an eligible renewable energy resource.</p>
<p><b>SB506</b> <b>Fuller R</b></p> <p>Economic development: military and aerospace.</p>	<p>SENATE 2 YEAR 5/29/2015 - Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/28/2015)</p>	<p>Existing law establishes the Governor's Office of Business and Economic Development, which is administered by a director appointed by the Governor. The office serves the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Existing law, the Military Base Reuse Authority Act, authorizes the creation of a military base reuse authority to plan, finance, and manage the transition of a military base from military to civilian use, as specified. This bill would establish the Military and Aerospace Program in the Governor's Office of Business and Economic Development, and set forth the program's duties and authority with respect to state and local defense retention, conversion, and base reuse activities, including developing and recommending to the Governor and the Legislature a strategic plan for state and local defense retention and conversion efforts. The bill would authorize the office to establish a Military Advisory Council with a specified membership to provide input, information, technical advice, or other comments to the program on military related matters. This bill also would authorize the office to apply for grants and seek private funds for the operations of the office. The bill would establish the Military and Aerospace Account in the Special Deposit Fund in the State Treasury and require that any private funds the office accepts be deposited into that account. The bill would authorize the office to expend moneys in the account, upon appropriation by the Legislature, for specified purposes of the office. This bill contains other related provisions and other existing laws. <b>Last Amended on 4/14/2015</b></p>

<p><b>SB539</b> <b>Hueso D</b></p> <p>Renewable energy resources: geothermal.</p>	<p>ASSEMBLY U. &amp; C. 5/22/2015 - Referred to Com. on U. &amp; C.</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act authorizes the Public Utilities Commission, upon a complaint by a geothermal energy producer, to prohibit any electrical corporation from curtailing the generation, production, or transmission of electricity from a geothermal powerplant operated by the corporation, if the commission deems that the curtailment is not in the public interest. This bill would repeal the above-described geothermal generation, production, or transmission curtailment authorization. <b>Last Amended on 4/27/2015</b></p>
<p><b>SB697</b> <b>Hertzberg D</b></p> <p>Charter-party carriers of passengers.</p>	<p>ASSEMBLY U. &amp; C. 6/1/2015 - Referred to Com. on U. &amp; C.</p>	<p>The Passenger Charter-party Carriers' Act places charter-party carriers of passengers, as defined, under the jurisdiction of the Public Utilities Commission. Under existing law, no charter party carrier of passengers may operate a motor vehicle on a public highway unless there is displayed on the vehicle a distinctive identifying symbol, in the form prescribed by the commission, showing the classification to which the carrier belongs. For motor vehicles designed to carry not more than 8 passengers, the commission is required to issue a suitable decal with an identifying symbol and of a specified size for that purpose. This bill would repeal that provision requiring the issuance of the decal. <b>Last Amended on 4/9/2015</b></p>
<p><b>SB765</b> <b>Wolk D</b></p> <p>Energy: California Market Transformation Administrator.</p>	<p>ASSEMBLY ASSEMBLY 6/3/2015 - Read third time. Passed. (Ayes 23. Noes 17.) Ordered to the Assembly.</p>	<p>The Reliable Electric Service Investments Act requires the Public Utilities Commission (PUC), in evaluating energy efficiency investments, to ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate. This bill would require the PUC, in ensuring that prudent investments in energy efficiency are made and produce cost-effective energy savings, reduce customer demand, and support the state's greenhouse gas emissions reduction goals, to contract with an independent entity to serve as the California Market Transformation Administrator (CalMTA). The bill would require the PUC to require the CalMTA to take certain actions, including, among other actions, working in concert with other energy efficiency administrators that are carrying out energy efficiency activities under the PUC's oversight to incorporate long-term market transformation strategies into the state's energy efficiency portfolio and to work with the State Energy Resources Conservation and Development Commission to encourage local publicly owned electric utilities to participate in the CalMTA's planning efforts and provide funding for and support the market transformation initiatives administered by the CalMTA to ensure statewide consistency and full market deployment. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program. The bill would require the PUC to consult with the CalMTA regarding demand-side energy management programs. This bill contains other related provisions and other existing laws. <b>Last Amended on 6/2/2015</b></p>
<p><b>SB793</b> <b>Wolk D</b></p> <p>Green Tariff</p>	<p>ASSEMBLY DESK 5/18/2015 - In Assembly. Read first time. Held at</p>	<p>Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. The Green Tariff Shared Renewables Program requires a</p>

<p>Shared Renewables Program.</p>	<p>Desk.</p>	<p>participating utility, defined as being an electrical corporation with 100,000 or more customers in California, to file with the commission an application requesting approval of a tariff to implement a program enabling ratepayers to participate in electrical generation facilities that use eligible renewable energy resources, consistent with certain legislative findings and statements of intent. Existing law requires the commission, by July 1, 2014, to issue a decision concerning the participating utility’s application, determining whether to approve or disapprove the application, with or without modifications. Existing law requires the commission, after notice and opportunity for public comment, to approve the application if the commission determines that the proposed program is reasonable and consistent with the legislative findings and statements of intent and requires the commission to require that a participating utility’s green tariff shared renewables program be administered in accordance with specified provisions. Existing law repeals the program on January 1, 2019. This bill would require the commission to additionally require that a participating utility’s green tariff shared renewables program permit a participating customer to subscribe to the program and receive a reasonably estimated bill credit and bill charge, as determined by the commission, for a period of up to 20 years. This bill contains other related provisions and other existing laws. <b>Last Amended on 5/5/2015</b></p>
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## 10. GLOSSARY OF TERMS

<b>AB</b>	<b>Assembly Bill</b>
<b>ARB</b>	Air Resources Board
<b>CAISO</b>	California Independent System Operator
<b>CBA</b>	California Balancing Authority
<b>CCA</b>	Community Choice Aggregation
<b>CEC</b>	California Energy Commission
<b>CPUC</b>	California Public Utilities Commission
<b>DLAP</b>	Default Load Aggregation Point
<b>EPA</b>	Environmental Protection Agency
<b>IOU</b>	Investor Owner Utility

<b>ITC</b>	Investment Tax Credit
<b>KW</b>	Kilowatt
<b>kWh</b>	Kilowatt hour
<b>LSE</b>	Load Serving Entity
<b>MCE</b>	Marin Clean Energy
<b>MT</b>	Metric Ton
<b>MW</b>	Megawatt
<b>Mwh</b>	Megawatt hour
<b>NP15</b>	North of Path 15
<b>OTC</b>	Once Through Cooling
<b>PG&amp;E</b>	Pacific Gas & Electric Company
<b>PCIA</b>	Power Charge Indifference Adjustment
<b>POU</b>	Publicly Owned Utility
<b>PPA</b>	Power Purchase Agreement
<b>PUC</b>	Public Utilities Code
<b>RA</b>	Resource Adequacy
<b>RECs</b>	Renewable Energy Certificates
<b>RPS</b>	Renewable Portfolio Standard
<b>SB</b>	Senate Bill
<b>SCE</b>	Southern California Edison
<b>SCP</b>	Sonoma Clean Power
<b>SDG&amp;E</b>	San Diego Gas & Electric
<b>SONGS</b>	San Onofre Nuclear Generating Station
<b>SP15</b>	South of Path 15
<b>SQMD</b>	Settlement Quality Meter Data
<b>UIE</b>	Unstructured Imbalance Energy



Community Council (a non-profit organization) operates a volunteer run bus service to seniors and those with disabilities. SLO County provided limited funding to operate and the rest of the budget comes from community donations received from fund raising by the Community Council. Everything else about the program, from recruiting and training volunteers, promotion, maintenance, dispatching, volunteer coordination, etc. is handled by the Community Council.

Councilmember Smukler and City staff have been working with MBSCI on developing a volunteer senior van program that would be operated by MBSCI. Staff from both agencies have met several times to develop a MOU of duties each would be responsible for and developed an agreement that would be considered by MBSCI's Board and City Council.

MBSCI's Board met on November 18, 2015, and approved the attached agreement for execution by its Board President. MBSCI will be creating a sub-committee for the volunteer transit program that will liaise with City staff. With Council approval of the agreement at this meeting and its execution by both parties, MBSCI can begin to move forward with vehicle acquisition, final development of the service to be offered and initiation of promoting the new service.

**CONCLUSION**

Staff recommends the City Council approve the attached agreement with the MBSCI for a volunteer senior van program and authorize the Mayor to execute the agreement.

**ATTACHMENT**

Agreement for Senior Transportation Services

## AGREEMENT FOR SENIOR TRANSPORTATION SERVICES

This AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF MORRO BAY**, a municipal corporation, hereinafter referred to as "**CITY**," and the **MORRO BAY SENIOR CITIZENS INCORPORATED**, a California nonprofit corporation, hereinafter referred to as "**CONTRACTOR**," for the provision of volunteer senior transit services.

**WHEREAS**, **CITY** provides year round general public deviated fixed-route local transit service within Morro Bay city limits; and

**WHEREAS**, **CITY** desires to retain **CONTRACTOR** to provide a volunteer based transportation program, Morro Bay Senior Transportation Program (MBSTP), for the convenience of senior citizens who are in Morro Bay and may not be able to use existing local or regional transit services; and

**WHEREAS**, the MBSTP is to provide supplemental transit service intended to fill in the gaps of existing local or regional transit services; and

**WHEREAS**, the main function of the MBSTP is to improve the quality of life and mobility of local senior citizens by providing affordable, safe, and reliable transportation to health care and other destinations within the City limits and San Luis Obispo County; and

**WHEREAS**, the MBSTP is not intended to compete directly with or replace existing local and regional public transit services.

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

1. Scope of Services. Pursuant to the terms and conditions of this Agreement, **CITY** hereby engages **CONTRACTOR**, and **CONTRACTOR** hereby agrees to provide for **CITY** volunteer transportation services to seniors in the Morro Bay area as outlined in the MBSTP Scope of Services in Exhibit A. Destinations are limited to within the County of San Luis Obispo.

2. Duties of Contractor and City. Exhibit B outlines the specific roles and duties assigned to **CITY** and **CONTRACTOR**.

3. Service Requirement. In performing the above agreed services, **CONTRACTOR** shall:

- (a) Provide properly licensed vehicle(s) and properly licensed drivers who are competent to perform the duties listed herein,
- (b) Provide insurance coverage as listed in Section 12,
- (c) Operate the vehicle(s) in a safe and reasonable manner and in compliance with all local, State and Federal statutes and regulations,

- (d) Obtain a vehicle safety inspection report from an ASE certified mechanic prior to placing vehicle(s) in service for first time. All safety repairs must be made prior to placing the vehicle(s) in service,
- (e) Maintain vehicle(s) in a safe and clean manner. Verify vehicle(s) are safe and in compliance with all local, State and Federal statutes and regulations prior to operating said vehicle(s),
- (f) Require drivers to perform vehicle safety inspections on a daily basis. Unsafe vehicle(s) will not be driven until safety defects are repaired,
- (g) Provide equal access to service for all members of the target service group(s) and
- (h) Provide for all operating costs of vehicle(s) including, but not limited to fuel, oil, tires and repairs.

4. Length of Service. This Agreement shall begin on the date of execution of this Agreement on behalf of **CITY**, as long it has also been signed on behalf of **CONTRACTOR**, and upon filing any required assurances or insurance documents, and shall continue thereafter on a month-to-month basis, unless terminated by either party pursuant to Section 11 below.

5. Budget and Funding. With adoption of the FY12/13 and FY13/14 budgets, **CITY** has allocated \$43,992 of State Local Transportation Funds to aid with the implementation of the MBSTP, which includes vehicle acquisition and startup funding for operations (Initial Funding). Except for the Initial Funding, it is the intent for the MBSTP to be self-sufficient, and as such, **CONTRACTOR** will apply for and obtain its own donations, grants or other revenue sources, and carry on its own future fund raising activities for the MBSTP. No financial burden or expectation of continued funding is to be placed on **CITY**. If expenditures are anticipated to exceed revenues, then **CONTRACTOR** shall revise the MBSTP services offered to bring expenditures in line with revenues generated. If after that revision is done, expenditures are still anticipated to exceed revenues, then **CONTRACTOR** shall notify **CITY** and both parties will discuss whether the MBSTP should continue with additional changes to services offered or need to be discontinued.

**CONTRACTOR** shall have a bank account and record keeping system for the MBSTP that is separate from **CONTRACTOR's** main activities. That separate bank account shall have one staff member from **CITY** and one from **CONTRACTOR** as signatories.

**CONTRACTOR** shall develop and submit to **CITY** an annual budget of expenditures and revenues. **CITY** and **CONTRACTOR** shall meet quarterly to review the budget performance summary prepared by **CITY**.

**CONTRACTOR** shall prepare and submit to **CITY** annual financial statements for the MBSTP and for **CONTRACTOR**.

**CITY** shall have no financial obligation for the repair or maintenance of any vehicle operated by **CONTRACTOR**.

6. Reporting Requirements. **CONTRACTOR** shall collect the following data and submit monthly and quarterly reporting as outlined in Section 7, below. **CONTRACTOR** and **CITY** shall jointly develop the format for the monthly and quarterly reports.

- (a) Number of passengers transported
- (b) Passenger pick-up and destination points; include breakdown of trips into three categories with total and percent of total: local short trips (Morro Bay), regional short trips (Los Osos/Cayucos) and regional long trips (all other locations)
- (c) Breakdown of trip purpose to include but not be limited to: medical/dental, shopping, social, etc...; include total and percent of total for each trip category
- (d) Length of trip in miles
- (e) Starting and ending odometer for month
- (f) Total passengers by day of the week
- (g) Total passengers by time of trip
- (h) Total of hours of service for all trips shown under (c) plus a monthly total of one way miles of service
- (i) Total of cancelled trips with breakdown of reason for cancelation (rider's decision, rider needing assistance to/from van or to reach destination, driver non available or van in maintenance shop, etc..)
- (j) Total trip requests that could not be served with breakdown of how many by local short trip, regional short trip and regional long trip; include total number of requests successfully referred to other existing providers or will be in the future (for instance, subject to ADA certification region wide)
- (k) Total operating costs (excluding capital costs) and describe costs over \$200
- (l) Total revenues received broken down by type to include, but not be limited to: donation, grant, Local Transportation Funds

All records associated with the provision of services referenced in this Agreement shall be made available to **CITY's** Director of Public Works, or his/her designee, upon written request and shall be retained by **CONTRACTOR** for a three-year period after termination of this Agreement. **CONTRACTOR** shall permit authorized representatives of **CITY** to inspect, audit, and copy all data and records in **CONTRACTOR's** possession regarding the performance of this Agreement.

7. Reporting Calendar. **CONTRACTOR** will prepare and submit a report of the data collected by **CONTRACTOR** pursuant to Section 6, above, on a monthly basis which may lead to exploring refinements to the initial service in place. The monthly reports will be shared with the designated **CITY** staff for their information. **CONTRACTOR** will prepare and submit to **CITY** a quarterly summary of the reporting data collected.

8. Employment Status. **CONTRACTOR** shall at all times during the term of this Agreement be construed to be an independent contractor and in no event shall any of its personnel, or subcontractors, be construed to be employees of **CITY**.

9. Nondiscrimination. There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

10. Enforceability. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

11. Termination of Agreement.

(a) It is the intent the MBSTP will be self-sufficient and no financial burden or expectation of continued funding is to be placed on the **CITY** or **CONTRACTOR**. If during the term of this Agreement the MBSTP is no longer self-sufficient and continues to be so after changes to the scope of services has been altered to bring revenue and expenditures in balance or if insurance can no longer be provided in accordance with Section 12, then **CITY** or **CONTRACTOR** may terminate this Agreement.

(b) Additionally, **CITY** or **CONTRACTOR** may, without cause and with thirty-days' prior written notice, terminate this Agreement at any point during the term of this Agreement. Termination may be effectuated for **CITY** by the Public Works Director, or his/her designee, without need for action, approval, or ratification by the City Council. **CONTRACTOR** shall discontinue operations of the transportation services and incur no further obligations or expenses, but shall be entitled to compensation for services satisfactorily performed prior to the date of termination, but subject to the limited Initial funding to be provided by **CITY**. Termination may be effectuated for **CONTRACTOR** by **CONTRACTOR's** President, or his/her designee, after receiving action, approval or ratification by **CONTRACTOR's** Board.

12. Insurance: During the term of this Agreement, **CONTRACTOR** shall carry insurance in accordance with Exhibit C attached hereto and incorporated as part of this Agreement and such other insurance as required by law. Lack of insurance does not negate the **CONTRACTOR's** obligation under this contract. **CONTRACTOR** agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, **CONTRACTOR** shall look solely to its insurance for recovery, except where caused by the active negligence, sole negligence, or willful misconduct of the **CITY**. **CONTRACTOR** hereby grants to the **CITY**, on behalf of any insurer providing insurance to either **CONTRACTOR** or **CITY** with respect to the services of **CONTRACTOR** herein, a waiver of

any right to subrogation which any such insurer of said **CONTRACTOR** may acquire against the **CITY** by virtue of the payment of any loss under such insurance.

Insurance shall be secured and approved by **CITY's** risk manager prior to commencement of work according to this contract. The policy or a successor policy must be in effect for the duration of the project or lease.

Maintenance of proper insurance coverage is a material element of this contract and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the **CITY** as a material breach of contract. **CONTRACTOR** shall forward the **CITY** specifications and forms to **CONTRACTOR's** insurance agent for compliance.

13. Hold Harmless. **CONTRACTOR** shall hold harmless, defend, and indemnify **CITY** and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including reasonable attorney's fees and court costs (Damages) arising out of this Agreement; provided, that the obligation to hold harmless and defend is only to the extent **CONTRACTOR** or any of its officers, employees, agents or volunteers caused in whole or in part Damages.

14. Entire Agreement. This Agreement between **CONTRACTOR** and **CITY** supersedes all prior negotiations, representations, or agreements, either written or oral regarding the subject matter hereof. This document may be amended only by written instrument, signed by both **CONTRACTOR** and **CITY**.

15. Waivers. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.

16. Governing Law. California law shall govern in any dispute arising under this Agreement.

17. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person, or sent by United States first class mail, postage prepaid. Notices required to be given to **CITY** shall be addressed as follows:

**CITY:** Director of Public Works  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

**CONTRACTOR:** President  
Morro Bay Senior Citizens Incorporated  
1001 Kennedy Way  
Morro Bay, CA 93442

Either party may change such address by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the day and year first above written.

Dated: \_\_\_\_\_ **City of Morro Bay**

By: \_\_\_\_\_  
Jamie L. Irons, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Joseph W. Pannone, City Attorney

Dated: \_\_\_\_\_ **Morro Bay Senior Citizens Incorporated**

By: \_\_\_\_\_  
Chuck Stoll  
Its President

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

## **EXHIBIT A MBSTP Scope**

The Morro Bay Senior Transportation Program (MBSTP), a program of **CONTRACTOR** with support from **CITY**, is a volunteer operated program. MBSTP is a supplemental service that is intended to fill gaps in the current public transportation system.

The main function of MBSTP is to improve the quality of life and mobility of local senior citizens by providing affordable, safe, and reliable transportation to health care and other destinations within the City of Morro Bay and San Luis Obispo County.

The program is not intended to compete directly with or replace existing local and regional public transit services. As a supplemental program staffed by volunteers, the hours and days of the operation will be limited and available to seniors who are able to enter and exit the vehicle without assistance.

The MBSTP will also provide information and refer potential riders to additional local, regional and specialized public transportation services.

## EXHIBIT B CITY AND CONTRACTOR DUTIES

### **CITY will:**

1. Aid **CONTRACTOR** in recruiting, interviewing, selecting, and training volunteer drivers for the MBSTP.
2. Aid in initial MBSTP vehicle purchase with title held in the name of **CONTRACTOR**.
3. Provide parking at Community Center parking lot or jointly agreed alternative location.
4. Aid **CONTRACTOR** in the publicity and fundraising projects for the program.
5. Coordinate with **CONTRACTOR** to schedule, complete, receive results and notify drivers of their passage of the Department of Justice Background Checks administered at the MB Police Department.
6. Hold MBSTP funds, as previously allocated for initiation of the program by the City Council, in a separate **CITY** account and all related eligible expenses will be paid out of that account.
7. Aid in scope and program development and establish a quarterly budget review and performance reporting process with **CONTRACTOR**.
8. Aid **CONTRACTOR** in identification of alternative program funding and support options for future years of operation such as local, county, State, and Federal grants or eligible private sources (foundations, other non-profit organizations with the mission to serve the needs of seniors).
9. Aid with **CONTRACTOR** in the investigation of incidents, accidents, and injuries involving volunteer riders and/or drivers.

### **CONTRACTOR will:**

1. Be responsible for the budget, management, oversight, and fiscal control of the MBSTP. Among other annual responsibilities, **CONTRACTOR** will cover insurance premium for the agreed upon scope and seek the most advantageous plan per the transportation experience gained by other senior clubs on the North Coast.
2. Perform routine and preventative maintenance on the MBSTP vehicle(s).
3. Designate a sub-committee to oversee and coordinate the program. Sub-committee will meet with **CITY** on a quarterly basis and submit reports for **CITY** review of the program scope, budget and performance.
4. Recruit, interview, select, and train volunteer drivers and dispatch for MBSTP. Implement DMV pull notices and confirm background clearance volunteer drivers on an ongoing basis.
5. Select and train volunteers to staff phone station(s) at the Senior Center (during designated hours and open days) in order to assist the Operations Manager in scheduling drivers' assignments and subsequently setting/confirming riders pick up and drop off times and locations.
6. Schedule all volunteer drivers and the pick-up/drop-off of riders in conformance with the adopted scope of the MBSTP. MBSTP has the discretion to suspend, cancel, or adjust the schedule if qualified volunteer drivers, a safe operational vehicle or adequate operational funds are not available. If necessary, **CONTRACTOR** will notify and work with **CITY** to update the MOU or program scope.
7. Perform investigation of incidents, accidents, and injuries involving volunteer riders and/or drivers and notify **CITY** of investigations when they occur.
8. Based on day-to-day tracking of the MBSTP, data collection will take place and be summarized by month, for presentation to the **CONTRACTOR's** Board preferably by the 2<sup>nd</sup> Wednesday of each month following the month for which the summary is submitted.

## EXHIBIT C INSURANCE REQUIREMENTS

**CONTRACTOR** shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the **CONTRACTOR**, his agents, representatives, employees or subcontractors.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### ***Minimum Limits of Insurance***

**CONTRACTOR** shall maintain limits no less than:

- |  |   |
|--|---|
| 1. General Liability:<br>(Including operations<br>products and<br>completed operations.) | <b>\$1,000,000</b> per occurrence for bodily injury,<br>personal injury and property damage. If<br>Commercial General Liability Insurance or other<br>form with a general aggregate limit is used, either the<br>general aggregate limit shall apply separately to this<br>project/location or the general aggregate limit shall be<br>twice the required occurrence limit. |
| 2. Automobile Liability:<br>property damage.   | <b>\$1,000,000</b> per accident for bodily injury and<br>property damage.   |
| 3. Employer's Liability:   | <b>\$1,000,000</b> per accident for bodily injury or disease  |

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the **CITY**. At the option of the **CITY**, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the **CITY**, its officers, officials, employees and volunteers; or the **CONTRACTOR** shall provide a financial guarantee satisfactory to the **CITY** guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **CITY**, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of **CONTRACTOR**; and with respect to liability arising out of work or operations performed by or on behalf of **CONTRACTOR** including materials, parts

or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy (CG 20 10 11 85).

2. For any claims related to this project, **CONTRACTOR's** insurance coverage shall be primary insurance as respects **CITY**, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by **CITY**, its officers, officials, employees, or volunteers shall be excess of **CONTRACTOR's** insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to **CITY**.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

### ***Verification of Coverage***

**CONTRACTOR** shall furnish **CITY** with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by **CITY** or on other than **CITY's** forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by **CITY** **before** work commences. **CITY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

### ***Subcontractors***

**CONTRACTOR** shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to **CITY** for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.