

City of Morro Bay

City Council Agenda

Mission Statement

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

AMENDED REGULAR MEETING

TUESDAY, JANUARY 12, 2016

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 CITY COUNCIL MEETING HELD ON NOVEMBER 17, 2015; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE SPECIAL JOINT MEETING OF THE CITY COUNCIL AND WATER RECLAMATION FACILITY CITIZEN ADVISORY COMMITTEE HELD ON DECEMBER 1, 2015; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON DECEMBER 8, 2015; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON DECEMBER 8, 2015; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 WATER RECLAMATION FACILITY PROGRAM UPDATE; (PUBLIC WORKS)

RECOMMENDATION: Receive and file.

A-6 APPROVAL OF 2016 EMPLOYEE HEALTH BANK INCREASES; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Approve as submitted.

A-7 RESOLUTION NO. 01-16 AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION FOR INMATE WORK CREWS; (PUBLIC WORKS)

RECOMMENDATION: Adopt Resolution No. 01-16.

A-8 PROCLAMATION DECLARING JANUARY 2016 AS "MORRO BAY WINTER BIRD FESTIVAL MONTH"; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARINGS

- B-1 APPEAL OF THE PLANNING COMMISSION DENIAL OF COASTAL DEVELOPMENT PERMIT (CP0-410) & CONDITIONAL USE PERMIT (UP0-369) TO CONSTRUCT A 3,386SF SINGLE FAMILY RESIDENCE WITH 520SF GARAGE AND 356 SF OF DECKING AND 236 SF COVERED PORCH ON A VACANT LOT AT 289 MAIN STREET. THIS PROJECT IS LOCATED INSIDE THE COASTAL COMMISSION APPEALS JURISDICTION (APPELLANT: JOHN AND ALAIR HOUGH, APPLICANTS); (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt Resolution No. 02-16 which determines the project is categorically exempt under CEQA Guidelines Section 15303 Class 3, grant the appeal of the Planning Commission denial, and conditionally approve Coastal Development Permit CP0-410, Conditional Use Permit UP0-369 and revised plans dated December 14, 2015.

C. UNFINISHED BUSINESS/SECOND READING AND ADOPTION OF ORDINANCES

- C-1 DISCUSSION AND DIRECTION TO STAFF REGARDING THE MORRO BAY AQUARIUM LEASE SITE; (ADMINISTRATION)

RECOMMENDATION: Discuss and provide direction to staff.

- C-2 DISCUSSION AND DIRECTION ON CITY TOURISM MARKETING AND PROMOTIONS MANAGEMENT; (ADMINISTRATION)

RECOMMENDATION: Discuss the alternatives presented, consider adoption of Resolution No. 03-16 – Alternatives “A” and “B”, and provide direction to staff.

- C-3 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES: (CITY COUNCIL)

RECOMMENDATION: Discuss and make appointments for Mayor Pro Tempore, Representatives on Discretionary Boards, Council Liaison Assignments and Council Sub-Committees.

- C-4 AWARD OF CONSULTANT CONTRACT FOR THE UPDATE OF THE GENERAL PLAN, LOCAL COASTAL PLAN, ZONING CODE AND ENVIRONMENTAL IMPACT REPORT TO MICHAEL BAKER INTERNATIONAL; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Review the General Plan Advisory Committee recommendation, authorize the Community Development Manager to execute a two-year agreement with Michael Baker International, and direct staff to return during mid-year budget review with funding options.

C-5 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 598 AMENDING SECTION 3.08.070 OF THE MORRO MUNICIPAL CODE RELATING TO BIDDING; (CITY ATTORNEY)

RECOMMENDATION: Introduce Ordinance 598 and waive further reading, amending Section 3.08.070 of the Morro Bay Municipal Code relating to Bidding.

C-6 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 599 RELATING TO MEDICINAL MARIJUANA USES AND PROHIBITIONS IN THE CITY OF MORRO BAY; ADOPTION OF RESOLUTION NO. 04-16 REAFFIRMING THAT MEDICINAL MARIJUANA DISPENSARIES AND THE CULTIVATION OF MARIJUANA, AS USES NOT SPECIFICALLY ENUMERATED IN THE MORRO BAY MUNICIPAL CODE, ARE PROHIBITED

RECOMMENDATION: Introduce Ordinance No. 599 and waive further reading, relating to Medicinal Marijuana Uses and Prohibitions in the City of Morro Bay; and adopt Resolution No. 04-16 reaffirming that medicinal marijuana dispensaries and the cultivation of marijuana, as uses not specifically enumerated in the Morro Bay Municipal Code, are prohibited

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 26, 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 MEETING – NOVEMBER 17, 2015
COMMUNITY CENTER MULTI-PURPOSE ROOM
1001 KENNEDY WAY – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	John Headding	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	Dana Swanson	City Clerk
	Brooke Austin	Deputy City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 4:10 p.m. with all Councilmembers present.

The public comment period was opened.

<https://youtu.be/8tu9sJ6MGWg?t=1m50s>

Joan Solu, Morro Bay resident, owner of the Embarcadero Inn, and current Morro Bay Tourism Bureau and Tourism Business Improvement District Advisory Board member, informed the Council she was withdrawing her application, noting there were four qualified candidates for the TBID Advisory Board.

The public comment period was closed.

The Council discussed whether to consider three applicants who were not able to attend interviews. Given the schedule changes that occurred, there was unanimous support to consider applications received from Dave Kinnard for Planning Commission, Nancy Wise for Recreation & Parks Commission, and Aaron Graves for the Tourism Business Improvement District Advisory Board.

The Council considered alternatives to the interview process, including interviewing one candidate at a time while other candidates wait either in the audience or in another room. There was concern about asking applicants to leave a public meeting and the Council agreed to continue using a panel interview format with all applicants present.

Citizens Oversight/Citizens Finance Committee

<https://youtu.be/8tu9sJ6MGWg?t=15m29s>

The following applicants were interviewed to fill three (3) 2016 vacancies on the Citizens Oversight/Citizens Finance Committee: David Betonte, Betty Forsythe, and Roscoe Mathieu.

The City Council voted by written ballot and the City Clerk read the results: David Betonte, Betty Forsythe, and Roscoe Mathieu each received unanimous support and were appointed to the Citizens Oversight/Citizens Finance Committee for 6-year terms beginning 2/1/16 and ending 1/31/22.

Planning Commission

<https://youtu.be/8tu9sJ6MGWg?t=41m19s>

The following applicants were considered for one (1) 2016 vacancy on the Planning Commission: Joseph Ingrassia, Dave Kinnard, and William Munce.

The City Council voted by written ballot and the City Clerk read the results: Joseph Ingrassia received four votes (Mayor Irons and Councilmembers Headding, Johnson and Smukler) and William Munce received one vote (Councilmember Makowetski). Joseph Ingrassia was appointed to the Planning Commission for a 4-year term beginning 2/1/16 and ending 1/31/20.

Recreation and Parks Commission

<https://youtu.be/8tu9sJ6MGWg?t=1h2m50s>

The following applicants were considered for two (2) current vacancies and one (1) 2016 vacancy on the Recreation and Parks Commission: Kevin Carroll, Roscoe Mathieu, Timothy Ross, Skip Sorich and Nancy Wise.

For a 4-year term beginning 2/1/16 and ending 1/31/20, the City Council voted by written ballot and the City Clerk read the results: Timothy Ross received four votes (Mayor Irons and Councilmembers Headding, Johnson and Smukler) and Kevin Carroll received one vote (Councilmember Makowetski). Timothy Ross was appointed to the Recreation and Parks Commission for a 4-year term beginning 2/1/16 and ending 1/31/20.

For the current vacancy and 4-year term beginning 2/1/16 and ending 1/31/20: Kevin Carroll received three votes (Councilmembers Johnson, Makowetski and Smukler), Roscoe Mathieu received one vote (Councilmember Headding), and Nancy Wise received one vote (Mayor Irons). Kevin Carroll was appointed to the Recreation and Parks Commission to fill a current vacancy and 4-year term beginning 2/1/16 and ending 1/31/20.

For the current vacancy for the remainder of a term ending 1/31/17: Skip Sorich received four votes (Councilmembers Headding, Johnson, Makowetski and Smukler) and Nancy Wise received one vote (Mayor Irons). Skip Sorich was appointed to fill a current vacancy for the remainder of term ending 1/31/17.

City Clerk Swanson suggested the Council consider appointing Mr. Ross to fill the current vacancy plus 4-year term as Mr. Carroll is a current board member for a term ending 1/31/16; terms for both Commissioners would end 1/31/20. There was unanimous Council support for this change.

A brief recess was taken at 6:00 p.m.; the meeting reconvened at 6:06 p.m.

General Plan/Local Coastal Plan Advisory Committee

<https://youtu.be/8tu9sJ6MGWg?t=1h44m47s>

Following the recess, the City Clerk informed the City Council Mr. Ingrassia had verbally withdrawn his application for the General Plan Advisory Committee after being appointed to the Planning Commission as he did not wish to serve on two different boards.

The following applicants were considered to fill one (1) current vacancy on the General Plan Advisory Committee (GPAC) for no set term: Jeffrey Heller, William Munce and Bill Woodson. During interviews, Mr. Munce announced his withdrawal from the interview process for this committee.

The Council voted by written ballot and the City Clerk read the results: Jeffrey Heller received four votes (Councilmembers Headding, Johnson, Makowetski and Smukler) and Bill Woodson received one vote (Mayor Irons). Jeffrey Heller was appointed to fill a current vacancy on the GPAC.

Public Works Advisory Board

<https://youtu.be/8tu9sJ6MGWg?t=2h15m49s>

The following candidates were interviewed to fill two (2) 2016 vacancies on the Public Works Advisory Board (PWAB): Ric Deschler, Steven Shively and Stewart Skiff.

The Council voted by written ballot and the City Clerk read the results: Steven Shively received four votes (Mayor Irons and Councilmembers Johnson, Makowetski and Smukler), Stewart Skiff received four votes (Mayor Irons and Councilmembers Headding, Johnson and Smukler), and Ric Deschler received two votes (Councilmembers Headding and Makowetski). Steven Shively and Stewart Skiff were appointed to fill 4-year terms beginning 2/1/16 and ending 1/31/20.

Tourism Business Improvement District Advisory Board

<https://youtu.be/8tu9sJ6MGWg?t=2h47m26s>

The following candidates were considered to fill four (4) available Tourism Bureau Improvement District (TBID) Advisory Board positions: Todd Baston, Jayne Behman, Aaron Graves and Charles Yates. Following the interviews, Ms. Behman advised the Council that, if selected, she preferred to serve for the shorter term ending in 2017. Mr. Yates advised the Council he would not be available to begin serving until February 2016.

The Council voted by written ballot and the City Clerk read the results:

There was unanimous Council support to appoint Charles Yates to the vacancy for hotelier member-at-large for a 4-year term beginning 2/1/16 and ending 1/31/20.

For a current vacancy and 4-year term for a hotelier with preference given for 22 rooms or less: Aaron Graves received three votes (Mayor Irons and Councilmembers Headding and Makowetski) and Todd Baston received two votes (Councilmembers Johnson and Smukler). Aaron Graves was appointed to the current vacancy and 4-year term ending 1/31/20.

For a current vacancy for the remainder of a term ending 1/31/19: Todd Baston received three votes (Mayor Irons and Councilmembers Headding and Makowetski) and Aaron Graves received two votes (Councilmembers Johnson and Smukler). Todd Baston was appointed to fill a current vacancy for hotelier member-at-large for the remainder of a term ending 1/31/19.

Jayne Behman received unanimous Council support to fill a current vacancy for hotelier with preference given for 50 rooms or less for the remainder of a term ending 1/31/17.

ADJOURNMENT

The meeting adjourned at 7:45 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES – DECEMBER 1, 2015
JOINT MEETING OF THE MORRO BAY
CITY COUNCIL AND WATER RECLAMATION FACILITY CITIZEN ADVISORY COMMITTEE
MORRO BAY VETERAN’S HALL
209 SURF STREET – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	John Headding	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
	John Diodati	Committee Chair
	Bill Woodson	Committee Member
	Paul Donnelly	Committee Member
	Ginny Garelick	Committee Member
	Dale Guerra	Committee Member
	Valerie Levulett	Committee Member
	Steve Shively	Committee Member
	Barbara Spagnola	Committee Member
	Richard Sadowski	Committee Member (arrived at 5:52 p.m.)
STAFF:	Rob Livick	Public Works Director
	Bruce Keogh	Wastewater Treatment Plant Manager
	Rick Sauerwein	Capital Projects Manager
	Brooke Austin	Deputy City Clerk
	Shannon Chaffin	Assistant City Attorney (arrived at 4:25 p.m.)
CONTRACT		
STAFF:	Michael Nunley	WRF Program Manager
	John Rickenbach	WRF Deputy Program Manager

I. ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established by the City Council with all members present.

A quorum was established by the Water Reclamation Facility Citizen Advisory Committee (WRFCAC) with all members, but Member Sadowski, present. Member Sadowski arrived at 5:52 p.m.

II. PUBLIC COMMENT

The Public Comment period was opened. Seeing none, the Public Comment period was closed.

III. FACILITY MASTER PLAN - TREATMENT ALTERNATIVES AND RECOMMENDATIONS

<https://youtu.be/iToGcxg1Uvw?t=2m04s>

Public Works Director Livick gave a summary of the timeline of the project, upcoming meetings and additional opportunities for public input.

Program Manager Mike Nunley introduced Matt Thomas of Black and Veatch.

Matt Thomas, Black & Veatch Engineering Lead for the project, presented a PowerPoint presentation on the Facility Master Plan and Liquid Treatment Technologies. The full presentation is available at the following link:

<http://morrobayca.gov/DocumentCenter/View/9262>

He reviewed the technical memos that have been provided to the WRFCAC so far regarding the Facility Master Plan. Technical Memorandum Number 7 deals with the Liquid Treatment Technologies Evaluation, which is the subject matter for this meeting. All treatment technologies are in alignment with City goals.

Brad Hemken of Black & Veatch reviewed treatment alternatives and walked through the steps of preliminary treatment evaluation; primary treatment alternatives (optional - but would allow for energy recovery of methane gas); and secondary/biological treatment. For secondary biological treatment, ten different options were screened characterized as either suspended growth (SG), fixed film (FF), or hybrid SG-FF systems. Of the ten screened, three options were selected to consider for more detailed consideration - activated sludge, sequencing batch reactor (SBR), and oxidation ditch. The advantages and disadvantages of each were evaluated based on ten factors and SBR ranked highest of the three. For the next step, tertiary filtration, two different types of Title 22 filtration technologies were evaluated - disc filters and media filters. Disc filters scored more favorably. Then for disinfection, UV and Chlorine were compared and UV scored better. Finally, advanced treatment, which allows for groundwater recharge, avocado irrigation and indirect potable reuse, was evaluated through microfiltration, reverse osmosis and the advanced oxidation process. Two alternatives are being recommended to take forward to the Facility Master Plan for detailed cost analysis. Alternative 1 is conventional treatment and Alternative 2 is combined secondary/tertiary treatment using membrane bioreactors.

The WRF Program Manager and Black and Veatch staff responded to Council and Committee inquiries. Program Manager Nunley advised that although this presentation deals with Technical Memorandum Number 7, all of the technical memorandums are available on the website on the Water Reclamation Facility Project Updates page.

The Public Comment period for Item III was opened.

Roy Cinowalt, property owner in Morro Bay, stated that San Luis Obispo and Santa Barbara have successful treatment plants and he wanted to know if we could use one of those as a template to save time and money.

Marc Shouse, of Morro Bay, inquired why reverse osmosis at the desalination plant could not be used. He also encouraged the City to continue to try to partner with Cayucos

The Public Comment period for Item III was closed.

Staff responded to public comments and Council inquiries.

IV. WATER RECLAMATION FACILITY PROJECT UPDATE

<https://youtu.be/iToGcxg1Uvw?t=1h44m25s>

Program Manager Nunley presented the project update, including an overview of the program schedule, accomplishments to date, frequently asked questions, and projected phase completion for 2016.

Program Manager Nunley responded to Council inquiries regarding site evaluation, onsite composting, the inclusion of Cayucos, and property negotiations.

V. ADJOURNMENT

The joint meeting of the City Council and Water Reclamation Facility Citizen Advisory Committee was adjourned at 6:02 p.m.

Recorded by:

Brooke Austin
Deputy City Clerk

MINUTES – MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
DECEMBER 8, 2015
CITY HALL CONFERENCE ROOM – 3:00 P.M.

AGENDA NO: A-3

MEETING DATE: January 12, 2016

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

STAFF PRESENT: Dave Buckingham City Manager
Joe Pannone City Attorney
Sam Taylor Deputy City Manager
Susan Slayton Administrative Services Director
Eric Endersby Harbor Director
Scot Graham Community Development Manager

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 3:04 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 comments for items only on the agenda.

Ted Schade, Morro Bay, spoke regarding the vacant lot on Mindoro Street and urged the Council to not allow a home to be built on the small lot.

Cliff Branch, stated he was present to answer any questions the Council may have regarding Lease Site 89/89W; no questions were asked.

The public comment period was closed.

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

CS-1 GOVERNMENT CODE SECTION 54957.6 – CONFERENCE WITH LABOR NEGOTIATORS

Agency Designated Representatives: Susan Slayton, Administrative Services Director and David Buckingham, City Manager

Employee Organizations: Service Employees International Union (SEIU) – Local 620; Morro Bay Police Officers Association; Morro Bay Firefighters Association; Confidential Employees Unit; Management Employees Unit

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

Property: Vacant lot on Mindoro Street (APN 065-113-066)

Property Negotiators: Ted Schade and Lisa Schade; Tobin James Shumrick; Douglas Castro and Lindsie Castro; Noel Rodman

Agency Negotiators: David Buckingham, City Manager

Under Negotiation: Price and Terms of Payment

Property: 781 Market Avenue (APN 066-321-027 and 066-112-007)

Property Negotiators: Ken MacMillan, DiStasio's on the Bay

Agency Negotiators: David Buckingham, City Manager

Under Negotiation: Price and Terms of Payment

Property: Lease Site 89/89W, 845 Embarcadero

Property Negotiators: Cliff Branch

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

Under Negotiation: Price and Terms of Payment

Property: Lease Site 86/86W, 801 Embarcadero, LLC, 801 Embarcadero

Property Negotiators: Burt Caldwell

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

Under Negotiation: Price and Terms of Payment

Property: Lease Site 87-88/87W-88W, B & L Flash, Inc., 833 Embarcadero

Property Negotiators: Vi Leage

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

Under Negotiation: Price and Terms of Payment

Property: Morro Bay State Park Marina, 10 State Park Road

Property Negotiators: California Department of Parks and Recreation

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.

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 – DECEMBER 8, 2015
VETERAN’S MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	John Headding	Councilmember
	Christine Johnson	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
	Janeen Burlingame	Management Analyst
	Scot Graham	Community Development Manager
	Cindy Jacinth	Associate Planner
	Whitney McIlvaine	Contract Planner
	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 6:03 p.m.

MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

Employee Recognition
<https://youtu.be/noe9qt3Pgcc?t=1m23s>

The City Council and staff congratulated Deputy City Manager Sam Taylor on the completion of his Master’s Degree in Public Administration at Kent State University.

CLOSED SESSION REPORT

Mayor Irons 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/noe9qt3Pgcc?t=3m18s>

PUBLIC PRESENTATIONS - NONE

PUBLIC COMMENT

<https://youtu.be/noe9qt3Pgcc?t=19m13s>

Desiree Hatcher of Artisan Soapery located at 845 Embarcadero, Suite E, provided the business spot. They have a variety of unique products, including organic homemade skin care and custom scented products. They also carry items made by other local artists. For more information, please visit their website: www.artisansoapery.com

Walter Heath, Morro Bay resident and Chamber of Commerce Board President, invited the public to attend an open house and mixer, Thursday, December 10th from 5:30 to 7:30pm at the Visitor Center, 695 Harbor. He also congratulated Bonnie Johnson, Brandon Kato, the Bike Park Committee, and Central Coast Concerned Mountain Bikers for their hard work creating a fantastic facility at Main Street near Radcliffe.

Valerie Darnell, South Bay Community Center Manager, announced the Needs 'N Wishes Holiday Fundraiser to be held Saturday, December 12, 2015, at the South Bay Community Center from 10am to 7pm.

Richard Margetson, Needs 'n Wishes Co-Founder, shared the Holiday Fundraiser has raised over \$350k in a 10-year period, with no overhead costs. This year's event will include Operation Santa Claus, Toys for Tots, and various local musicians. All funds raised will benefit the Maxine Lewis Memorial Shelter, Transitional Food and Shelter, and SLO Noor Clinic.

Shawn Ison, Manager of the Prado Day Center and Maxine Lewis Memorial Shelter, commended the community for participating in the Needs 'N Wishes fundraiser, which is very important to the center. She also asked the Council consider designating CDBG funds for the Prado Day Center, noting any money provided goes directly to client services.

Bill Martony, Morro Bay, spoke regarding the WRF project and suggested the Council consider other properties that have come available, such as the Tri-W property or one of the Chevron parcels.

Betty Winholtz, Morro Bay, spoke regarding Item C-1 and requested the Council not contribute to substandard lots. Regarding Item D-1, she urged the Council to pursue Community Choice Aggregation as it will help individuals in the community with their personal finances.

Ken Vesterfelt, Morro Bay, shared a 4-page article in Car Craft Magazine on the Morro Bay Car Show.

Nancy Castle, Morro Bay, announced Thanksgiving Dinner was a success and thanked the many individuals, businesses, and organizations who helped with the event. Over 500 dinners were served. She also noted the numbers attending Monday night meals have doubled.

The public comment period was closed.

A. CONSENT AGENDA
<https://youtu.be/noe9qt3Pgcc?t=40m50s>

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.

The public comment period for the Consent Agenda was opened.

Rosalie Valvo, representing the Morro Coast Audubon Society regarding Item A-14, requested the homeowners' association conform not only to the letter of the law, but also the spirit of the Migratory Bird Act, by removing nests before eggs are laid and asked the Council to amend the contract to include this language.

Betty Winholtz, Morro Bay, regarding Item A-14, disagreed with Ms. Valvo's assessment of the depredation permit noting the permit does not allow killing of birds. She also challenged some of the statements made by the homeowners' association and asked for more documentation and evidence.

William Albrecht, Bayshore Bluffs resident, regarding Item A-14, noted that in accordance with the depredation permit, 49 eggs were removed from nests, put in oil then back into the nest, preventing the eggs from hatching. They do not hurt adult birds and no babies that he knows of were killed.

Janet Gould, Bayshore Bluffs resident, shared the team has worked hard to address the bird population in a humane way; they are not killing any birds, just preventing hatching of young birds. Records from the past five years are available and she urged the Council to continue to allow for protection of the health and safety of Bayshore Bluffs residents.

The public comment period for the Consent Agenda was closed.

Councilmember Johnson pulled Item A-11 to make a brief comment.

Mayor Irons pulled Item A-7 for a brief comment.

Mayor Irons acknowledged redline versions of Items A-9, A-17 and A-18 were provided by staff and available for public review.

MOTION: Councilmember Smukler moved the Council approve Items A-1 through A-6, A-8, A-10, A-12 through A-16, and A-19 of the Consent Agenda; and Items A-9, A-17 and A-18, as amended by staff. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

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

<https://youtu.be/noe9qt3Pgcc?t=52m42s>

Councilmember Johnson noted the City previously had no formal City Manager evaluation process in place. The Council met in Closed Session to review sample policies available through the League of California Cities and examples from other cities to write this policy. She commended her colleagues for their work.

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

<https://youtu.be/noe9qt3Pgcc?t=54m38s>

Regarding Item A-7, Mayor Irons requested the MMRP be revisited in January to see how it ties into the 5-year WRF timeline; Council concurred.

MOTION: Mayor Irons moved the Council approve Items A-7 and A-11 of the Consent Agenda. The motion was seconded by Councilmember Johnson and carried unanimously. 5-0.

A brief recess was taken at 6:58 p.m.; the meeting reconvened at 7:02 p.m.

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)

<https://youtu.be/noe9qt3Pgcc?t=59m58s>

Contract Planner McIlvaine presented the staff report and responded to Council inquiries.

Mayor Irons opened the public hearing.

Linda Stedjee, appellant, stated this appeal is the result of a conflict between public and private property rights. The proposed siting of the house obliterates a current path that provides beach access for north Morro Bay residents and visitors. She requested the Council uphold the appeal and deny the permit at this time and ask applicants to investigate options, including improving the proposed alternative path option, and merging the original lots in the parcel so the house can be relocated away from the path. Ms. Stedjee responded to Council inquiries and noted she is willing to accept an alternative path if it provides equivalent access to the existing path.

Barry Branin, appellant, suggested that site poles be placed on the property to get a better understanding of the proposed project. He provided background information on issues that led to the 1972 ballot initiative, Proposition 22, which passed by over 55% of the votes to protect the natural and scenic resources and the Council has a responsibility to uphold the State Coastal Plan and Local Coastal Plan. The number of beach access points in Morro Bay has been counted, and each one is important and must be maintained. He requested the Council uphold the appeal or postpone a decision until measures discussed have been investigated.

Rachel Kovesdi, Kovesdi Consulting, spoke on behalf of the applicants, who have modified the project based on input from City staff and Planning Commission, Coastal Commission staff, USFWS, CADFW, technical experts, and the public, and the project conforms to all applicable LCP policies and regulations. There are 20 points of public beach access within 1/3 mile of the property, six of those with similar topography within 500 ft. of the property. She asked the Council to deny appeals and affirm Planning Commission approval of the project.

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

Greg Frye, applicant, purchased lot three years ago and has submitted three different house plans in response to concerns from neighbors, City staff and Coastal Commission staff. The intent from the beginning was to align with Coastal Commission and City planners to develop a project that meets their guidelines; the project before you is end result of that work.

Danny Brebes, Morro Bay, stated the trail was used extensively and was a drivable road when he was young. Regarding maintenance, he noted the existing path has migrated and over time the proposed path will push into the spillway below.

Betty Winholtz, Morro Bay, asked if the utilities will be underground and if putting in curb, gutter and sidewalk will prevent public parking on Toro Lane. She feels the City has a responsibility to investigate prescriptive rights, and trail maintenance is a key issue.

Betty Frye, spoke in support of the project.

Marla Jo Bruton-Sadowski, Morro Bay, reiterated the importance of keeping Highway 1 a scenic corridor.

Laura Cogan, Morro Bay, encouraged the Council to approve the project.

Kristen Headland, Morro Bay, urged the Council to uphold appeal as the proposed trail is not comparable to the existing path. She urged the City to require a path wide enough for children, possibly with a guiderail.

Mike Frye, spoke in favor of project, noting the path being constructed is adequate to accommodate continued use. Landscape materials used will root in and grow to minimize soil erosion.

Sara Loven, a neighbor of the Fryes, is certain they will take wonderful care of the property.

The public comment period and public hearing for Item B-1 was closed.

Mayor Irons disclosed he had ex parte communications with Mr. Frye in August of this year, but not since Planning Commission approved the project. Councilmember Makowetski disclosed he had ex parte communications with and met with Mr. Frye at the property.

In response to questions raised during the public comment period, staff confirmed underground utilities are required and the driveway approach will eliminate approximately 16 ft. of parking. Staff also verify trail slope, which is steepest at the beginning of the trail, otherwise mostly level; overall, it is not steeper than portions of the existing trail.

The Council discussed prescriptive rights and maintenance concerns presented by the appellants, as well as the importance of coastal access signage. With regard to maintenance, it was noted the current trail is not being maintained. Mayor Irons presented photographs of various beach access areas near Morro Rock, Cloisters and North Point and noted many trails have been removed to protect sensitive habitat areas. He supported the project in the first iteration, restoring habitat and eliminating public access at this location.

The Council agreed equitable access is important and discussed trail design considerations that would ensure long-term public access at this location. Councilmembers Headding and Johnson noted there were other nearby trails that were more appropriate for those with mobility issues.

City Attorney Pannone advised the Council a prescriptive easement is a court determination and the City Council can direct staff to file a lawsuit to make that determination. The Attorney General or any private individual could also do so. As to maintenance and liability issues, the City is more protected by having a natural trail than having a maintained trail.

The Council asked the applicant to respond to signage, maintenance and trail design concerns. The Applicant was favorable to including beach access signage, and had a similar fear regarding increased liability if asked to maintain the trail. The Council suggested a wider trail to accommodate those with strollers or wagons; both staff and the applicant noted a 3' wide trail may erode much more than 2' or 18" wide trail.

MOTION: Councilmember Smukler moved the Council deny both appeals and uphold Planning Commission approval of CP0-419 and UP0-383, with language added in condition 21 requiring coastal access signage at both ends of the public access trail, and condition 15 be revised to ensure landscaping shall not obstruct access

to trail, and adopt Resolution No. 77-15 with stated modifications. The motion was seconded by Councilmember Heading and carried 4-1, with Mayor Irons voting no.

A brief recess was taken at 9:50 p.m. and the meeting reconvened at 10:00 p.m.

B-2 REVIEW AND ADOPT DRAFT FUNDING RECOMMENDATIONS FOR THE 2016 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY DEVELOPMENT)
<https://youtu.be/HnDhXyXthKI?t=2s>

Associate Planner Jacinth presented the staff report and responded to Council inquiries.

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

Susan Graves, speaking on behalf of CASA San Luis Obispo County, asked the Council to reconsider their request for funding in the amount of \$8,000 and offered additional information to support their application.

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

There was Council consensus in support of staff recommendations, including the multi-year funding opportunity. They deferred discussion of funding for service organizations until the budget process.

MOTION: Mayor Irons moved the Council approve staff recommendations, including the pursuit of an advance of CDBG funds for the 2017-2019 programs, and adopt Resolution No. 75-15. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

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)
<https://youtu.be/HnDhXyXthKI?t=24m23s>

Councilmember Johnson recused herself as the property is near her residence.

City Manager Buckingham presented the staff report and, along with Community Development Manager Graham, responded to Council inquiries.

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

Ted Schade, 182 Mindoro Street, submitted a letter to the City Council providing multiple reasons he believes this small lot is not appropriate for development. The Planning Commission concluded a small home was feasible, but no analysis of lot constraints.

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

The Council considered three of the four offers received (one offer did not meet the City's requirements) and supported staff recommendation.

MOTION: Councilmember Headding moved the Council approve the staff recommendation to accept bid #3 from Douglas and Lindsie Castro in the amount of \$170,000 with a 14-day escrow. The motion was seconded by Mayor Irons and carried 4-0-1 with Councilmember Johnson abstaining.

Mayor Irons requested Item D-2 be heard next; the Council concurred.

D. NEW BUSINESS

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

<https://youtu.be/HnDhXyXthKI?t=39m29s>

Management Analyst Burlingame presented the staff report and responded to Council inquiries.

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

Chuck Stoll, President of Morro Bay Senior Citizens Inc. recognized James Costanzo and Eliane Wilson for their dedication to and assistance with the project. He feels it is a natural fit for Senior Citizens Inc. to provide this service and it will be a great success.

Eliane Wilson, shared they have interested drivers and will work to be sure they fit the profile. Staffing at the Senior Center, along with new volunteers, will receive training to communicate with the public. She reminded the public you do not have to be a senior citizen to volunteer; it's good to have a wide range of ages involved.

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

MOTION: Mayor Irons moved the meeting go past 11pm. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

Councilmember Smukler noted the previous City Council committed seed funds necessary to establish this program which will provide funding for the first two years based on budget estimates. If you're interested in volunteering, please call 772-4421.

MOTION: Councilmember Smukler moved the Council approve the agreement with Morro Bay Senior Citizens Inc. for volunteer senior van services. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

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

<https://youtu.be/HnDhXyXthKI?t=1h2m32s>

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

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

The Council supported staff recommendation to consider prioritization of this item during 2016/17 goal setting process and requested staff contact the County to let them know Morro Bay is interested. Future discussions should include anticipated timing from other cities and counties in the area. A presentation to the Public Works Advisory Board, as time allows, was also discussed.

MOTION: Councilmember Smukler moved the Council support staff recommendation to consider and prioritize this item during the 2016/17 goal setting process, and reach out to San Luis Obispo County to let them know Morro Bay is interested. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

ADJOURNMENT

The meeting adjourned at 11:25 p.m. 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 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson
City Clerk

- Implemented software for the Program Management system.
- Completed preparation of the application for a Clean Water State Revolving Fund (SRF) Planning Loan and uploaded the application package to SWRCB through their FFAST system
- Participated in conference calls and meetings with the Facility Master Plan team and reviewed progress reports. Provided City comments to FMP team on internal draft evaluations of direct potable reuse and organic waste processing opportunities.
- Continued fatal flaw analysis and negotiation with owners of Morro Valley properties
- Reviewed preliminary findings from Morro Valley groundwater evaluation
- Received and reviewed preliminary salinity study findings from Larry Walker & Associates, Inc.
- Developed internal draft of WRF Program website
- Authorized contract for ESA to begin data review and preparation related to CEQA compliance

Findings for Preliminary Morro Valley Groundwater Recharge Evaluation

The Program Manager anticipates forwarding a draft report to the WRFCAC engineering sub-committee by January 12, 2016 for their review. The Program Management Team will then request comments from the sub-committee during the week of January 19, 2016. A full presentation of the report and recommendations for next steps will be included in the agenda of the February 2, 2016 WRFCAC meeting.

Budget and Expenses

The Program Management team is in the implementation process for the new Program Management software and will be transitioning to the software for program budget tracking over the next month. During this transition, the Program Management Team will request review of the proposed budget format by the finance subcommittee. Until this transition is complete, the summary of project expenses to date will be provided in the current format.

Near-Term Schedule

An updated schedule for upcoming meetings and workshops will be provided to the City Council, WRFCAC members, and the general public, prior to the February WRFCAC meeting. The critical path item for this phase of work, the Facility Master Plan, is on schedule for a draft March release.

ATTACHMENTS

1. Summary of Project Expenses and Estimated Costs

Attachment 1

MORRO BAY WRF PROGRAM BUDGET STATUS

As of: 12/22/2015

Budget Item	Contractor/ Agency	Budgeted	Allocated	Spent	Remaining	Percent Complete
SITE ALTERNATIVE ANALYSIS						
Past Costs		\$534,418	\$534,418	\$448,057	\$86,361	100%
PHASE I						
Property Acquisition/ROW Allowance		\$2,400,000				
MacElvaine Property						
Fatal Flaw - Biological Resources	KMA		\$12,835	\$11,240	\$1,595	88%
Fatal Flaw - Geotechnical						
Phase II - Task 5	Fugro		\$26,000		\$26,000	0%
Fatal Flaw - Cultural Resources	Far Western		\$12,000	\$9,979	\$2,021	83%
Property Cost						
Righetti Property						
Survey	Head Surveys		\$15,644		\$15,644	0%
Fatal Flaw - Cultural Resources	Far Western		\$6,485		\$6,485	0%
Fatal Flaw - Biological Resources (in PM budget)	MKN					
Facility Master Plan		\$781,135				
Facility Master Plan	B&V		\$710,123	\$116,384	\$593,739	16%
SUBTOTAL - PHASE I (ROUNDED)		\$3,200,000	\$783,087	\$137,603	\$645,484	
PROGRAM						
2015 - 2017 Program Management		\$2,000,000				
2015 Program Management	MKN		\$920,808	\$78,131	\$842,677	8%
Master Reclamation Plan		\$150,000				
Master Reclamation Plan Development	MKN		\$140,000		\$140,000	0%
Salinity Identification/ Control		\$60,000				
Task 1 Salinity Identification	LWA		\$23,640	\$15,555	\$8,085	66%
Task 2 Salinity Control	LWA		\$22,600		\$22,600	0%
Hydrogeology		\$300,000				
Phase I Investigation	Fugro		\$38,600	\$37,374	\$1,226	97%
Amendment 1 - Phase II Investigation	Fugro		\$24,000		\$24,000	0%
Survey		\$60,000				
Highway 41 and Rancho Colina	Head Surveys		\$45,050	\$41,343	\$3,707	92%
Grant and Loan Funding		\$175,000				
Tracking and SRF Support	Kestrel		\$65,752	\$12,219	\$53,533	19%
Permitting		\$500,000				
CEQA/NEPA Documentation and Consulting	ESA		\$346,578		\$346,578	0%
SUBTOTAL - PROGRAM (ROUNDED)		\$3,300,000	\$1,627,028	\$184,622	\$1,442,406	
PHASE I BUDGET (DESIGN AND CONSTRUCTION) TBD						
PHASE II BUDGET (DESIGN AND CONSTRUCTION) TBD						



AGENDA NO: A-6

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: December 15, 2015

FROM: Susan Slayton, Administrative Services Director/Treasurer

SUBJECT: Approval of 2016 Employee Health Bank Increases

RECOMMENDATION

Staff recommends the City Council approve the 2016 Employee Health Bank increases, as presented. All bargaining units have accepted the increase.

FISCAL IMPACT

Due to CalPERS Health plan rate increases, the total annual increased cost of healthcare for all employees on a City subsidized health plan is \$173,700. Following negotiations with the bargaining units, the City is paying \$93,000 of this increased cost by raising our health bank contributions. City employees will be paying the balance of the increases, \$80,700, out of pocket. The FY 2015/16 portion of the annual \$93,000 City increase is \$46,500. These bank increases go into effect on Jan 1, 2016.

SUMMARY

CalPERS Health rates, for the 2016 calendar year, are provided to the City after the adoption of the fiscal year budget. Annually, staff presents the information to the City Council, and provides remedies. For 2016, the plan (Blue Shield HMO) with the greatest number of participants (nearly 50%) increased by 18.76%; that same plan increased by 22.73% in 2015. In response to this, staff presented a proposed increase to the health banks that provides a percentage of coverage similar to that provided in past years, and splits the impact nearly 50/50.

BACKGROUND

The City has participated in CalPERS health insurance since 1992. This plan has proven to be less expensive than a private plan would be, due to the number of employees to which the City provides insurance (currently 89 employees take our health insurance). CalPERS provides health benefits to about eight million participants (active employees, dependents and retirees), and therefore, has a better opportunity to control costs than would a small agency.

DISCUSSION

Late in June 2015, staff received notice from CalPERS of its meeting to approve the 2016 health rates, which are attached to this report. Health rates for HMOs increased by 18.76%, and increased

Prepared By: SS

Dept Review: _____

City Manager Review: DWB

City Attorney Review: _____

for PPOs by 15.03% (Select) and 6.77% (Choice). Staff presented this to the City Manager, and then City Council, for guidance. Below is the cost impact to the employees, with no bank increase; as a reminder, **all amounts shown are monthly, unless otherwise stated:**

CITY OF MORRO BAY
INCREASE IN HEALTH RATES - COST TO EMPLOYEE BY COVERAGE

	Employee is paying, in 2015, per month		Employee will pay, in 2016, per month		Monthly cost increase to Employee	
	Emp + 1	Emp +2+	Emp + 1	Emp +2+	Emp + 1	Emp +2+
PERSChoice	163.80	365.44	342.42	597.65	178.62	232.21
PERS Select	146.16	342.51	225.40	445.52	79.24	103.01
Blue Shield NetValue	97.18	278.83	307.70	552.51	210.52	273.68

NOTE:

Employee Only is 100% covered with the exception of those participating in PERSCare, who will pay \$46.50 per month, beginning in 2016, to retain that coverage.

In 2014, HMO employees paid \$0 for E+1 coverage, and \$108.64 for E+2+ coverage. In 2015, HMO employees began paying \$97.18 for E+1 coverage, and \$278.83 for E+2+ coverage, after the increase to the banks of \$58 and \$100.

For 2016, HMO participants will pay an additional \$210.52 (for a total out-of-pocket \$307.70) for E+1 coverage, and an additional \$273.68 (for a total out-of-pocket \$552.51) for E+2+ coverage. This prompted staff to bring forward a proposal for health bank increases.

The proposal was to keep coverage percentages as consistent as possible, while still requiring employees to participate in sharing the cost increases of the health insurance. With that in mind, City Manager Dave Buckingham had staff use a formula, based on the average cost of the City's health plan options, throwing out the highest and the lowest cost plans. The table below shows the results of that computation:

CITY OF MORRO BAY

Calculation of change in average plan cost between 2015 and 2016

CALPERS HEALTH PLANS	CALPERS HEALTH PLAN RATES			
	Employee + 1		Employee + 2+	
	2015	2016	2015	2016
Blue Shield - NetValue	\$1,122.18	\$1,250.40	\$1,458.83	\$1,625.52
PERS Select	\$1,171.16	\$1,309.74	\$1,522.51	\$1,702.66
PERSChoice	\$1,188.80	\$1,332.70	\$1,545.44	\$1,732.51
Blue Shield - Access +	\$1,197.32	\$1,367.42	\$1,556.52	\$1,777.65
PORAC (members only)	\$1,292.00	\$1,399.00	\$1,642.00	\$1,789.00
PERSCare	\$1,314.64	\$1,421.58	\$1,709.03	\$1,848.05
Anthem HMO Traditional	\$1,486.24	\$1,523.00	\$1,932.11	\$1,979.90
Average plan cost	\$1,232.78	\$1,366.09	\$1,595.10	\$1,769.97
Percentage of change between plan years	<u>10.81%</u>		<u>10.96%</u>	

Sort = 2015 remove highest & lowest; same for 2016, by category (E+1, E+2+)

Calculation = add plans by year, and divide total by number of plans. Calculate the % of change.

Using 11% as a factor resulted in a cost to the City of approximately \$93,000.

Mr. Buckingham was concerned about the disparate treatment of E+1 and E+2+; greater coverage was provided to E+1. Staff was asked to remain as closely as possible within the \$93,000, while equalizing the impact on the employee populations (E+1 and E+2+). Using Blue Shield Net Value, since it is the plan with the largest employee participants, staff arrived at the following banks that, coincidentally, cost the City exactly \$93,000 when distributed between E+1 and E+2+:

E+1 = \$1,109, an increase of \$84 E+2+ = \$1,326, an increase of \$146

Using these banks results in employee cost increases that differ by \$1.16, as illustrated in the table below:

CITY OF MORRO BAY

Equalizing the impact on E+1 and E+2+ in Blue Shield Net Value Plan

	RATES			NEW BANK	EE PAYS		
	2015	2016			2015	2016	(Increase)
NetValue	\$ 561.09	\$ 666.35	E	\$ 715.00	\$ -	\$ -	\$ -
	\$ 1,122.18	\$ 1,332.70	E+1	\$ 1,109.00	\$ 97.18	\$ 223.70	\$(126.52)
	\$ 1,458.83	\$ 1,732.51	E+2+	\$ 1,326.00	\$ 278.83	\$ 406.51	\$(127.68)

Staff met and conferred with the three represented employee groups: SEIU, POA, and FFA. Also staff met with the Confidential and Management employees on this issue. All have agreed to accept the increase to the banks, as presented.

Employees have the option to switch plans and can save some money in the monthly premium. However, the costs of the PPO generally outweigh the premium cost of the HMO, especially with the increase to the individual/family out-of-pocket limits, which, for 2016 is, \$4,850/\$9,700.

CONCLUSION

Staff is requesting approval of the increase to the 2016 health banks.



AGENDA NO: A-7

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 15, 2015

FROM: Rob Livick, Public Work Director
Brooke Austin, Legal Assistant/Deputy City Clerk

SUBJECT: Resolution No. 01-16 Authorizing the City Manager to Execute an Agreement with the California Department of Corrections and Rehabilitation for Inmate Work Crews

RECOMMENDATION

Staff recommends the Council adopt Resolution No. 01-16 authorizing the City Manager to execute an agreement with the California Department of Corrections and Rehabilitation for inmate work crews.

BACKGROUND

The City has contracted with the California Department of Corrections and Rehabilitation (CDCR) for inmate work crews for the past thirty years. Inmate work crews from the California Men's Colony provide general clean-up, and other activities mutually agreed upon, such as graffiti and litter removal, painting, weed abatement, miscellaneous landscaping work, etc. The City would like to continue that practice and has been offered a two-year agreement for those services. CDCR has implemented a more formal process to secure those services. A standard agreement has been issued to the City, which requires a Council resolution authorizing the City Manager to enter into the agreement.

DISCUSSION

The attached Resolution No. 01-16 has been prepared to authorize execution of the agreement with CDCR for inmate work crews.

CONCLUSION

Staff recommends the Council adopt Resolution No. 01-16.

01181.0001/278698.1

Prepared By: BRA

Dept Review: RL

City Manager Review: _____

City Attorney Review: JWP

RESOLUTION NO. 01-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION FOR INMATE WORK CREWS**

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

WHEREAS, the City of Morro Bay has, for many years, utilized work crews from the California Men’s Colony to provide general clean-up and other activities mutually agreed upon; and

WHEREAS, the City of Morro Bay desires to continue to contract for such services; and

WHEREAS, to continue those services, the City of Morro Bay and the California Department of Corrections and Rehabilitation wish to enter into a new two-year agreement.

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

1. The City Council approves entering into a new two-year agreement (the “Agreement”) effective, July 1, 2015 through June 30, 2017 with the California Department of Corrections and Rehabilitation for Inmate Community Service Work Crews in an annual amount not to exceed the annual allocation of funds approved by the City Council for this activity in each fiscal year during the term of the Agreement.
2. The City Manager, or his or her designee, is authorized to execute the Agreement and any related documents 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 12th day of January, 2016 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

AGENDA NO: A-8

MEETING DATE: January 12, 2016

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING JANUARY 2016 AS
"MORRO BAY WINTER BIRD FESTIVAL MONTH"**

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

WHEREAS, the Morro Bay Winter Bird Festival was created in 1996 as a cooperative effort of the Morro Coast Audubon Society, Central Coast Natural History Association, California State Parks, Morro Bay Chamber of Commerce, City of Morro Bay, and Friends of the Estuary; and

WHEREAS, the mission statement says, "The Winter Bird Festival is a yearly eco-tourism event whose purposes are 1) to promote an understanding and appreciation of birds and other wildlife and an awareness of environmental and conservation issues of the Central Coast and 2) to contribute to the well-being of Morro Bay and our sponsors and assisting community organizations"; and

WHEREAS, Morro Bay is a Globally Important Bird Area located on the Pacific Flyway, and always ranks in the top ten for the Audubon Christmas Bird Count, with over 200 bird species usually sighted during the Festival weekend; and

WHEREAS, the Winter Bird Festival is a non-profit organization, run primarily by local birders and volunteers; and

WHEREAS, the first Winter Bird Festival was held in January 1997, with 24 events and 230 participants, and the 2016 festival offers 136 events to more than 500 participants from all areas of the United States; and

WHEREAS, the January 2016 Winter Bird Festival marks the 20th anniversary of this event.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby proclaim January 2016 as "Morro Bay Winter Bird Festival Month", and urges the citizens of Morro Bay to enjoy the many programs this event offers in our community.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 12th day of January 2016

JAMIE L. IRONS, Mayor



AGENDA NO: B-1

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: December 21, 2015

FROM: Cindy Jacinth, Associate Planner

SUBJECT: Appeal of the Planning Commission Denial of Coastal Development Permit (CP0-410) & Conditional Use Permit (UP0-369) to Construct a 3,386sf Single Family Residence with 520sf Garage and 356 sf of Decking and 236 sf Covered Porch on a Vacant Lot at 289 Main Street. This project is located inside the Coastal Commission appeals jurisdiction (Appellant: John and Alair Hough, Applicants)

RECOMMENDATION

Staff recommends the City Council:

1. Determine the project is categorically exempt under CEQA Guidelines Section 15303, Class 3 as it is the construction of one single-family residence and that none of the Categorical Exemption Exceptions, noted under CEQA Guidelines Section 15300.2, apply to the project.
2. Grant the appeal of the Planning Commission denial and conditionally approve Coastal Development Permit (CP0-410), Conditional Use Permit (UP0-369) and the revised plans dated December 14, 2015 through adoption of City Council Resolution No. 02-16.

ALTERNATIVES

1. Grant the appeal and send the project back to Planning Commission with direction to reconsider the project based on the revised plans.
2. Uphold the appeal, thereby reversing Planning Commission's denial and approving Coastal Development Permit #CP0-410 and Conditional Use Permit #UP0-369.
3. Deny the appeal, upholding the Planning Commission denial.
4. Continue review to a date certain with direction to staff and the applicants.

FISCAL IMPACT

The project is located in the Coastal Appeals Jurisdiction and therefore, there is no fee required to file an appeal for land use decisions. Cost for staff time necessary to evaluate the appeal, prepare the staff report, conduct noticing and attend Council hearing are paid by the City's general fund.

01181.0005/279971.1

Prepared By: CJ

Dept Review: SG

City Manager Review:

City Attorney Review: JWF

SUMMARY

On September 1, 2015, the Planning Commission held a public hearing on the Applicant's request for a coastal development permit and conditional use permit for new construction of a 3,386 square foot single family residence with 503 square foot garage, 356 sf of decking and 236 sf covered porch. After consideration of the item, the Commission continued the hearing to the October 6, 2015 meeting with direction to the Applicant to submit revised plans to reduce the bulk and scale of the home specifically along the west elevation. (Exhibit C).

On October 6, 2015, the Planning Commission reviewed revised plans dated September 23, 2015 as directed and after review and deliberation moved to deny the project based on lack of neighborhood compatibility related to bulk, size and scale.

Appeal: On October 30, 2015, the applicants, John & Alair Hough, filed an appeal of the Planning Commission action. (Exhibits B). The Appellants are requesting that the Council uphold the appeal and approve the coastal development and conditional use permit for 289 Main Street.

John and Alair Hough's appeal states the Planning Commission erred in its findings to deny the project. With multiple attachments, they claim that the Planning Commission used findings that are not applicable to the project and its location.

In summary, the appeal (Exhibit B) states there is a lack of substantial evidence in the record to support the Commission determination to deny the permits and the Commission's findings are vague and overbroad so that any other applicant would have been unable to have a clear understanding of what development standards were applicable.

The basis for appeal relies on what they claim were the Commission's failure to specify which subsection of the Zoning Ordinance they are relying on for their use of the bulk, size scale language. The appeal states the project is not located in a highly scenic area as identified at 17.48.190E which is required to meet additional standards per the Coastal Land Use Plan and therefore bulk height relationship does not apply. They also state that Land Use Element policy LU-15 is aimed at regulating building height, location and mass through its implementation of the zoning ordinance to regulate development standards and that to allow PC to regulate height, location and mass is subjective with no uniform standards.

Staff Response: The Applicant's project did meet the minimum zoning development standards for the R-1 zoning district. However, as a project located within the Planned Development Overlay zone, it is the function of the Planning Commission to review the project to a higher standard of review as stated at MBMC 17.40.030. The purpose of the PD overlay zone is to provide for detailed and substantial analysis of development on parcels which, because of location in this case, warrant special review. In addition, the City Council's 2015 adoption of Residential Design Guidelines were intended to implement policies in the City's General Plan regarding neighborhood compatibility. The Planning Commission found the project to be inconsistent with the guidelines specifically in terms of visual incompatibility for bulk, size and scale as identified in Zoning Ordinance Section 17.48.190, Land Use Element Policy LU-15, and Coastal Land Use Plan (LCP) Policy 12.02.

BACKGROUND

After the first Planning Commission meeting of September 1, 2015, the after action letter (Ex. B of PC staff report) sent to the Applicant requested revisions to the plans as follows: 1. Calculate actual lot coverage which includes all structures on the property; 2. Revise plan title sheet to correct square footage to include basement area; 3. The rear deck along the south to be shortened along with a revised design which reduces the scale/mass along the west elevation which faces the Tidelands parking lot.

The Applicant submitted revised plans along with a justification/explanation letter dated September 24, 2015. The revised plans and letter responded to the PC's request noting that lot coverage calculations and title sheet data had been corrected. In addition, the proposed deck on the southern and western elevations was significantly reduced from one large 822 sq deck to two smaller decks, one at 226 sf off the living room on the west and a smaller deck of 93 sf off the master bedroom with a set of stairs for access.

Although revisions were made to the decking, the Applicant at that time made no attempts to reduce the bulk and scale of the home along the west elevation, but rather provided a justification as to why the home could not be further modified mostly based on slope topography and accessibility. The letter explained why roofline could not be redesigned and why the home could not be stepped due to slope issues as well as the Applicant's desire to maintain a primarily single level home for livability reasons as opposed to a split level home. The letter also explains the intent behind the architectural design and articulation.

At the October 6, 2015 Planning Commission meeting, the Planning Commission reviewed these revised plans and expressed concerns regarding lack of neighborhood compatibility with surrounding homes. During their deliberation, they expressed concerns that the home, despite revisions to the deck, still gave the appearance of being very massive with concern for the view from Tidelands parking lot. Ultimately, the Planning Commission voted to deny the project. On October 20, 2015, the Planning Commission voted to adopt Resolution 40-15 (Exhibit D) which incorporated the findings for denial based on lack of visually compatible with the character of the surrounding neighborhood in terms of bulk, size, and scale.

PROJECT CHANGES

Since the October 20, 2015 Planning Commission meeting, staff has reached out to the Applicant in order to provide additional clarification regarding the Planning Commission's direction. After meeting with the Applicant and their representatives, the Applicant has submitted plans (Exhibit G) that have been revised in a number of areas with the goal to reduce the bulk, size and scale of the home as directed by Planning Commission.

The list of changes shown on the plans and summarized below by the Applicant are (Exhibit I):

1. Original deck was 822 continuous square feet. Deck was reduced by 505 square feet, or a 61% reduction, and divided into two parts for visual separation with a new total of 319 sf. (Plans shows 356 square feet).
2. Changed cable stair railing off both decks to a stepped stair railing to break up vertical mass at West and South elevation.
3. Changed gable roofline at North end of upper floor to a shed type roofline to open up view corridor from Main Street.
4. Changed upstairs bedroom into an office by eliminating the closet, reducing the square footage by 45 feet. Also turned ridgeline East to West to run perpendicular to bay to increase view of bay from Main Street.

5. Changed lower siding on three elevations (West, South and North) from shingle to board and batt to reduce the appearance of vertical mass.
6. Changed the gable on the roof over the covered deck at West elevation making it essentially a flat roof to further reduce the appearance of vertical mass from the tidelands area.
7. Removed the West and South walls of covered deck area to reduce feeling of bulk thus creating an open air feeling and further reducing visual mass. Deck roof will be supported by spaced 6X6 posts.
8. Leave in place existing mature landscaping at West side of the project to assist in screening the property from parking lot.
9. Use a darker gray for color palette to further reduce perception of bulk and mass.

With the above changes to the project, the project description is proposed to now include a 3,341 sf home with 520 sf garage and 356 sf of decking and 236 sf covered porch. This represents a 45sf reduction in square footage resulting from the reduction on the second floor bedroom.

<u>Single Family Residential Zoning Ordinance Standards</u>			
	Standards	Original	Revised
Front Yard Setback	20 feet, including garage	20 feet	no change to base zoning standards – changes incorporated are reductions in bulk, scale and articulation to west elevation along with revised visual simulations.
Interior Yard Setback	10% of average width of lot with 10 foot maximum and 5 foot minimum	5 feet on north side 34 feet 2 inches on south side	
Exterior Yard Setback	20% of average width of lot with 10 foot maximum and 5 foot minimum	n/a	
Rear Yard Setback	10% depth	55 feet at closest point to house	
Lot Coverage	45% allowed	33.9%	
Height	25 feet	23.45 feet	
Parking	2 covered and enclosed spaces	2 covered and enclosed spaces plus 1 additional uncovered space	



In addition, it was noted during plan revisions that the visual simulations presented in the Planning Commission packet may not have accurately reflected the proposed home when viewed from Tideland's parking lot. The vegetation landscaping shown in the foreground was shown as trimmed with new smaller landscaping, when in fact a prominent bush near the southwest corner of the home along with small trees are proposed to remain which would help to blend the home into its surroundings and also break up the massing of the west elevation. Accordingly, revised simulations have been prepared which show both landscaping correctly, and also depict the revised changes (Exhibit H). The Applicant intends to maintain the mature landscaping and staff recommends that maintenance of this mature landscaping be an additional condition of approval of coastal development permit and conditional use permit.

ANALYSIS:

Staff, in evaluating the proposed architectural changes, finds that the revised design of the home now breaks up the vertical massing (bulk, size and scale) that was previously evident on the west elevation. The change in gable roofline, stepped stair railing at both decks, reduction of square footage on the upstairs bedroom, change in lower siding from shingle to board and batt aim to reduce the appearance of vertical mass and scale.

As a result of the revised plans, staff's evaluation has determined that the project as revised can be found to be consistent with the City's General Plan/ Local Coastal Plan and Zoning Ordinance. The original project as reviewed by Planning Commission and presented at the October 6, 2015 meeting did not meet the City's General Plan policies for neighborhood compatibility as specified in the Residential Design Guidelines. Therefore, staff's recommendation is that the Council approve the appeal as filed with the City on October 30, 2015 and review and conditionally approve revised plans dated December 14, 2015.

Alternative recommendation #1 for the Council to consider is to approve the appeal and remand the project back to Planning Commission for review of the revised plans. However, at both the September 1, 2015 and October 6, 2015 meetings, public testimony included public opposition to the project. This testimony focused primarily on lack of neighborhood compatibility. Given the project's history as well

as a 2012 Coastal Commission appeal that was filed on a neighboring house proposed by the same applicant, staff understands there is a high likelihood that should the Council remand the matter back to the Planning Commission, that the PC's decision could likely be appealed again and end up back before the Council for review. In the interest of resolving the project's permit application status, staff is not recommending this option #1. It is fully within the Council's authority to either approve or deny the project.

CONCLUSION

In meetings with the applicant and their representatives, since the Planning Commission's vote to deny the project, much progress has been made in revising the design to more closely address the Planning Commission's concerns. The revised plans attempt to reduce the bulk and scale of the home through a number of ways such as the changed gable roofline, the gable on the roof over the covered deck, the change in lower siding on the west, south and north elevations to reduce appearance of vertical mass. In addition, the project has also been design to meet bluff development standards as specified in Title 17.45 of the Morro Bay Municipal Code. As revised, staff's evaluation of the project is that the numerous changes can be deemed to fulfill the direction of the Planning Commission to reduce the bulk and scale of the home, specifically along the west side elevation and more specifically as view from the Tideland Parking lot. As revised, the project can be found to be consistent with the Coastal Act and the City's Local Coastal Plan and Zoning Ordinance.

EXHIBITS:

Exhibit A - City Council Resolution #02-16

Exhibit B - Appeal filed by John & Alair Hough received October 30, 2015

Exhibit C - After Action Letter to Applicant dated September 10, 2015

Exhibit D - Planning Commission Resolution 40-15 denying CP0-410 and UP0-369

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

Exhibit F - Minutes of the September 1, 2015 Planning Commission meeting

Exhibit G - Revised plans dated December 14, 2015

Exhibit H - Revised Visual Simulations received December 16, 2015

Exhibit I - Applicant's List of Architectural Changes received December 11, 2015

Full-size plans are included in Council member packets.

ONLINE LINK:

1. Complete Staff Report and Attachments for 9-1-15 Planning Commission meeting
<http://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2593>
2. Complete Staff Report and Attachments for 10-6-15 Planning Commission meeting
<http://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2595>

RESOLUTION NO. 02-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE APPEAL OF THE PLANNING COMMISSION
WHICH DENIED COASTAL DEVELOPMENT PERMIT (CP0-410)
AND CONDITIONAL USE PERMIT (UP0-369) AND APPROVING
REVISED PLANS DATED DECEMBER 14, 2015 TO ALLOW
CONSTRUCTION OF A NEW 3,341 SQUARE FOOT SINGLE-
FAMILY RESIDENCE WITH 356 SQUARE FOOT OF DECKING, 236
SQUARE FOOT COVERED PORCH AND 520 SQUARE FOOT
GARAGE AT 289 MAIN STREET**

**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 September 1, 2015 and October 6, 2015, for the purpose of considering Coastal Development Permit (CP0-410) and Conditional Use Permit (UP0-369) (“the Project”); and

WHEREAS, on October 20, 2015, the Planning Commission of the City of Morro Bay adopted Resolution 40-15 to deny Coastal Development Permit (CP0-410) and Conditional Use Permit (UP0-369) based on lack of neighborhood compatibility related to bulk, size, and scale; and

WHEREAS, on October 30, 2015, an appeal of the Planning Commission action to deny the project was filed with the City of Morro Bay by the Applicants, John and Alair Hough, specifically requesting the City Council overturn the Planning Commission’s denial and approve the project; and

WHEREAS, on December 14, 2015, the City of Morro Bay received revised plans by the Applicant with architectural changes intended to reduce the bulk, size and scale of the project; and

WHEREAS, the City Council conducted a public hearing at the Morro Bay Veteran’s Hall, 209 Surf Street, Morro Bay, California, on January 12, 2016, to consider an appeal of the Planning Commission’s denial of the project, located in an area within the appeals jurisdiction of the California Coastal Commission; and

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

WHEREAS, the City Council has duly considered all evidence, including the recommendations made by the Planning Commission, the testimony of the applicant, the

applicant's revised plans and revised visual simulations, interested parties, and the evaluation and recommendations by staff, presented at said 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 written and oral testimony and evidence presented to the Council at and for the above public hearing, the City Council makes the following findings:

California Environmental Quality Act (CEQA)

A. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15303, Class 3 for construction of one single-family residence. Additionally, none of the Categorical Exemption Exceptions, noted under Section 15300.2, apply to the project.

Coastal Development Permit Findings

- A. The project as revised is consistent with the applicable provisions of the certified Local Coastal Plan. The revised architectural changes reduce the bulk, size and scale of the home make it visually compatible with the surrounding area. The Local Coastal Plan is consistent with the General Plan and the project meets minimum density requirements and therefore meets the LCP.
- B. For every development between the nearest public road and the sea or the shoreline of any body of water, the Planning Commission shall make a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. *The property is located to the east of Tideland Park which provides public access to the water.*

Conditional Use Permit Findings

- A. The project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that the proposed single-family residence is a permitted use within the zoning district applicable to the project site and said structure complies with all applicable project conditions and City regulations.
- B. The project will not be injurious or detrimental to property and improvements in the neighborhood because the use is designed to be consistent with the City regulations applicable to this development. Also, because the use as revised with architectural changes to reduce to the bulk, size and scale and as shown in presented visual

simulations noted in the staff report denote the project will be visually compatible with surrounding property and improvement in the neighborhood.

- C. The project will not be injurious or detrimental to the general welfare of the City because the single-family residence is a permitted use within the zone district and plan designation applicable to the site and said use is designed to be accordance with all applicable project conditions and City regulations.

MIXED USE AREA B FINDINGS

- A. That any new residential development shall be of a density and design which minimizes potential exposure to and would not unreasonably restrict water- oriented commercial activities. *The project is located on an existing residential lot that was previously subdivided and meets the minimum density. The project will not have a negative effect on water-oriented commercial activities because the property does not provide access to the water and is adjacent to Tidelands Park which provides water access.*
- B. That any new use shall not generate significant traffic/circulation impacts and shall include adequate parking, loading and access (turning and driveway) facilities. *The project is on a lot that meets minimum density with a private access easement off Main Street. Main Street can accommodate the traffic that will result from the development of one-single family residence.*
- C. That any new use shall not result in any harmful (e.g. toxic waste) discharge into the bay. *The single family residence will not discharge any harmful waste from the site nor will the bay be affected.*

MAJOR VEGETATION FINDINGS

1. That the major vegetation removal, as mitigated, will not significantly impact any threatened or endangered plant or animal habitat area;
2. That reasonably calculated mitigation measures are in place to avoid dangerous soil erosion or instability resulting from the removal;
3. That the Major Vegetation removal will not adversely affect the character of the surrounding neighborhood because it is necessary for the development of the lot.

Section 2. Action. The City Council does hereby approve the appeal filed on October 30, 2015 and approve Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369 for property located at 289 Main Street subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated December 21, 2015 for the project at 289 Main Street depicted on plans dated December 14, 2015, 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 "CDM"), 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 CDM, 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 applicants 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 Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the 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.

PUBLIC WORKS CONDITIONS:

The Applicant show the following items on the plans submitted for a Building Permit:

1. 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.
2. Include the locations of all proposed utilities, gas, sewer, water etc. Indicate on the plans the location of the lateral and if the sewer lateral is proposed or existing. If the existing sewer lateral is going to be used the following must be completed prior to building permit issuance.
 - a. 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)

Add the following Notes to the Plans:

- c. 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.

FIRE CONDITIONS:

1. The plan depicts a 10 ft. by 23 ft. emergency vehicle overhang space, adjacent to the apparatus turnaround and fronting the garage. This space shall not be obstructed in any manner, including the parking of vehicles (CFC 503.4).

PLANNING CONDITIONS:

1. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
2. 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.
3. 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.
4. 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.
5. Architecture: Building color and materials shall be as described in the staff report dated December 21, 2015 and as shown on plans approved by the City Council and specifically called out on the plans submitted for a Building Permit to the satisfaction of the Community Development Manager.
6. 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 with the request for foundation inspection.

7. 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 and complies with the maximum height requirements of 14 for flat roofs or 17 feet (for 4 in 12 or greater pitch), maximum above the average natural grade of the building footprint.
8. Landscaping: Plans shall be revised prior to building permit issuance to be consistent with the revised architectural site plan as shown on plans dated December 14, 2015. In addition, prior to building permit issuance, revised plans shall be submitted to include an irrigation water management plan consistent with the conceptual landscaping plan and approved as part of this planning permit (CP0-410 & UP0-369).
9. Applicant shall maintain existing mature landscaping as shown in the visual simulations received by the City on December 16, 2015 and as presented in the staff report dated December 21, 2015.
10. Lighting: Prior to issuance of a building permit, exterior lighting shall be in substantial compliance with fixture cut sheets submitted with project plans dated June 30, 2015.
11. Inspection: The applicant shall comply with all Planning conditions listed above and obtain a final inspection from the Planning Division at the necessary time in order to ensure all conditions have been met.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 12th day of January, 2016 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

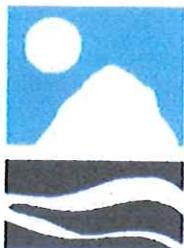
JAMIE L. IRONS, Mayor

ATTEST

DANA SWANSON, City Clerk

RECEIVED
City of Morro Bay

OCT 30 2015



CITY OF MORRO BAY

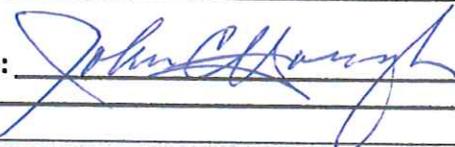
Public Services Department
Planning Division

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: 289 Main Street	
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 by the Planning Commission to deny the project as per resolution # PC 40-15	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369	
Date decision or action rendered: October 20, 2015	
Grounds for the appeal (attach additional sheets as necessary): See attached sheets	
Requested relief or action: Uphold appeal and approve Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369 as proposed.	
Appellant (please print): John & Alair Hough	Phone: (805) 772-2197
Address: 281 Main Street, Morro Bay, Ca 93442	
Appellant Signature: 	Date: Oct. 27, 2015

FOR OFFICE USE ONLY

Accepted by:	Date appeal filed:
Appeal body:	Date of appeal hearing:

GLICK & HAUPT LLP

ATTORNEYS AT LAW

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October 29, 2015

Via Hand Delivery

Morro Bay City Council
c/o Morro Bay City Clerk
595 Harbor St,
Morro Bay, CA 93442

**RE: Appeal of Planning Commission Denial of Coastal Development Permit
CPO-410 and Conditional Use Permit UPO-369 – For Property Located at
289 Main Street.**

Dear Morro Bay City Council Members:

On behalf of Mr. and Mrs. Hough (collectively, “Appellant”) we are appealing the above referenced Planning Commission (“Commission”) decision. A true and correct copy of Resolution No. PC 40-15 is attached hereto as Exhibit A. This letter will serve as Appellant’s grounds for appeal as set forth below.

Decisions Being Appealed

The Commission has denied the Coastal Development Permit and the Conditional Use Permit based on several Findings. The Appellant is appealing the Commission’s decision as it relates to all of the Commission’s Findings. On behalf of the Appellant, we intend to demonstrate that the Commission erred in making its Findings and not approving the Project.

Coastal Development Permit Findings for Denial

I. Per Resolution No. PC 40-15 the Commission made the following findings with respect to denial of the Coastal Development Permit:

A. Finding “A”

The project, as proposed, is not in conformance with the General Plan and Local Coastal Program because it is not consistent with the Zoning Ordinance Section 17.48.190 which implements the General Plan and is part of the Local Coastal Program. Specifically, the project, as proposed, is not visually compatible with the character of the surrounding neighborhood in terms of bulk, size, and scale.

B. Finding "B"

The project is not consistent with the Land Use Element Policy LU-15 which states, "The present human scale and leisurely, low-intensity appearance of Morro Bay should be maintained through careful regulation of building height, location and mass."

C. Finding "C"

The project is not consistent with the Coastal Land Use Plan Policy 12.02 which states that permitted development shall be sited and designed to be visually compatible with the surrounding areas. Policy 12.02 includes criteria for architectural review which requires application of building height/bulk relationship to be compatible with existing surrounding uses.

II. Appellant's Basis for Appeal:

A. Appellant's Response to Commission's Finding "A"

Although the Commission has failed to specify which subsection of Zoning Ordinance Section 17.48.190 they are relying on, from their use of the "bulk, size and scale" language, it appears they are relying on 17.48.190(E). Zoning Ordinance Section 17.48.190(E) provides that new development in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, must meet additional standards such as having a height/bulk relationship that is compatible with the surrounding area. A true and a correct copy of Zoning Ordinance Section 17.48.190 is attached hereto as Exhibit B.

The fallacy in the Commission's finding is that the Project at issue is not in a highly scenic area as depicted in the Morro Bay coastal land use plan/coastal element. Therefore, the additional standards such as height/bulk, which the Commission has based its finding on, do not apply to this Project. Figures 30 and 31 attached hereto as Exhibit C show the location of scenic views and identify areas of visual significance as identified by the City of Morro Bay Coastal Land Use Plan. Additionally, the Planning Commission Staff Report confirms that the Project is

not located in the LCP's designated highly scenic area. See Staff Report at page 7-8 attached hereto as Exhibit D.

The Project, located at 289 Main Street, is not inconsistent with the provisions of section 17.480.190 because it is not located in a highly scenic area and the height/bulk relationship standard does not apply to this project.

A. Appellant's Response to Commission's Finding "B"

Land Use Element Policy LU-15 must be read as a whole, not in a piecemeal fashion.

Policy LU-15.1 provides the following and is attached hereto as Exhibit E:

The Zoning Ordinance should encourage flexibility in the application of its development standards related to height, setbacks, and building coverage. In order that all of these development characteristics work together, rigid enforcement of any one or all of them can result in unimaginative development.

Policy LU- 15.2 provides the following and is attached hereto as Exhibit E:

Zoning requirements should encourage variations in architecture.

When read as a whole, Policy LU-15 is clearly aimed at regulating building height, location and mass through its implementation of zoning ordinances to regulate development standards. Here, the Project meets all zoning ordinance requirements pertaining to building height, setbacks, and lot coverage. At the Commission Hearing on 10/6/2015, Associate Planner Cindy Jacinth indicated on the record that the Project does meet general plan/LCP and zoning ordinance requirements for new construction of a single family home. (See Hearing Recording at 1:36:00).

Land Use Policy 15 states "the present human scale and leisurely, low-intensity appearance of Morro Bay should be maintained through careful regulation of building height, location, and mass." However, building height, location, and mass of residential development is regulated by Single Family Residential Zoning Ordinance Standards. As proposed, the Project meets or exceeds all ordinance standards, including the required setbacks, lot coverage, height, and parking standards. (See Exhibit D at page 5). The Project is consistent with Policy LU-15 because LU-15 is aimed at implementing height, location and mass standards through *regulations*. If LU-15 was read otherwise, LU-15 would be read to confer power to the

Commission to regulate the height, location and mass of any building or residence based on their preferences and views alone.

“...[A]n ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases” and an ordinance will be found invalid “where it leaves its interpretation, administration or enforcement to the ungoverned discretion of the administrative agency. “ *Redwood City Co. of Jehovah's Witnesses v. City of Menlo Park*, 167 Cal. App. 2d 686, 697-98 (1959). Turning to Policy LU-15, every person likely has a different view of what represents “the present human scale and leisurely, low-intensity appearance of Morro Bay”. This is clearly a subjective standard that cannot be implemented without the unfettered discretion of the Commission. The Commission’s application of LU-15 to this Project without reference to the applicable zoning ordinances is inconsistent with the provisions and purposes of the Coastal Land Use Element. Moreover, when read in isolation, as stated in the Commission’s Findings, “the present human scale and leisurely, low-intensity appearance of Morro Bay”, would arguably leave that policy to be interpreted by the ungoverned discretion of the Commission. This would lead to non-uniformity in the administration and enforcement of LU-15 in different cases. It would be impossible for any property owner to design and build a structure that meets these standards the Commission has cited to without looking to the applicable zoning ordinances.

B. Appellant’s Response to Commission’s Finding “C”

Coastal Land Use Plan Policy 12.02 indicates that “Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas [sic] shall be visually compatible with surrounding areas.” A true and correct copy of Coastal Land Use Plan Policy 12.02 is attached hereto as Exhibit E. Once again, the Commission relies on the “application of building height/bulk relationship to be compatible with existing surrounding uses” provision that does not apply to this Project. The specific design criteria the Commission cites to, namely the building height/bulk relationship, is a specific requirement that is established for the following areas only: *The Embarcadero and the Downtown Commercial Area*. The proposed Project is clearly in neither of those areas. (See Exhibit C Figure 31). The Commission’s reliance on Coastal Land Use Plan Policy 12.02 and its application of the building height/bulk relationship was clearly erroneous as this criterion only applies to proposed Projects

located in The Embarcadero and Downtown Commercial Area. Therefore the Commission's finding is clearly inconsistent with the provisions and purposes of Land Use Policy 12.02 and the application of the bulk/height relationship indicated in Policy 12.02 to this project is inappropriate.

Conditional Use Permit Findings for Denial

I. Per Resolution No. PC 40-15 the Commission made the following findings with respect to denial of the Conditional Use Permit:

A. Finding "A"

The project will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that the proposed single family residence is not visually compatible with the existing surrounding uses and through its proposed design is not compatible with the surrounding neighborhood in terms of bulk, size, and scale.

B. Finding "B"

The project will be injurious or detrimental to property and improvements in the neighborhood because the home as proposed is not compatible with the surround neighborhood in terms of bulk, size, and scale as demonstrated through the revised plans submitted to the City dated September 23, 2015.

C. Finding "C"

The project will be injurious or detrimental to the general welfare of the City because the single-family residence as proposed is not visually compatible with the surrounding neighborhood in terms of bulk, size and scale.

II. Appellant's Basis for Appeal:

A. Appellant's Response to Commission's Findings "A", "B", and "C"

Although the Commission has stated three separate findings to support its denial of the Conditional Use Permit, the Commission's denial of the Project is based only on one codified issue - compatibility with the existing surrounding uses/neighborhood in terms of bulk, size, and scale. The Commission fails to cite to *any* provisions of the General Plan, Local Coastal Plan, or applicable Zoning Ordinances to support their denial of UPO-369, and how these provisions provide the Commission's Finding that Project will be detrimental to the general welfare of the City and its residents.

Why the Planning Commission Erred or Abused its Discretion

1) There is a Lack of Substantial Evidence in the Record to Support the Commission's Determination to Deny CPO-410 and UPC-369.

Findings must be made by a quasi-judicial body of part of its determination whether to deny or grant a CUP. *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1244 (2000). "Such findings must be supported by substantial evidence in light of the entire record." *Id.* Courts reviewing adjudicatory planning actions look to the administrative record to determine whether the agency's decision is both supported by substantial evidence and whether the agency's findings support the decision made. *Id.* When reviewing an administrative decision, courts will "scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 514 (1974).

The Commission made a blanket finding that the home as proposed "is not compatible with the surround [sic] neighborhood in terms of bulk, size, and scale..." However, there is no indication that the Commission looked to the immediate neighborhood (300 foot radius per the Design Guidelines) when determining the proportional relationship of the Project to objects/structures next to it. (See the Morro Bay Design Guidelines attached hereto as Exhibit F.) There is simply no evidence in the record to establish that the Project as designed is incompatible with the surrounding neighborhood in terms of bulk, size, and scale. Instead, the Commission relied on their personal preferences to determine that the Project is incompatible. Commissioner Sadowski commented on the project at the October 6, 2015 and summed up his position of the proposed Project as he "feels that this could be done better". This statement embodies the overall feedback and comments the Appellants received from the Commission about their project.

2) The Commission's Findings are Vague and Overbroad

The basis of the Commission's finding that the Project will be injurious and detrimental to the health, safety, morals, comfort and general welfare because the home as proposed is not compatible with the surrounding neighborhood in terms of bulk and size. Of particular concern is the fact that the Commission bootstrapped broad policy language for the entire City as the basis for its finding while totally ignoring the development standards for the zoning district where the

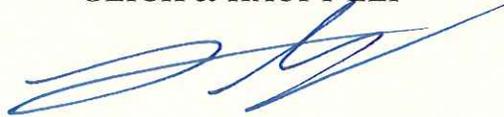
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Appellant's project is located. The Project as proposed is a permitted use within the zoning district applicable to the Project site and the residence complies with the Municipal Code for development standards. Moreover, the Project as proposed is consistent with the General Plan and Local Coastal Plan. See Exhibit D at pg. 9. The Findings approved by the Commission are so vague and overbroad that neither Appellant, nor any other applicant would have a clear understanding of what development standards were applicable.

Conclusion

The Appellant respectfully requests that the City council overturn the decision of the Planning Commission and approve the Coastal Development Permit and the Conditional Use Permit.

Respectfully,
GLICK & HAUPT LLP

A handwritten signature in blue ink, appearing to read 'Fred K. Glick', is written over the printed name.

Fred K. Glick



CITY OF MORRO BAY
COMMUNITY DEVELOPMENT DEPARTMENT
955 Shasta Avenue
Morro Bay, CA 93442

October 23, 2015

Cathy Novak
Cathy Novak Consulting
PO Box 296
Morro Bay, CA 93443

RE: 289 Main Street,, Morro Bay, CA -- #CP0-410 and UP0-369

Dear Ms. Novak,

On October 20, 2015, the Planning Commission denied the above referenced Coastal Development Permit and Conditional Use Permit. Attached is adopted Resolution 40-15.

The Morro Bay Municipal Code provides for an appeal of the action by the Planning Commission within ten (10) days of adoption and anyone wishing to appeal may do so in writing by delivering such letter to the office of the City Clerk. There is no fee for processing appeals which are within the Coastal Appeals Jurisdiction.

Please contact me if you have any questions at 805-772-6577.

Sincerely,

A handwritten signature in blue ink that reads "C Jacinth". The signature is written in a cursive, flowing style.

Cindy Jacinth
Associate Planner

RESOLUTION NO. PC 40-15

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION DENYING COASTAL DEVELOPMENT PERMIT (CP0-410) AND CONDITIONAL USE PERMIT (UP0-369) FOR CONSTRUCTION OF A NEW 3,386 SQUARE FOOT SINGLE-FAMILY RESIDENCE WITH 520 SQUARE FOOT GARAGE, and 356 SQUARE FEET OF DECKING AND 236 SQUARE FOOT COVERED PORCH ON A VACANT LOT AT 289 MAIN STREET

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 September 1, 2015, for the purpose of considering Coastal Development Permit (CP0-410) and Conditional Use Permit (UP0-369) for construction of a new 3,386 square foot single-family residence with 520 square foot garage on a vacant lot at 289 Main Street and continued the hearing to the October 6, 2015 Planning Commission meeting; and

WHEREAS, Planning Commission meeting at its September 1, 2015 meeting directed the Applicant to submit revised plans which accurately calculate lot coverage excluding that portion of the property dedicated to the common driveway; correct square footage of home to include the lower story basement square footage in the total size of the proposed home; and revise plans to show a shortened/reduced deck along the south elevation which also reduces scale/mass along the west elevation which faces the Tidelands Parking lot.

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 (CP0-410) and Conditional Use Permit (UP0-369) for construction of a new 3,386 square foot single-family residence with 520 square foot garage and 356 sf of decking and 236 sf covered porch on a vacant lot at 289 Main Street with revised plans submitted; 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, whether written or oral, including without limitation, the testimony of the applicant, interested parties, consultants, City staff and all written and oral evaluations and recommendations by staff, presented at the September 1, 2015 and October 6, 2015 hearings.

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) FINDINGS

- A. Pursuant to the California Environmental Quality Act Guidelines Section 15270, CEQA does not apply to projects that are disapproved or denied by the approval body.

COASTAL DEVELOPMENT PERMIT FINDINGS FOR DENIAL

- A. The project, as proposed, is not in conformance with the General Plan and Local Coastal Program because it is not consistent with the Zoning Ordinance Section 17.48.190 which implements the General Plan and is part of the Local Coastal Program. Specifically, the project, as proposed, is not visually compatible with the character of the surrounding neighborhood in terms of bulk, size, and scale.
- B. The project is not consistent with the Land Use Element Policy LU-15 which states, "The present human scale and leisurely, low-intensity appearance of Morro Bay should be maintained through careful regulation of building height, location and mass."
- C. The project is not consistent with the Coastal Land Use Plan Policy 12.02 which states that permitted development shall be sited and designed to be visually compatible with the surrounding areas. Policy 12.02 includes criteria for architectural review which requires application of building height/bulk relationship to be compatible with existing surrounding uses.

CONDITIONAL USE PERMIT FINDINGS

- A. The project will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that the proposed single-family residence is not visually compatible with the existing surrounding uses and through its proposed design is not compatible with the surrounding neighborhood in terms of bulk, size, and scale.
- B. The project will be injurious or detrimental to property and improvements in the neighborhood because the home as proposed is not compatible with the surrounding neighborhood in terms of bulk, size, and scale as demonstrated through the revised plans submitted to the City dated September 23, 2015
- C. The project will be injurious or detrimental to the general welfare of the City because the single-family residence as proposed is not visually compatible with the surrounding neighborhood in terms of bulk, size and scale.

Section 2. Action. The Planning Commission does hereby deny Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369 for property located at 289 Main Street.

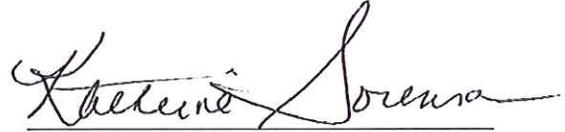
PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 20th day of October, 2015 on the following vote:

AYES: Sorenson, Luhr, Sadowski, Lucas

NOES:

ABSENT:

ABSTAIN: Tefft



Vice Chairperson Katherine Sorenson

ATTEST



Scot Graham, Community Development Manager

The foregoing resolution was passed and adopted this 20th day of October, 2015.

17.48.190 - Protection of visual resources and compatible design.

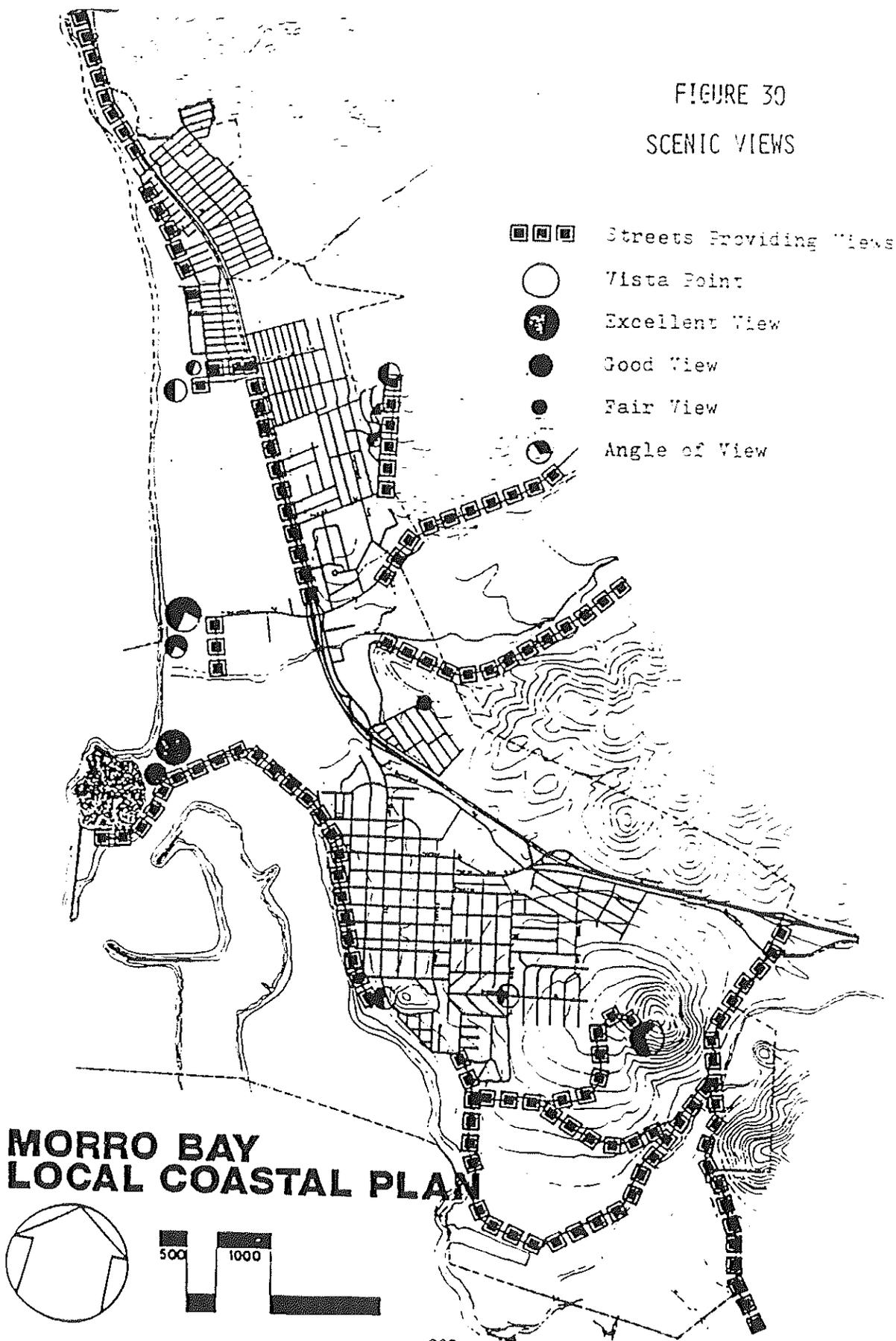
New development shall project and, where feasible, enhance the visual quality of the surrounding area. New development may be permitted only if the siting and design meet the following standards:

- A. Protection of public views: significant public views to and along the coast are protected.
- B. Natural landform protection: alterations to natural landforms are minimized.
- C. Compatibility: the development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the city.
- D. Visual quality: restores and enhances visual quality in visually degraded areas.
- E. Scenic area standards: in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, the following additional standards shall also apply:
 - 1. Character: the proposed development shall be subordinate in character to its surroundings.
 - 2. Height/bulk: the height/bulk relationships in the development shall be compatible with the surrounding area.
 - 3. Parks or open space: parks or open space shall be designated and incorporated into new developments.
 - 4. View corridors: view corridors shall be incorporated into the development to protect significant public views to and along the shoreline and other scenic areas.
 - 5. Landscaping: landscaping shall be provided to restore and enhance visually degraded areas using native, if feasible, and drought-resistant plant and tree species.
 - 6. Preservation and enhancement: preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock.

(Ord. 445 § 3 (part), 1995)

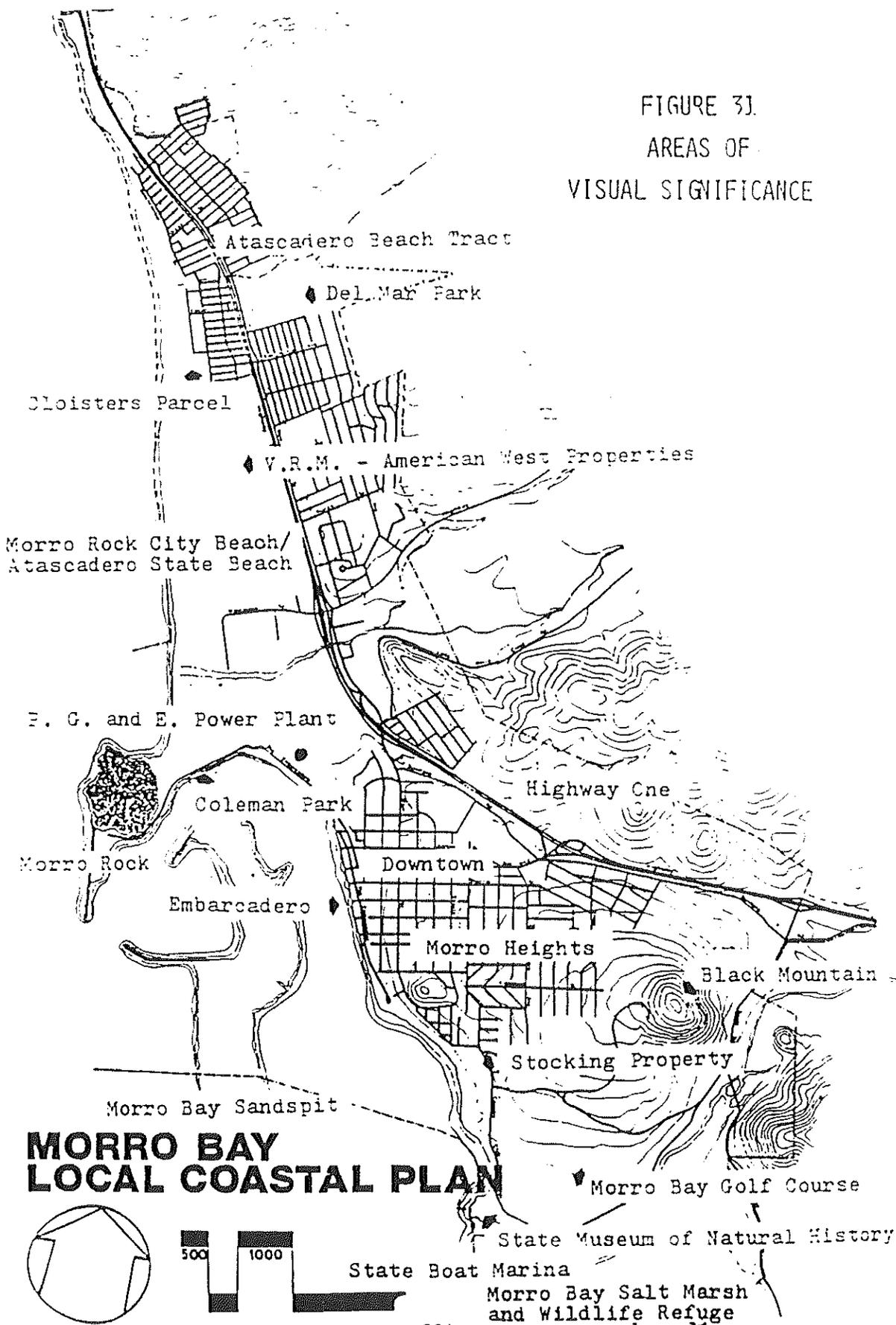
City of Morro Bay
Coastal Land Use Plan
Chapter XIII

FIGURE 30
SCENIC VIEWS



City of Morro Bay
Coastal Land Use Plan
Chapter XIII

FIGURE 31.
AREAS OF
VISUAL SIGNIFICANCE





AGENDA NO: B-2

MEETING DATE: September 1, 2015

Staff Report

TO: Planning Commissioners

DATE: August 27, 2015

FROM: Cindy Jacinth, Associate Planner

SUBJECT: Coastal Development Permit (CP0-410) & Conditional Use Permit (UP0-369) 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.

RECOMMENDATION:

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

- A. Adopt Planning Commission Resolution 32-15 which includes the Findings and Conditions of Approval for the project depicted on site development plans dated June 30, 2015

APPLICANT/AGENT: John & Alair Hough / Cathy Novak

LEGAL DESCRIPTION/APN: 066-251-052

PROJECT DESCRIPTION:

The Applicant is requesting Coastal Development Permit and Conditional Use Permit approval for a new 2,882 square foot single family residence with 503 square foot basement and 520 square foot garage on a vacant lot to be located at 289 Main which is within the California Coastal Commission appeals jurisdiction. Projects located within the appeals jurisdiction are required to obtain a coastal development permit from the Planning Commission. Projects located within a planned development (PD) overlay must process a conditional use permit and requires a precise plan.

PROJECT SETTING:

The property is split zoned R-1/PD on the eastern three-fourths of the property and the western one fourth of the property is zoned WF/PD. The proposed new single family residence is proposed for the R-1 portion of the lot, with no development proposed for the Waterfront side. Visually the line of vegetation in the aerial image below depicts the zoning line change from R-1

Prepared By: <u> CJ </u>	Department Review: <u> SG </u>
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to Waterfront zoning district.



<u>Adjacent Zoning/Land Use</u>			
North:	R-1, Low/Medium Residential	South:	R-1, Low /Medium Residential
East:	R-1, Low/Medium Residential	West:	Waterfront (WF/PD)/Parking lot

<u>Site Characteristics</u>	
Site Area	14,672 square feet
Existing Use	Vacant
Terrain	Moderately sloping toward the west
Vegetation/Wildlife	Mix of ruderal and ornamental landscaping along perimeter
Archaeological Resources	No known archaeological resources exist on the site and the site is not within close proximity of a known site
Access	Main Street/ nearest cross street is Acacia Street

<u>General Plan, Zoning Ordinance & Local Coastal Plan Designations</u>	
General Plan/Coastal Plan Land Use Designation	Mixed Use Area B of the Coastal Land Use Plan Low to Medium Density Residential (4-7 unit/acre)
Base Zone District	R-1, Single Family Residential / WF, Waterfront
Zoning Overlay District	Planned Development (PD)

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Special Treatment Area	N/A
Combining District	N/A
Specific Plan Area	N/A
Coastal Zone	Within the Coastal Appeals Jurisdiction

PROJECT ANALYSIS:

Background

This property was part of a Parcel Map application in 2008 that ultimately resulted in the creation of four lots from three existing lots, one of which is the subject parcel. In conjunction with the parcel map approval, a common access easement/driveway was required and approved subsequently by the Planning Commission on November 25, 2009 through Conditional Use Permit #UP0-269 and Coastal Development Permit #CP0-307. This is the last lot in the parcel map to seek development approvals.

Regulations

The project is located in the Coastal Commission’s Appeals Jurisdiction and pursuant to section 17.58.020.H.2.b of the Morro Bay Municipal Code, a single family residence within the coastal appeals jurisdiction, is required to obtain a regular coastal development permit from Planning Commission.

The project is located in the Planned Development overlay and requires the plans be reviewed pursuant to a precise plan. A concept plan is not required for this project because the project size does not meet the threshold in order for a concept plan to be required. Although a concept plan is not required all the information for a concept plan shall be presented at the precise plan submittal.

The applicant has submitted a site plan, floor plan, elevations, color and material board, landscape plan, lighting fixtures details and visual simulations with visual study site plan.

Coastal Bluff Determination

The City’s LCP requires that development on coastal bluffs be regulated in order to protect public views, protect coastal bluffs, mitigate for adverse visual impacts and to maintain unique geographic features that ensures development is subordinate to the character and form of the coastal bluff areas.

During the initial review of this application, staff noted that on page 37 of the City’s LCP, Figure 6 “Coastal Physical Characteristics” (Exhibit F), this property is in an area not shown as a coastal bluff. However, because the LCP map does not identify individual parcels clearly, the Applicant submitted a geological report prepared by Earth Systems for a professional determination. Earth Systems prepared a report in 2007 and updated in 2014 through a site visit in 2013 to review the

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existing slope at the site and assess its current condition with respect to stability and provide a professional opinion as to whether it would be considered a coastal bluff per accepted geologic definitions and the City's LCP. The report concluded that the property is not a coastal bluff and should not be subject to development standards intended for coastal bluffs. In late 2014, staff consulted with the Coastal Commission with a request for concurrence from Coastal on the acceptance of recommendations from the geologist to apply the standard setback requirements in lieu of bluff development setback standards as noted in the Zoning code.

In February 2015, City staff met with Mark Johnsson, staff geologist for the Coastal Commission along with Rick Gorman with Earth Systems at the project site to review in person the site conditions.

Coastal Commission normally measures development setbacks from the upper edge of the bluff top. Defining that "bluff edge" can be complicated by the presence of irregularities in the bluff edge, and for this particular project, the presence bayward of the Tidelands parking lot which was constructed decades ago. Coastal staff response was that it would be necessary to locate the old bluff top prior to the parking lot construction at tidelands park, and that they suspect the toe of the bluff could be buried underneath the existing parking lot.

It was unclear whether the toe of the bluff or top of bluff is in fact on the property or is underneath the Tideland parking lot. Attempts to research and recover old aerial photos that predate the parking lot construction were unsuccessful in that they do not reveal site conditions due to vegetation obscuring the western site boundary during that era.

Because the outcome of the request for Coastal Commission concurrence was inconclusive, the Applicant chose to revise their plans to reflect compliance with the bluff development standards and submitted revised plans that now show an increased rear setback. The plans currently identify a 20 foot setback from top of bank as would be required under the City's Bluff Development standards (Title 17.45) in regards to development within the bluff buffer area (17.45.040). The line called out as top of bank is approximately 35 feet from the property line and is noted as "as shown on 3 MB 36 (1924)". The City's bluff buffer standards also require that new development within 50 feet of the bluff edge be no higher than 17 feet for pitched roof design. This portion of the house has been design as one story. The plans also denote a 50 foot setback from top of bank and it is this portion where the home is proposed as two story with a height denoted as 23.45 feet from average natural grade.

Project Specifics

The project is proposed at the end of the access driveway which accesses off Main Street. The project proposes to construct a new split level two story residence with a total square footage of 2,882 conditioned space. This includes upstairs area of 607 square feet and downstairs area of 2,275 square feet. The project also includes 503.5 square feet of basement area. includes a 520

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square foot garage. The proposal includes 3 bedrooms plus office with 2.5 bathrooms, kitchen, living, dining, covered porch and deck. The proposal also incorporates a west facing deck on the first floor. The basement area consists of a rec room and wine cellar. In addition to the 2 car garage, the project proposes to create a 9' x 20' foot guest parking space outside of the access driveway.

The applicant has designed the house with the front of the house and entrance along the west elevation. Home access and garage access is through the common access driveway.

For the purposes of zoning district setbacks the 20 foot front yard setback is established from the property line at the access driveway which fronts onto Main Street and the rear yard setback is established from the west side of the property. When an access easement is created all development shall have yards (setbacks) as required by the zoning regulations, including a ten foot setback along any access way, (Section 16-9.206.A.4). Plans show the 20 foot setback from property line for front and also denote the 10 foot setback from the edge of the access driveway. The interior side yard setbacks meet the minimum requirement of 5 feet.

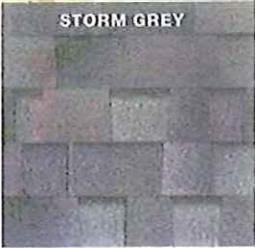
<u>Single Family Residential Zoning Ordinance Standards</u>		
	Standards	Proposed
Front Yard Setback	20 feet, including garage	20 feet
Interior Yard Setback	10% of average width of lot with 10 foot maximum and 5 foot minimum	5 feet on north side 34 feet 2 inches on south side
Exterior Yard Setback	20% of average width of lot with 10 foot maximum and 5 foot minimum	n/a
Rear Yard Setback	10% depth	55 feet at closest point to house
Lot Coverage	45% allowed	32.1%
Height	25 feet	23.45 feet
Parking	2 covered and enclosed spaces	2 covered and enclosed spaces plus 1 additional uncovered space

Color and Materials

The applicant has proposed cedar or hardi shingles with an asphalt shingle roof. The residence siding will be painted a light gray tone (Benjamin Moore "whitestone") with white trim and front door to be a dark red with dark grey roofing.

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289 Main Street Color Board

<p>HOUGH RESIDENCE</p> <p>289 MAIN ST., MORRO BAY, CA</p>	
 <p>STORM GREY</p>	<p>ROOF: MALARKY, "STORM GREY"</p>
	<p>TRIM & WINDOW: "TUNDRA" 2133-70, BENJAMIN/MOORE DOORS EXCEPT FRONT</p>
	<p>SHINGLES: "WHITESTONE" 2134-60, BENJAMINE/MOORE</p>
	<p>FRONT DOOR: "COTTAGE RED" BENJAMIN/MOORE</p>

Lighting

Pursuant to section 17.52.080, no illumination may be directed toward the adjacent residential uses and onto streets. The proposed house, located at the end of the access easement is the closest home of the original parcel map action to Tidelands Park and the Bay. These are areas from which the proposed lighting could be visible. Specific exterior lighting locations are not shown on the plans. The applicant did submit cut sheets which specify the light type, dimensions and light bulb wattage. The materials submitted show Kichler Nickel bronze finish outdoor wall sconce and low-voltage half-moon bronze finish deck lights. These lighting specifications also indicate the proposed lights will be Dark Sky-compliant. Staff recommends that all exterior lighting be shielded so that the light source is not directly visible from off site. To ensure compliance with lighting requirements, a condition of approval has been added to require

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exterior lighting to be in substantial compliance with fixture cut sheets submitted with project plans. (Exhibit E).

Landscape Plan

The applicant submitted a landscape plan because it is a required element of a Precise Plan application. The landscape and irrigation plan submitted identifies 4 existing palm trees (2 groups) within the area of building footprint to be removed or trans-located. Also, 5 additional palm trees (2 groups) in the area of the proposed guest parking space are also proposed to be removed for a total of 9 palm trees removed. A group of 2 existing palms in the front of the proposed guest parking will remain. The planting schedule identifies a mix of native drought tolerant trees and shrub surrounding the property consistent with the neighboring properties along the access driveway. The proposed tree schedule includes Black Peppermint Tree, Toyon, Fernleaf Catalina Ironwood, New Zealand Christmas Tree, Holly Leaf Cherry, and Brisbane Box. A variety of shrubs and ground covers are also proposed and shown on plan sheet L1.1 No plantings are proposed which would require high water usage. An irrigation schedule submitted with the original house design before bluff determination showed the proposed areas of crush granite paths, cobble mulch and non-irrigated area as well as the total landscape area with a mix of low (drought tolerant) and moderate water use plantings. A condition of approval has been added to require the applicant to revise the irrigation schedule to be consistent with the landscape plan submitted due to the change in house footprint.

Visual Simulations

The applicant has submitted color photo simulations to illustrate existing and proposed viewpoints. The simulations presented are taken from a variety of vantage points. These include simulations from the street showing an outline of proposed home with adjacent homes to the left and right; In addition, a visual simulation is included which shows the proposed home looking east from Tideland Park. The simulation shows the relationship of the proposed home in proximity to the existing adjacent homes. These simulations are included as Exhibit C to the staff report.

Local Coastal Plan (LCP) and Zoning Ordinance Consistency

The LCP contains numerous policies protecting public views from scenic corridors and public recreational areas. LCP Policy 12.01 requires development to be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The LCP's highly scenic areas have an additional standard, but the proposed home is not located in a City designated highly scenic area. This was based on a determination from a coastal appeal that was filed for 281 Main Street in 2012 wherein both the City Council and the Coastal Commission found that that project (part of the subject parcel map application) did not raise a visual resource issue and that the project was consistent with the City's LCP policies. The Coastal Commission's decision was

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based upon the fact that this portion of Main Street is not designated as a highly scenic area under the LCP (Coastal Commission staff report dated 2/14/2013).

This project as proposed is sited and designed to blend into the context of the existing residential in the area while also compatible with commercial and recreational developments that are located between Main Street and the waterfront. In addition, Zoning Ordinance Section 17.48.190 requires that alterations to natural landforms be minimized, that new development be visually compatible with the character of the surrounding area, and that significant public views to and along the coast be protected.

The project as proposed is sited on the flattest portion of the property which minimizes the alteration of natural land forms which is consistent with the requirements of the LCP. The orientation of the home is from east to west which minimizes visual impacts from Main Street and the topography of the lot which is set down from the elevation of Main Street, a public viewpoint. It additionally has been reviewed by a qualified soils engineer who has concluded that with the implementation of the recommendations in the report, the site is suitable for the proposed development. The home is consistent and compatible with the character of the surrounding area that has a mixture of architectural styles, materials that range from board and batten siding to stucco and varying sizes.

Since the project as proposed is sited on the flattest portion of the property, it minimizes the alteration of landforms which is consistent with the requirements of LCP Policies.

The project as proposed constitutes infill residential development in an urbanized area of the City and is located less than 300 feet from the bay. The project meets the development standards of the zoning district, including height, lot coverage and setbacks so it is consistent with the requirements of the Mixed Use Area B overlay. Pursuant to the City's LCP coastal physical characteristics map, the project is not identified as a bluff, but has been designed to be consistent with bluff setback requirements as identified in the Title 17.45 of the Zoning Ordinance. Also, the proposed residence would not have significant adverse impacts to visual resources since the development is not located within a highly scenic area but in an existing residential area with other residential and commercial developments in this area between the property and shoreline.

ENVIRONMENTAL DETERMINATION: Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15303, Class 3 for New Construction or Conversion of Small Structures. The exemption provides for the construction of one single-family residential structure.

PUBLIC NOTICE: Notice of this item was published in the San Luis Obispo Tribune newspaper on August 21, 2015 and all property owners of record and occupants within 500 feet of the subject site were notified of this evening's public hearing and invited to voice any

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concerns on this application.

CONCLUSION: The project as proposed is consistent with the General Plan, Local Coastal Plan, and Municipal Code for development standards. Staff recommends that the Planning Commission find this project consistent with the purpose of the zoning district as a principally permitted use, that it complies with City LCP policies, finds it consistent with the requirements of the Mixed Use Area B overlay and meets development standards. Therefore, staff recommends Planning Commission conditionally approve the requested Conditional Use Permit #UP0-369 and Coastal Development Permit #CP0-410 for new construction of a single family residence at 289 Main Street.

EXHIBITS:

- Exhibit A - Planning Commission Resolution 32-15
- Exhibit B – Graphics/ Plan Reductions
- Exhibit C– Visual Simulations
- Exhibit D – Visual Study Site Plan
- Exhibit E – Lighting Details
- Exhibit F – LCP Coastal Physical Characteristics Map

RESOLUTION NO. PC 32-15

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION
APPROVING COASTAL DEVELOPMENT PERMIT (CP0-410) AND
CONDITIONAL USE PERMIT (UP0-369) TO ALLOW CONSTRUCTION OF A NEW
2,882 SQUARE FOOT SINGLE-FAMILY RESIDENCE WITH 503 SQUARE FOOT
BASEMENT AND 520 SQUARE FOOT GARAGE AT 289 MAIN STREET

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 September 1, 2015, for the purpose of considering Coastal Development Permit (CP0-410) and Conditional Use Permit (UP0-369) for construction of a new 2,882 square foot single-family residence with 503 square foot basement and 520 square foot garage on a vacant lot at 289 Main Street; 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) FINDINGS

- A. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15303, Class 3 for construction of one single-family residence. Additionally, none of the Categorical Exemption Exceptions, noted under Section 15300.2, apply to the project.

COASTAL DEVELOPMENT PERMIT FINDINGS

- A. The project as proposed is consistent with the applicable provisions of the certified Local Coastal Plan. The Local Coastal Plan is consistent with the General Plan and the project meets minimum density requirements and therefore meets the LCP.
- B. For every development between the nearest public road and the sea or the shoreline of any body of water, the Planning Commission shall make a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. *The property is located to the east of Tidelands Park which provides public access to the water.*

CONDITIONAL USE PERMIT FINDINGS

- A. The project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that the proposed single-family residence is a permitted use within the zoning district applicable to the project site and said structure complies with all applicable project conditions and City regulations.
- B. The project will not be injurious or detrimental to property and improvements in the neighborhood because the use is designed to be consistent with the City regulations applicable to this development.
- C. The project will not be injurious or detrimental to the general welfare of the City because the single-family residence is a permitted use within the zone district and plan designation applicable to the site and said use is designed to be accordance with all applicable project conditions and City regulations.

MIXED USE AREA B FINDINGS

- A. That any new residential development shall be of a density and design which minimizes potential exposure to and would not unreasonably restrict water-oriented commercial activities. *The project is located on an existing residential lot that was previously subdivided and meets the minimum density. The project will not have a negative effect on water-oriented commercial activities because the property does not provide access to the water and is adjacent to Tidelands Park which provides water access.*
- B. That any new use shall not generate significant traffic/circulation impacts and shall include adequate parking, loading and access (turning and driveway) facilities. *The project is on a lot that meets minimum density with a private access easement off Main Street. Main Street can accommodate the traffic that will result from the development of one-single family residence.*
- C. That any new use shall not result in any harmful (e.g. toxic waste) discharge into the bay. *The single family residence will not discharge any harmful waste from the site nor will the bay be affected.*

MAJOR VEGETATION FINDINGS

1. That the major vegetation removal, as mitigated, will not significantly impact any threatened or endangered plant or animal habitat area;

2. That reasonably calculated mitigation measures are in place to avoid dangerous soil erosion or instability resulting from the removal;
3. That the Major Vegetation removal will not adversely affect the character of the surrounding neighborhood because it is necessary for the development of the lot.

Section 2. Action. The Planning Commission does hereby approve Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369 for property located at 289 Main Street subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated August 27, 2015 for the project at 289 Main Street depicted on plans dated June 30, 2015, 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 "CDM"), 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 CDM, 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 applicants 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 Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the 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.

PUBLIC WORKS CONDITIONS:

The Applicant show the following items on the plans submitted for a Building Permit:

1. 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.
2. Include the locations of all proposed utilities, gas, sewer, water etc. Indicate on the plans the location of the lateral and if the sewer lateral is proposed or existing. If the existing sewer lateral is going to be used the following must be completed prior to building permit issuance.
 - a. 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)

Add the following Notes to the Plans:

- c. 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.

FIRE CONDITIONS:

1. The plan depicts a 10 ft. by 23 ft. emergency vehicle overhang space, adjacent to the apparatus turnaround and fronting the garage. This space shall not be obstructed in any manner, including the parking of vehicles (CFC 503.4).

PLANNING CONDITIONS:

1. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
2. 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.
3. 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.
4. 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.

5. Architecture: 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.
6. 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 with the request for foundation inspection.
7. 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 and complies with the maximum height requirements of 14 for flat roofs or 17 feet (for 4 in 12 or greater pitch), maximum above the average natural grade of the building footprint.
8. Landscaping: Plans shall be revised prior to building permit issuance to provide an irrigation water management plan consistent with the conceptual landscaping plan dated July 20, 2015 and approved as part of this planning permit (CP0-410 & UP0-369).
9. Lighting: Prior to issuance of a building permit, exterior lighting shall be in substantial compliance with fixture cut sheets submitted with project plans dated June 30, 2015.
10. Inspection: The applicant shall comply with all Planning conditions listed above and obtain a final inspection from the Planning Division at the necessary time in order to ensure all conditions have been met.
11. Assessor's Parcel Number (APN): The applicant shall include on the plans submitted for Building Permit approval, the accurate APN Number for the property. The property APN is 066-251-052.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 1st day of September, 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 1st day of September, 2015.

and methods to maintain such as well as the maintenance of the natural ridge lines.

Program LU-13.3: The Subdivision Ordinance should provide for the division of land in forms other than that typical to flat land subdivision practices.

Program LU-13.4: A maximum slope upon which development can occur should be established. (OS 88)

POLICY LU-14: The City should develop a program that would begin to establish street improvements in those areas where runoff and sedimentation sources are greatest. (OS 88)

POLICY LU-15: The present human scale and leisurely, low intensity appearance of Morro Bay should be maintained through careful regulation of building height, location and mass. (LUE 53)

Program LU-15.1: The Zoning Ordinance should encourage flexibility in the application of its development standards related to height, setbacks, and building coverage. In order that all of these development characteristics work together, rigid enforcement of any one or all of them can result in unimaginative development. (LUE 53)

Program LU-15.2: Zoning requirements should encourage variations in architecture. (LUE 53)

POLICY LU-16: In order to encourage the development of unique and creative urban environments, the City should utilize incentive zoning and planning measures to encourage developers to subscribe to modern development concepts and techniques. (LUE 53)

Program LU-16.1: Density incentives should be designed to offer bonuses to development proposals that:

- o Preserve significant environmental features and qualities.
- o Accommodate public access and use of the coastal resources.
- o Create open spaces that effectively reduce the need for public parks or open spaces.
- o Institute significant energy and resource conservation features. (LUE 53-54)

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E. VISUAL RESOURCES POLICIES

Policy 12.01 The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated on Figure 31, shall be subordinate to the character of its setting.

Policy 12.02 Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the surrounding areas. Specific design criteria shall be established for the following areas:

- a. The Embarcadero (as defined in Policy 2.03)
- b. Downtown commercial area.

The criteria shall include the following specific requirements and shall be applied to proposed projects on a case-by-case basis during architectural review:

- a. Building height/bulk relationship compatible with existing surrounding uses;
- b. Landscaping to restore and enhance visually degraded areas using native and drought resistant plant and tree species;
- c. Preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock;
- d. Any other requirements applicable from Coastal Commission conceptual approval of the Urban Waterfront Restoration Plan.

Policy 12.02A The City shall develop special design criteria for the development of the Coleman Drive planning area to include the following:

- (1) Development of the landward portion of the area shall be limited to only low profile structures necessary to support development of commercial fishing facilities. Structures shall be sited to protect existing views available to Morro Rock and to and along the ocean and structures shall be subordinate to the character of the setting.
- (2) New development shall not encroach within the setback areas of the sensitive habitat located on Morro Rock.

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Policy 12.02B The City shall require a detailed development plan for Mixed Use Area G consistent with Policy 0.6. Any development shall be subordinate to the unique and sensitive visual character of the area. Design methodology shall include areas of clustered development, varying building heights, roof lines and setbacks, visible common open space areas and landscaping controls which ensure that full grown tree species are selected for heights which do not obscure views. The development plan shall preserve to the maximum extent feasible traditional public visual access from Highway One of the dunes, Morro Rock, and the open ocean and coastal headlands to the north. The plan shall at a minimum include the following visual resource design standards:

1) The public view corridor from Highway One is established as defined in Figure 32. As a condition of future development approval, a long term scenic conservation easement agreement shall be entered between the property owners and the City covering the area within the designated public view corridor. Such a scenic conservation easement covering the north bound view corridor shall be dedicated prior to the second final map recording, unless the entire property is included in one map, in which case, a scenic conservation easement covering the entire view corridor (north and south) shall be dedicated with that map.

Within the view corridor the following development limitations shall apply and these shall be reflected in the scenic conservation easement:

- a. no structure shall exceed four (4) feet in height above grade pursuant to Morro Bay Municipal Code Section 17.12.310 (B) and as hereafter amended except for small public restrooms,
- b. landscape screening shall not exceed eight (8) feet in height, or block more than 10% of the viewshed from Highway One,
- c. only open space, lateral access, parking areas, golf, passive recreational uses and mariculture activities shall be allowed in the public view corridor.

Policy 12.02C Consistent with Policy 6.05, a specific development plan shall be required if and when supplemental uses are found to be consistent with the agricultural policies contained in the LUP and the Coastal Act. visual resources for the specific plan shall include:

1. Development shall be sited in clusters on the most level portions of the site adjacent to Highway One. Development shall be compactly clustered onto the portions of the site that have stable slopes of 5 to 15% and shall not cover more than 2% of the gross acreage of the property both within and outside the City.
2. Prior to the siting of new structures, a detailed geotechnical report shall be prepared in accordance with Policy 9.04. The report shall define which portions of the site are less suitable for new development due to geologic constraints.

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3. Portions of the site outside of the approved development area shall be retained in open space or agricultural use to preserve the visual and rural character of the area.
4. Structure heights shall not exceed 18 feet above the average finished grade of each site pad except that structures designed and approved for visitor-serving lodging may be two stories not to exceed 25 feet in height, above existing grade.
5. The visual impact of any development on views from Highway One shall be minimized to the maximum extent feasible through the utilization of native plant species indigenous to the area.

Policy 12.03 Development between State Highway One and the ocean in Planning Areas 1, 2 and 5 shall provide view corridors as defined in Policy 12.02B and by Figure 32 so as not to significantly block views of travelers on the Highway. New development shall be subordinate to the character of its setting and shall be visually compatible with the surrounding areas.

Policy 12.04 The City will pursue enforcement of the Property Maintenance code in order to continue improving the visual characteristics of Morro Bay. Also, the City shall identify and work towards the removal or require the mitigation of the effects of those nonconforming uses that cause visual blight or otherwise demean the character of residential neighborhoods and commercial districts.

Policy 12.05 The City shall, as part of the implementation phase of the LCP, adopt new provisions to:

- a. Require monument and surface mounted signs and discourage roof mounted and pole signs;
- b. Require that view protection and the nighttime characteristics of the sign be mandatory considerations of any sign installation;
- c. Prohibit billboards;
- d. Reduce allowable height and size where they interfere with views to and along State Highway One.
- e. Develop and adopt sign criteria for signs appropriate for Morro Bay's commercial districts.

Policy 12.06 New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:

- a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of their unique characteristics, are popular visit destination points for recreation uses.

By applying the Design Guideline as part of the project review process, The City of Morro Bay, has the opportunity to provide positive, constructive direction to development within the City. The Design Guidelines can save time, facilitate a positive response to community concerns about development proposals, avoid divisive controversy, reduce unnecessary delays and expenses, and most importantly, achieve high quality designs and more livable neighborhoods.

Single Family Residential Design Guidelines

The following guidelines are not meant to encompass the entire range of design possibilities, but instead are meant to provide basic guidance as to what is expected when development is proposed. The policies are not meant to discourage innovative designs nor encourage any specific style or design concept. Variations from these guidelines should be considered when proposed project elements provide for a better project than would be possible adhering to the specific direction provided within the guidelines.

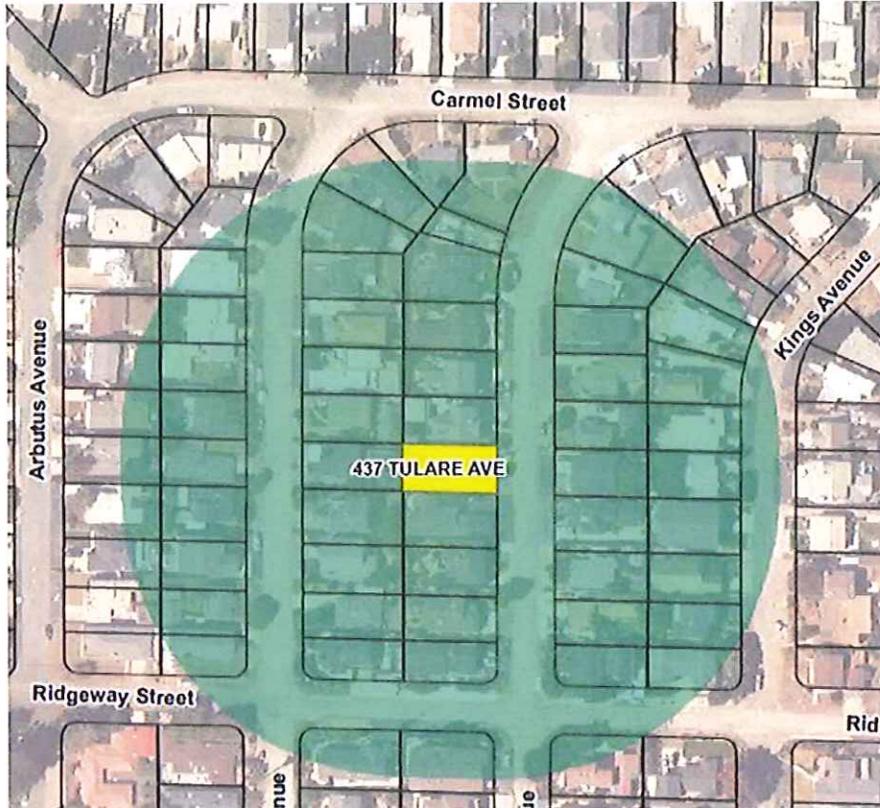
Design Guidelines

A. Relationship to Homes in Immediate Neighborhood

1. The overall design of the home should pay particular attention to the adjacent homes while remaining visually compatible with the immediate neighborhood.
2. Maintain architectural integrity with design and material consistency on all facades.
3. When replacing or changing the exterior materials, use materials compatible with homes in the surrounding area.
4. Entryways or features, such as front doors and porches should be visible from the street. Use of tall walls or fences and landscaping or other design elements that block view of the entry should be avoided.

Utilize figure 1 below when determining what constitutes the immediate neighborhood within a standard subdivision. There are factors where the diagram may not be applicable including, but not limited to, location and visibility of the building (e.g., terrain of the lot, lots with multiple frontages, small lot sizes). ***Should questions arise regarding what constitutes the "Immediate Neighborhood" please consult City Staff.***

Figure 1. Immediate Neighborhood Map Example (300 Foot Radius).



B. Scale and Mass

Building scale refers to the proportional relationship of a structure to objects/structures next to it. Mass is basically the size of a structure.

1. The perceived scale and mass of a **home design** should be compatible with homes in the nearby area. Features that accentuate the size of the home should be minimized so that it does not appear significantly larger than adjacent homes. Special attention should be given **to the three dimensional massing of a project, with emphasis given to those elevations visible from the public way.** Vantage points, other than street frontages may also be important for corner, hillside and bluff top lots and lots adjacent to parks or other public open space areas.



Exhibit C - City Council Appeal

CITY OF MORRO BAY

COMMUNITY DEVELOPMENT DEPARTMENT

955 Shasta Avenue
Morro Bay, CA 93442

September 10, 2015

Cathy Novak
Cathy Novak Consulting
PO Box 296
Morro Bay, CA 93443

RE: 289 Main Street., Morro Bay, CA -- CP0-410 and UP0-369

Dear Ms. Novak,

On September 1, 2015, the Planning Commission moved to continue the above referenced public hearing to the October 6, 2015 Planning Commission meeting.

The direction of the Planning Commission was to submit revised plans which include:

1. Calculate actual lot coverage which excludes from lot size the portion of the common driveway; includes all structures on the property namely the sheds situated on the west side of property; and includes the decks. Note the project statistics do specify 859.4 sf of driveway/walk included in the lot coverage calculation, but it is not clear what consists of the 859 square feet.
2. Revise plan title sheet to reflect correct square footage of home which includes the basement for a total square footage of 3,385.9sf.
3. The rear deck along the south to be shortened along with a revised design which reduces the scale/mass along the west elevation which faces the Tidelands parking lot.

Although not identified by Planning Commission, please note that the elevation page is not consistent with the floor plan page as it does not show the deck. With your resubmittal, the elevation pages should be revised to consistent with the rest of the plan sheets or provide appropriate clarification.

A revised submittal will be due no later than Thursday September 24, 2015 in order to meet agenda deadlines for the October 6th meeting. Please contact me if you have any questions at 805-772-6577.

Sincerely,

Cindy Jacinth
Associate Planner

RESOLUTION NO. PC 40-15

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION DENYING COASTAL DEVELOPMENT PERMIT (CP0-410) AND CONDITIONAL USE PERMIT (UP0-369) FOR CONSTRUCTION OF A NEW 3,386 SQUARE FOOT SINGLE-FAMILY RESIDENCE WITH 520 SQUARE FOOT GARAGE, and 356 SQUARE FEET OF DECKING AND 236 SQUARE FOOT COVERED PORCH ON A VACANT LOT AT 289 MAIN STREET

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 September 1, 2015, for the purpose of considering Coastal Development Permit (CP0-410) and Conditional Use Permit (UP0-369) for construction of a new 3,386 square foot single-family residence with 520 square foot garage on a vacant lot at 289 Main Street and continued the hearing to the October 6, 2015 Planning Commission meeting; and

WHEREAS, Planning Commission meeting at its September 1, 2015 meeting directed the Applicant to submit revised plans which accurately calculate lot coverage excluding that portion of the property dedicated to the common driveway; correct square footage of home to include the lower story basement square footage in the total size of the proposed home; and revise plans to show a shortened/reduced deck along the south elevation which also reduces scale/mass along the west elevation which faces the Tidelands Parking lot.

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 (CP0-410) and Conditional Use Permit (UP0-369) for construction of a new 3,386 square foot single-family residence with 520 square foot garage and 356 sf of decking and 236 sf covered porch on a vacant lot at 289 Main Street with revised plans submitted; 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, whether written or oral, including without limitation, the testimony of the applicant, interested parties, consultants, City staff and all written and oral evaluations and recommendations by staff, presented at the September 1, 2015 and October 6, 2015 hearings.

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) FINDINGS

- A. Pursuant to the California Environmental Quality Act Guidelines Section 15270, CEQA does not apply to projects that are disapproved or denied by the approval body.

COASTAL DEVELOPMENT PERMIT FINDINGS FOR DENIAL

- A. The project, as proposed, is not in conformance with the General Plan and Local Coastal Program because it is not consistent with the Zoning Ordinance Section 17.48.190 which implements the General Plan and is part of the Local Coastal Program. Specifically, the project, as proposed, is not visually compatible with the character of the surrounding neighborhood in terms of bulk, size, and scale.
- B. The project is not consistent with the Land Use Element Policy LU-15 which states, "The present human scale and leisurely, low-intensity appearance of Morro Bay should be maintained through careful regulation of building height, location and mass."
- C. The project is not consistent with the Coastal Land Use Plan Policy 12.02 which states that permitted development shall be sited and designed to be visually compatible with the surrounding areas. Policy 12.02 includes criteria for architectural review which requires application of building height/bulk relationship to be compatible with existing surrounding uses.

CONDITONAL USE PERMIT FINDINGS

- A. The project will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that the proposed single-family residence is not visually compatible with the existing surrounding uses and through its proposed design is not compatible with the surrounding neighborhood in terms of bulk, size, and scale.
- B. The project will be injurious or detrimental to property and improvements in the neighborhood because the home as proposed is not compatible with the surround neighborhood in terms of bulk, size, and scale as demonstrated through the revised plans submitted to the City dated September 23, 2015
- C. The project will be injurious or detrimental to the general welfare of the City because the single-family residence as proposed is not visually compatible with the surrounding neighborhood in terms of bulk, size and scale.

Section 2. Action. The Planning Commission does hereby deny Coastal Development Permit CP0-410 and Conditional Use Permit UP0-369 for property located at 289 Main Street.

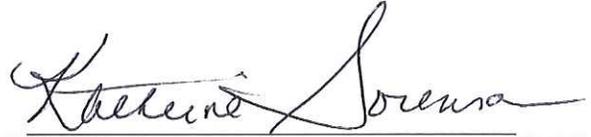
PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 20th day of October, 2015 on the following vote:

AYES: Sorenson, Luhr, Sadowski, Lucas

NOES:

ABSENT:

ABSTAIN: Tefft



Vice Chairperson Katherine Sorenson

ATTEST



Scot Graham, Community Development Manager

The foregoing resolution was passed and adopted this 20th day of October, 2015.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
 REGULAR MEETING – OCTOBER 6, 2015
 VETERANS MEMORIAL BUILDING – 6:00 PM

PRESENT:	Robert Tefft Katherine Sorenson Gerald Luhr Michael Lucas Richard Sadowski	Chairperson Vice-Chairperson Commissioner Commissioner Commissioner
STAFF:	Scot Graham Cindy Jacinth Whitney McIlvaine	Community Development Manager Associate Planner 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

Staff Recommendation: Continue the Project to a date uncertain

Staff Contact: Cindy Jacinth, Associate Planner, (805) 772-6577

<https://youtu.be/CSw0mXgmykM?t=4m46s>

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –
 NONE

Jacinth presented the staff report.

Chairperson Tefft opened Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=6m26s>

Chairperson Tefft closed Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=6m31s>

MOTION: Commissioner Lucas moved to continue to a date uncertain. Vice-Chairperson Sorenson seconded the motion and the motion passed unanimously (5-0).

<https://youtu.be/CSw0mXgmykM?t=7m18s>

B-2 Case No.: CP0-419, UP0-383 (*continued from the 8-18-15 Planning Commission hearing*)

Site Location: 3420 Toro Lane, Morro Bay, CA

Project Description: Continued review from the 8-18-15 Planning Commission meeting of a proposal 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 Appeals 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

<https://youtu.be/CSw0mXgmykM?t=7m53s>

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –
 Commissioner Luhr spoke to the applicant's representative over the phone.

McIlvaine presented the staff report.

Chairperson Tefft opened Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=40m48s>

Laura Cogan, Morro Bay resident, stated she supports the project.

Victoria Arthur, Morro Bay resident, stated she supports the project.

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>

Cathy Novak, applicant's representative, presented her staff report.

Betty Winholtz, Morro Bay resident, stated there should be public access to the water or to Tidelands through the private driveway . Ms. Winholtz also noted her concerns with the bulk and scale of the project. She would like the Planning Commission to consider maintaining and keeping the character of the neighborhood.

Vice-Chairperson Sorenson closed Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=1h57m12s>

Vice-Chairperson Sorenson opened Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=1h57m21s>

Commissioner Luhr asked Novak for the elevation at the edge of asphalt on the west end of the driveway and also the distance to the front door entry from the closet corner of asphalt.

Novak responded, the elevation for the west end was 28.5 and the distance to the front door to closet corner of asphalt was 7 feet.

Vice-Chairperson Sorenson closed Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=1h59m47s>

Vice-Chairperson Sorenson opened Public Comment period.

<https://youtu.be/CSw0mXgmykM?t=2h11m36s>

Commissioners discussed the proposed changes to the project and reviewed the bulk and scale of the home as well as lack of neighborhood compatibility.

Staff reviewed options for the Commission to choose. Planning Commission asked the Applicant's agent for their response.

Novak stated her clients have agreed to take Option 4, to have the Planning Commission deny the project and have the staff bring back findings.

MOTION: Commissioner Lucas moved to deny the project as proposed. Commissioner Sadowski seconded the motion and the motion passed unanimously (4-0).

B-4 Case No.: UP0-428

Site Location: 300 Shasta Ave., Morro Bay, CA

Proposal: The applicant proposes to add a 930 sq. ft. second-story addition to an existing 1,859 sq. ft. nonconforming residence. The existing single-story residence is considered nonconforming because it has a 10-foot front yard setback where 20 feet is required. The project is located outside of the Coastal Commission Appeals Jurisdiction.

CEQA Determination: Categorically exempt, Section 15301, Class 1

Staff Recommendation: Conditionally approve

Staff Contact: Whitney McIlvaine, Contract Planner, (805) 772-6211

<https://youtu.be/CSw0mXgmykM?t=2h17m53s>

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 37-15. 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](tel:8057726291)

<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

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING –OCTOBER 6, 2015

D. NEW BUSINESS - NONE

E. PLANNING COMMISSIONER COMMENTS

- Commissioner Lucas stated he was glad the Castro's came in tonight to voice their interest in the Mindoro lot.
- Commissioner Sadowski stated he would like to have a future discussion on vacation rentals. Commission Luhr concurred and would also like the discussion to include fire code violations and health and safety issues.
- Commissioner Sadowski stated he would like the City Voice Survey to include what the public's opinion on what the value of Morro Bay is.
- Vice-Chairperson Sorenson commended staff on the new yellow noticing signs.
- Chairperson Tefft stated to staff the need to have a discussion about the concept of greater than normal public benefit.

F. COMMUNITY DEVELOPMENT MANAGER COMMENTS

- Graham notified the Commissioners the City Voice Survey signs will be up until the 12th and collaborated on what type of questions are being asked on the survey.

G. ADJOURNMENT

The meeting adjourned at 9:16 p.m. to the regular Planning Commission meeting at the Veteran's Memorial Building, 209 Surf Street, on October 20, 2015, at 6:00 p.m.

Robert Tefft, Chairperson

ATTEST:

Scot Graham, Secretary

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING – SEPTEMBER 1, 2015
VETERANS MEMORIAL BUILDING – 6:00 PM

PRESENT:	Robert Tefft Katherine Sorenson Gerald Luhr Michael Lucas	Chairperson Vice-Chairperson Commissioner Commissioner
ABSENT:	Richard Sadowski	Commissioner
STAFF:	Scot Graham Joan Gargiulo Cindy Jacinth	Community Development Manager Contract Planner Associate Planner

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE
PLANNING COMMISSIONER ANNOUNCEMENTS
<https://youtu.be/ZAq03rZOA60?t=2m7s>

Chairperson Tefft notified the Commissioners he will be adding at the beginning of each public hearing item, notifications of “Disclosure of Ex Parte Communications”.

PUBLIC COMMENTS

Chairperson Tefft opened Public Comment period and seeing none, closed the Public Comment period.
<https://youtu.be/ZAq03rZOA60?t=4m38s>

PRESENTATIONS – NONE

A. CONSENT CALENDAR

- A-1 Approval of minutes from the Planning Commission meeting of July 7, 2015.
Staff Recommendation: Approve minutes as submitted.
- A-2 Current and Advanced Planning Processing List
Staff Recommendation: Receive and file.

MOTION: Vice-Chairperson Sorenson moved to approve the Consent Calendar. Commissioner Luhr seconded the motion and the motion passed unanimously (4-0).
<https://youtu.be/ZAq03rZOA60?t=3m11s>

B. PUBLIC HEARINGS

- B-1 Case Number:** UP0-416
Site Location: 900 Main Street, Morro Bay, CA
Proposal: Request for Minor Use Permit approval for Black Hill Siren bar and restaurant to be located at 900 Main Street. Includes interior remodeling to combine the

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING –SEPTEMBER 1, 2015

existing restaurant and the existing bar; approximately 2,400 sq. ft. of interior customer space and 936 sq. ft. of outdoor patio area.

CEQA Determination: Categorically Exempt, Section 15301, Class 1

Staff Recommendation: Approve with conditions

Staff Contact: Joan Gargiulo, Contact Planner, (805) 772-6270

<https://youtu.be/ZAq03rZOA60?t=5m12s>

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –
NONE

Gargiulo presented staff report.

Chairperson Tefft opened Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=14m7s>

Paul and Kelly Boisclair, applicants, stated the conditions for the project have been reasonable and also thanked staff and the City for helping them.

Betty Winholtz, resident, stated her concerns regarding noise and street trees. She also noted her concern regarding the outdoor facility and how it would affect the residents.

Ross Hale, business owner, stated he is concerned about the loud noise at night and questioned the outside supervision at night and the hours of the live band.

Chairperson Tefft closed Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=20m34s>

MOTION: Commissioner Luhr moved to approve PC Resolution 29-15 with additional conditions concerning seismic retrofitting, a sound mitigation plan, and an arborist report with regard to the existing street trees. Vice-Chairperson Sorenson seconded the motion and the motion passed unanimously (4-0).

<https://youtu.be/ZAq03rZOA60?t=1h6m30s>

B-2 Case No.: #CP0-410 & UP0-369

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/ZAq03rZOA60?t=1h35m28s>

Chairperson Tefft recused himself because he lives in close proximity to the project.

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –

Vice-Chairperson Sorenson stated she had a brief conversation with the applicant's representative.

Commissioner Lucas stated he met on site with the applicant's representative.

Chairperson Tefft received an email from the applicant's representative to meet regarding the project, but he notified her he would have to recuse himself.

Jacinth presented staff report.

Vice-Chairperson Sorenson opened Public Comment period.
<https://youtu.be/ZAq03rZOA60?t=2h3m57s>

Cathy Novak, agent, presented her report to the Commission.

Dorothy Cutter, resident, stated she wanted to know the exact square footage of the lot. She noted there wouldn't be any issues if the General Plan and Zoning Code was followed.

Vice-Chairperson Sorenson closed Public Comment period.
<https://youtu.be/ZAq03rZOA60>

Vice-Chairperson Sorenson opened Public Comment period.
<https://youtu.be/ZAq03rZOA60?t=2h20m42s>

Cathy Novak, agent, asked the Commissioners to give her more details on what the Commission wanted for the project so she could take the information back to the architect.

Vice-Chairperson Sorenson closed Public Comment period.
<https://youtu.be/ZAq03rZOA60?t=2h21m37s>

MOTION: Commissioner Luhr moved to continue CP0-410/ UP0-369, to the October 6th Planning Commission Meeting with direction to the applicant (See directions below). Commissioner Lucas seconded. Motion passed unanimously (3-0).
<https://youtu.be/ZAq03rZOA60?t=2h25m8s>

The direction of the Planning Commission was to submit revised plans which include:

1. Calculate actual lot coverage which excludes from lot size the portion of the common driveway; includes all structures on the property namely the sheds situated on the west side of property; and includes the decks.
2. Revise plan title sheet to reflect correct square footage of home which includes the basement for a total square footage of 3,385.9sf.
3. The rear deck along the south to be shortened along with a revised design which reduces the scale/mass along the west elevation which faces the Tidelands parking lot.

B-3

Case No.: #UP0-424

Site Location: Coleman Drive, 100 feet from Morro Rock near Target Rock

Proposal: Conditional Use Permit to erect a Fishermen's Family Sculpture as a memorial tribute to families of mariners. Sculpture to consist of a wife, son and daughter facing the bay to be located off Coleman Drive near Target Rock and southeast of Morro Rock. Height of sculpture to be 5 feet 9 inches on a foundation base approximately 12 feet by 7

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING –SEPTEMBER 1, 2015

feet. This project is located in the original jurisdiction of the California Coastal Commission.

CEQA Determination: Categorically exempt, Class 3

Staff Recommendation: Conditionally approve

Staff Contact: Cindy Jacinth, Associate Planner, (805) 772-6577

<https://youtu.be/ZAq03rZOA60?t=1h9m9s>

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –

Commissioner Lucas discussed the project with the owner's representative.

Chairperson Tefft emailed the applicants representative to discuss protection from auto accidents and vandalism.

Chairperson Tefft opened Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=1h18m23s>

Cathy Novak, agent for applicant, presented her report and answered questions from the Commissioners.

Laurie French, Fisherman Wives, thanked the Commission for their support.

Dorothy Cutter, resident, stated she liked the project and suggested an area for placement of the statue.

Linda Merrill, resident, asked the Commissioners if there was a long range plan to extend the boardwalk to the statue.

Chairperson Tefft closed Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=1h27m19s>

MOTION: Commissioner Lucas moved to approve UP0-424 as submitted. Vice-chairperson Sorenson seconded the motion and the motion passed unanimously (4-0).

<https://youtu.be/ZAq03rZOA60?t=1h33m14s>

B-4

Case No.: #CP0-471

Site Location: 110 Orcas

Proposal: Coastal Development Permit to construct a 2,058sf single family residence with 480sf subterranean garage on a vacant lot in the S-2A overlay zoning district. 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/ZAq03rZOA60?t=2h26m9s>

COMMISSIONERS DISCLOSURE OF EX PARTE COMMUNICATIONS –

Vice-Chairperson Sorenson stated she had a brief conversation with the neighbor.

Jacinth presented staff report.

Chairperson Tefft opened Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=2h43m9s>

Don Doubledee, architect, presented his report to the Commission.

Chairperson Tefft closed Public Comment period.

<https://youtu.be/ZAq03rZOA60?t=2h50m26s>

MOTION: Vice-Chairperson Sorenson moved to approve PC 31-15 with one additional finding and three additional conditions (See finding and conditions below). Commissioner Lucas seconded the motion. Motion passed (4-0).

<https://youtu.be/ZAq03rZOA60?t=3h16m26s>

110 Orcas

Added finding:

1. The Planning Commission finds that the legislative intent of Ordinance No. 483 of the City of Morro Bay and of Section 17.40.050(D)(7.) of the Municipal Code of the city of Morro Bay is to prohibit construction of more than a single “story above grade plane”, as that term is defined by the California Building Code (CCR, Title 24, Part 2, Chapter 2), and that the project is consistent with those ordinances, as so intended.

110 Orcas

Added conditions:

1. If a sump pump or ejector pit is used in the onsite sewer design, a backup energy supply with overflow storage shall be provided.
2. The grading plan and building cross section drawings shall clearly demonstrate that the garage is more than 50% below grade, consistent with the basement definition utilized in the California Building Code, in order to be in compliance with the S.2A overlay requirements which prohibit wo-story construction. Grading and building cross section drawings shall be included in the project plan set submitted Building Permit review.
3. Drainage area to the west and south of the property shall remain unvegetated in its natural state as shown on the conceptual landscape plan as presented to the Planning Commission and made a part of this coastal development permit (CP0-471).

C. UNFINISHED BUSINESS - NONE

D. NEW BUSINESS - NONE

E. PLANNING COMMISSIONER COMMENTS

Commissioner Lucas stated he was delighted to see people talking to their neighbors about their problems.

F. COMMUNITY DEVELOPMENT MANAGER COMMENTS

G. ADJOURNMENT

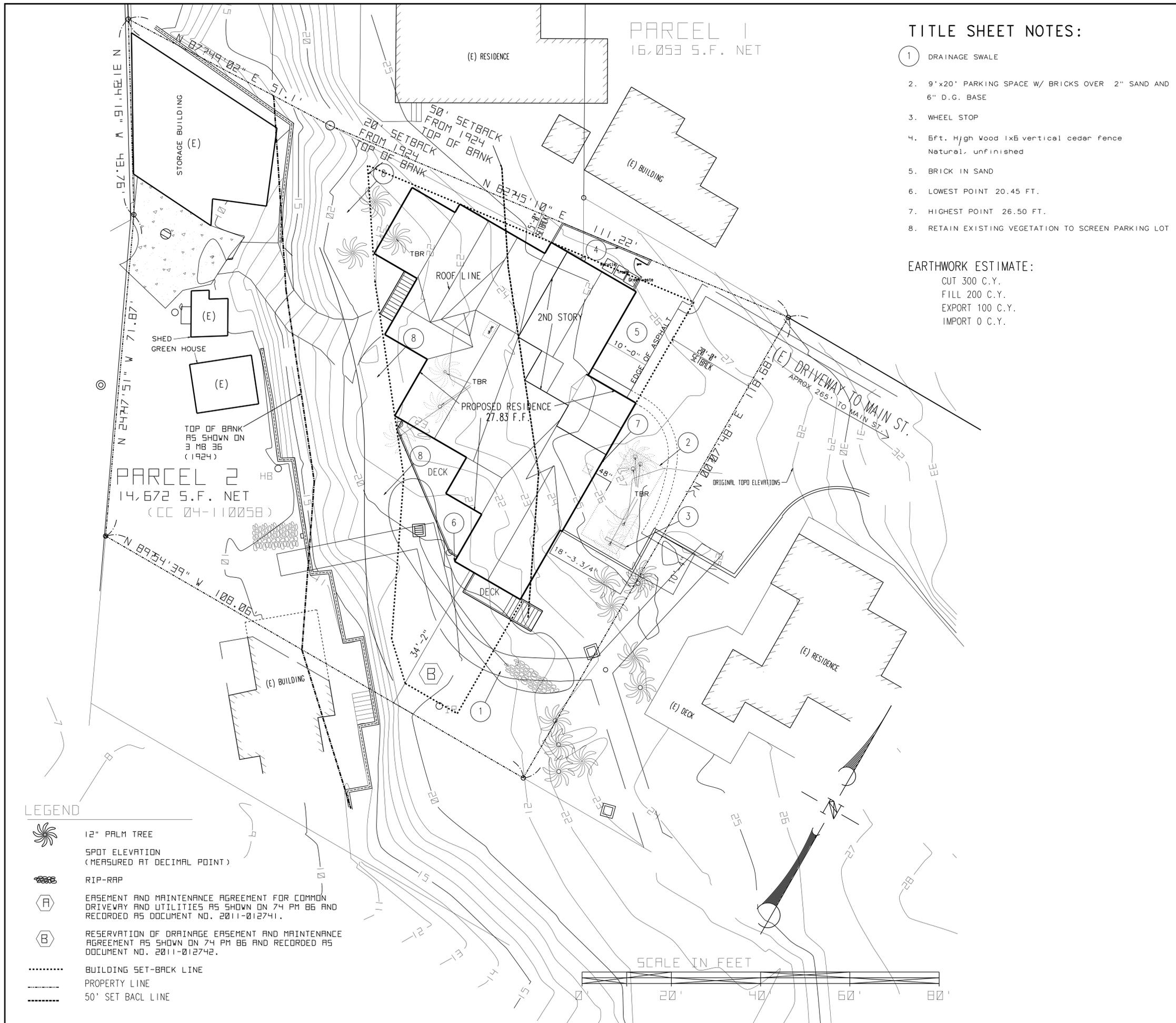
The meeting adjourned at 9:18 p.m. to the regular Planning Commission meeting at the Veteran’s Memorial Building, 209 Surf Street, on September 15, 2015, at 6:00 p.m.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING –SEPTEMBER 1, 2015

Robert Tefft, Chairperson

ATTEST:

Scot Graham, Secretary

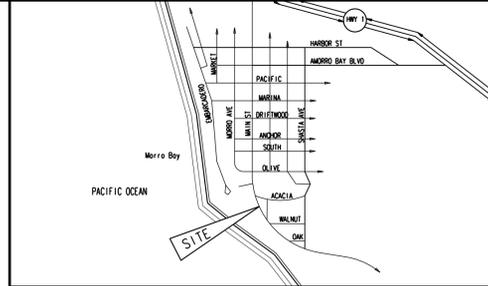


TITLE SHEET NOTES:

1. DRAINAGE SWALE
2. 9'x20' PARKING SPACE W/ BRICKS OVER 2" SAND AND 6" D.G. BASE
3. WHEEL STOP
4. 6ft. High Wood 1x6 vertical cedar fence Natural, unfinished
5. BRICK IN SAND
6. LOWEST POINT 20.45 FT.
7. HIGHEST POINT 26.50 FT.
8. RETAIN EXISTING VEGETATION TO SCREEN PARKING LOT

EARTHWORK ESTIMATE:

CUT 300 C.Y.
 FILL 200 C.Y.
 EXPORT 100 C.Y.
 IMPORT 0 C.Y.



VICINITY MAP

PROJECT DIRECTORY

OWNER:
 JOHN & ALAIR HOUGH
 285 MAIN STREET
 MORRO BAY, CA 93442
 805.772.2197

ARCHITECTURE/AGENT:
 THOMAS MARTIN ARCHITECT
 P.O. BOX 14128
 San Luis Obispo, CA 93406
 CONTACT: TOM MARTIN
 805.544.4398

GEOTECHNICAL ENGINEER:
 GEOSOLUTIONS
 220 HIGH STREET
 SAN LUIS OBISPO, CA 93401
 CONTACT: RILEY
 805.543.2171

LAND SURVEYOR:
 JOANN HEAD
 P.O. BOX 887
 SANTA MARGARITA, CA 93453
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 805.674.1530

CIVIL ENGINEER:
 STEVE LoCHANE
 15524 ABHERT RD
 ATASCADERO, CA 93422
 CONTACT: STEVE
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PLANNING CONSULTANT:
 CATHY NOVAK CONSULTING
 P.O. BOX 296
 MORRO BAY, CA 93443
 805.772.9499
 CONTACT: CATHY

LANDSCALE ARCHITECT
 GARY L. GLANDOR
 ASLA, PLA 3791
 PO BOX 944
 MORRO BAY, CA 93443
 805.801.8697

SHEET INDEX

- T.1 PROPOSED SITE PLAN/TITLE SHEET
- A.1 GRND LVL FLR PLN
- A.2 2ND LVL FLR PLN
- A.3 ELEVATIONS

PROJECT STATISTICS

R-1 (P-D) SINGLE FAMILY
 PROJECT SITE AREA: 14,673.36 S.F. - 838.0 S.F. COMMON ACCESSWAY= 13,835.36 S.F.
 MAX LOT COVERAGE ALLOWED: 13835.36 S.F. x 45% = 6225.91 S.F. allowed

2275.0 S.F. LOWER FLOOR
 355.6 S.F. RAISED DECK
 235.6 S.F. COVERED PORCH
 1070.9 S.F. STORAGE BUILDING
 154.0 S.F. GREENHOUSE
 76.4 S.F. SHED
 520.5 S.F. GARAGE

TOTAL PROPOSED COVERAGE: 4687.1 S.F. PROPOSED < 6225.9 S.F. ALLOWED

CONDITIONED SPACE UPSTAIRS: 562.4 S.F.
 CONDITIONED SPACE DOWNSTAIRS: 2275.0 S.F.
 TOTAL CONDITIONED SPACE: 2837.4 S.F.

UNCONDITIONED BASEMENT: 503.5 S.F.
 TOTAL SPACE: 3340.9 S.F.

CURRENT USE: UNIMPROVED LOT
 PROPOSED USE: SINGLE FAMILY RESIDENCE

LEGAL DESCRIPTION:

PARCEL 2 OF PARCEL MAP MB 08-0019, RECORDED IN BOOK 74,
 AT PAGE 88-88 OF PARCEL MAPS IN OFFICE OF THE COUNTY RECORDER,
 COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA.

APN: 066-251-052

OCCUPANCY CLASSIFICATION

GROUP: R-3 (LESS THAN 10)

AVERAGE NATURAL GRADE:

26.50' HIGHEST POINT BLDG INTERSECTS NATURAL GRADE
 20.45' LOWEST POINT BLDG INTERSECT NATURAL GRADE

46.90= 23.45' ANG

PARKING REQUIREMENT:

2 Spaces Covered in Garage, 1 open Space @ entry

LEGEND

- 12" PALM TREE
- SPOT ELEVATION (MEASURED AT DECIMAL POINT)
- RIP-RAP
- EASEMENT AND MAINTENANCE AGREEMENT FOR COMMON DRIVEWAY AND UTILITIES AS SHOWN ON 74 PM 86 AND RECORDED AS DOCUMENT NO. 2011-012741.
- RESERVATION OF DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT AS SHOWN ON 74 PM 86 AND RECORDED AS DOCUMENT NO. 2011-012742.
- BUILDING SET-BACK LINE
- PROPERTY LINE
- 50' SET BACK LINE

SCALE IN FEET



PREPARED: 20 JUL 2013
 SUBMIT PLNG. DEPT:
 REVISED:
 REV FOR PC 9 DEC 15

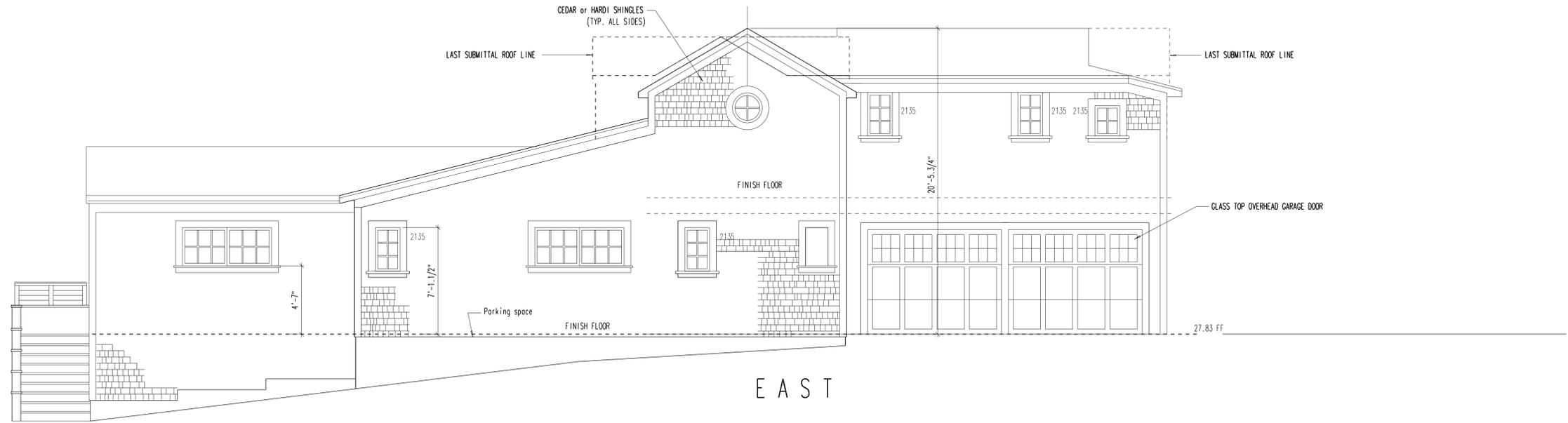
THOMAS MARTIN
 ARCHITECTURE . PLANNING . INTERIORS
 P.O. BOX 14128 . SAN LUIS OBISPO . CA 93401
 PH. 805.544.4398 . E-MAIL: TMARCHS@YAHOO.COM

SHEET TITLE:
TITLE SHEET
 Scale 1"=10'

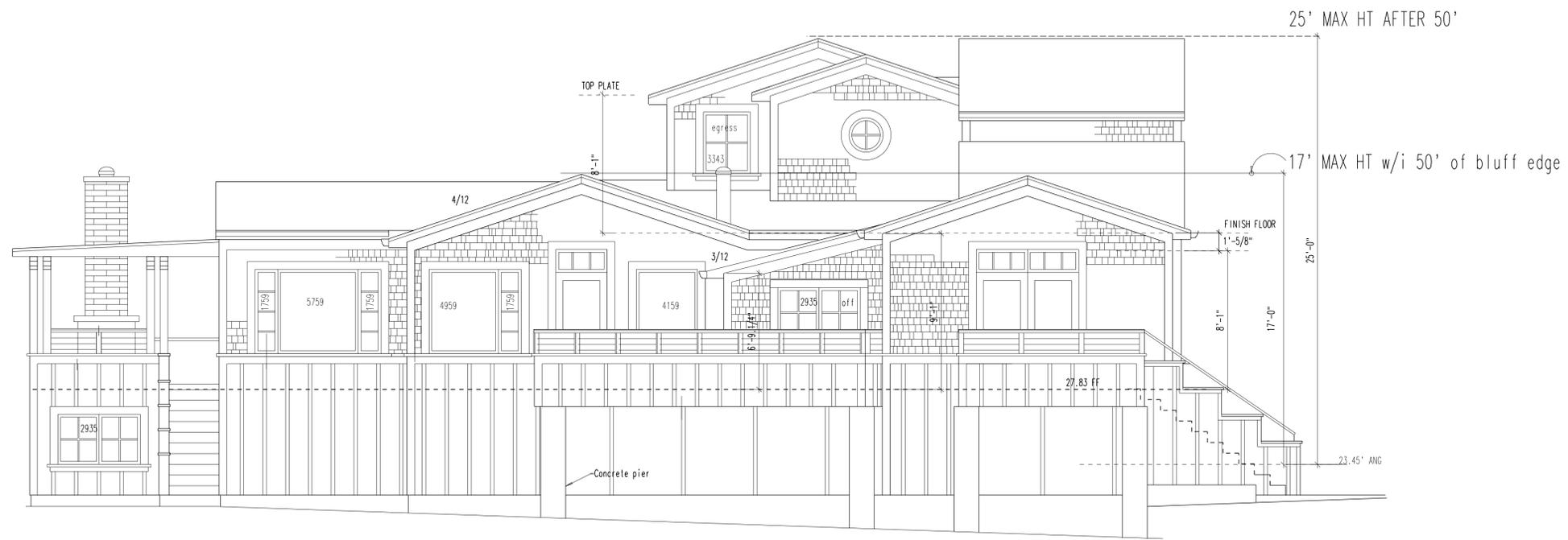
PROJECT ADDRESS:
HOUGH RESIDENCE
 289 Main Street
 Morro Bay, CA 93442



HOUGH
 REVISED: 14 DEC 2015



EAST



SOUTH

THOMAS MARTIN
 ARCHITECTURE · PLANNING · INTERIORS
 869 CHURCH ST. · SAN LUIS OBISPO · CA 93401
 PH 805 544 4398 · tmartinarchitect@gmail.com

PREPARED: 3 APR 15
 SUBMIT TO BLDG DEPT:
 REVISED:
 △ REV 9 DEC 15
 △
 △

SHEET TITLE:
ELEVATIONS
 Scale 1/4"=1'-0"

PROJECT ADDRESS:
HOUGH RESIDENCE
 289 Main Street
 Morro Bay, CA 93442

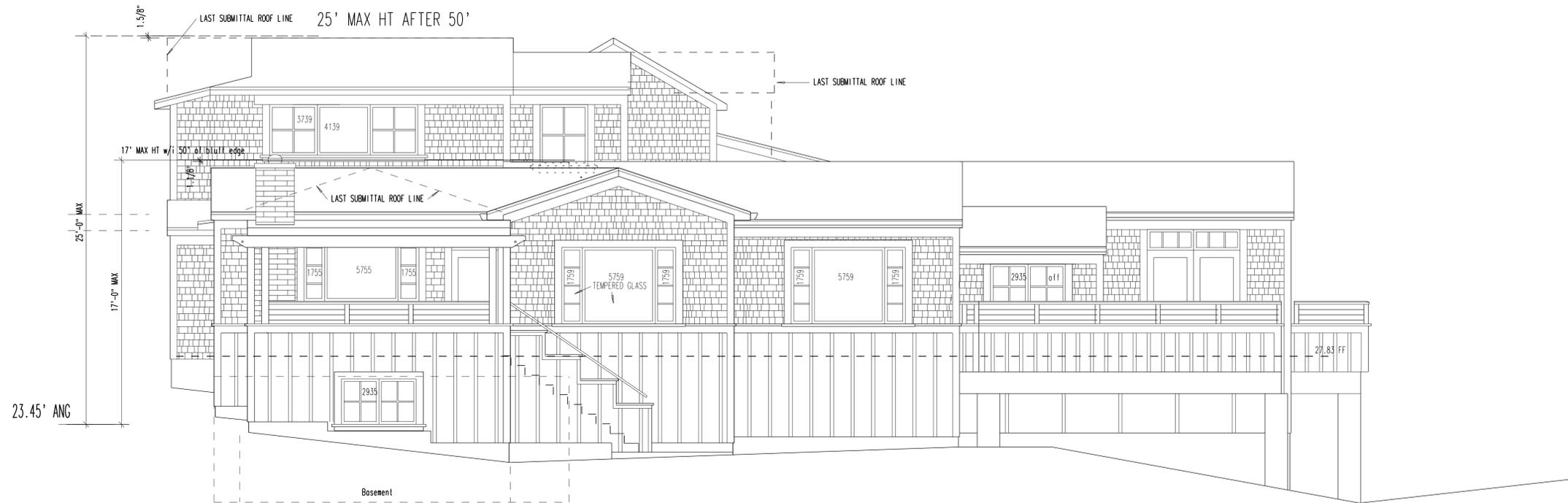


HOUGH
 REVISED: 9 DEC 15

2



NORTH



WEST

THOMAS MARTIN
 ARCHITECTURE · PLANNING · INTERIORS
 P.O. BOX 14128 · SAN LUIS OBISPO, CA 93401
 P.H. 805 544 4398 · E-MAIL: TMARCHS@YAHOO.COM

PREPARED: 2 APR 15
 SUBMIT TO BLDG DEPT:
 REVISED:
 ▲ REV 9 DEC 15
 ▲
 ▲

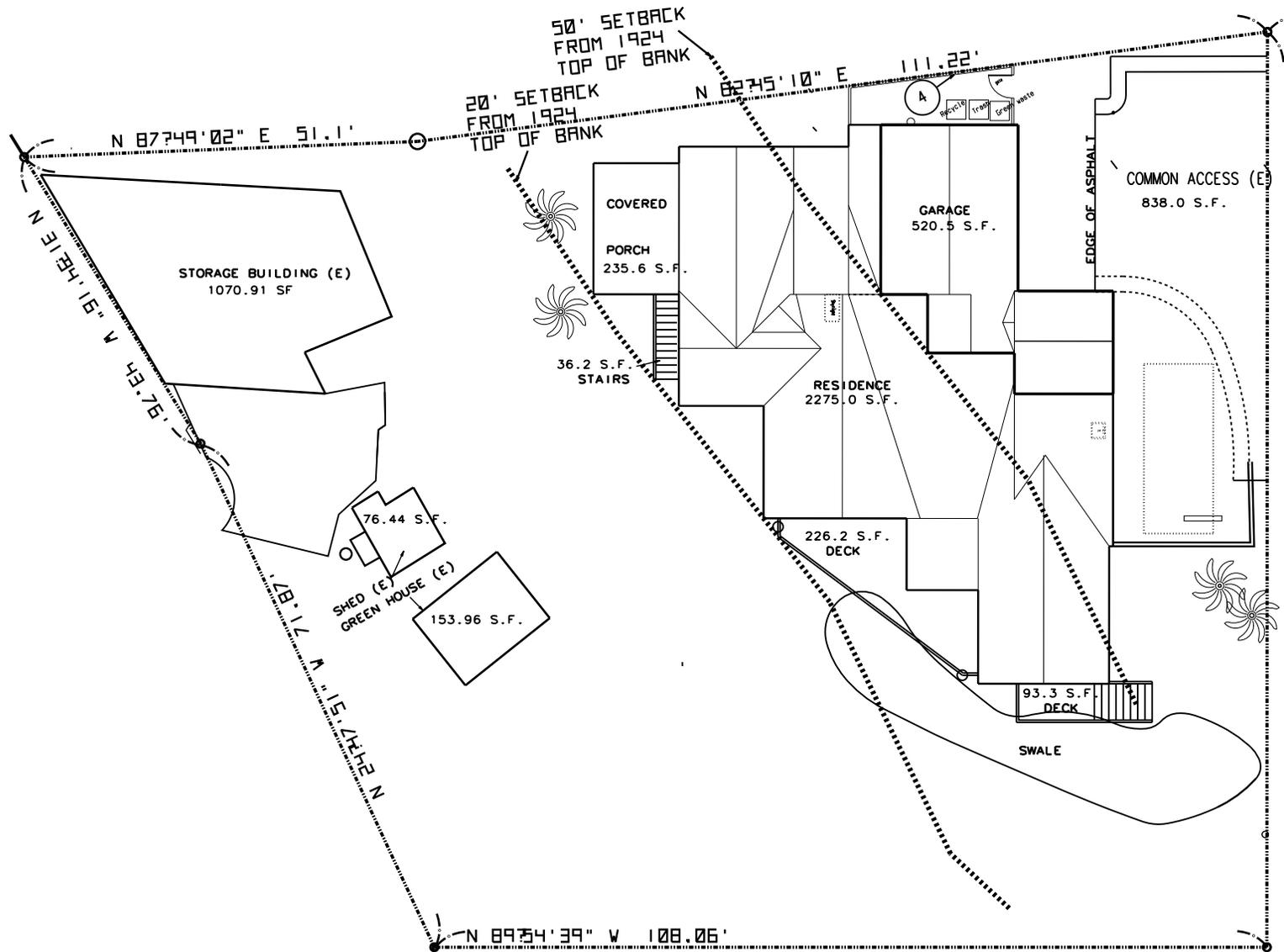
SHEET TITLE:
ELEVATIONS
 Scale 1/4"=1'-0"

PROJECT ADDRESS:
HOUGH RESIDENCE
 289 Main Street
 Morro Bay, CA 93442



HOUGH
 REVISED: 9 DEC 2015





N.T.S.

Exhibit H - Existing Simulation View



Exhibit H - Proposed Simulation View



Changes made to proposed Hough Residence at 279 Main St since first Commission meeting on September 1, 2015

1. Original deck was 822 continuous square feet. Deck was reduced by 505 square feet, or a 61% reduction, and divided into two parts for visual separation with a new total of 319 square feet.
2. Changed cable stair railing off both decks to a stepped stair railing to break up vertical mass at West and South elevation.
3. Changed gable roofline at North end of upper floor to a shed type roofline to open up view corridor from Main Street.
4. Changed upstairs bedroom into an office by eliminating the closet, reducing the square footage by 45 feet. Also turned ridgeline East to West to run perpendicular to bay to increase view of bay from Main Street.
5. Changed lower siding on three elevations (West, South and North) from shingle to board and batt to reduce the appearance of vertical mass.
6. Changed the gable on the roof over the covered deck at West elevation making it essentially a flat roof to further reduce the appearance of vertical mass from the tidelands area.
7. Removed the West and South walls of covered deck area to reduce feeling of bulk thus creating an open air feeling and further reducing visual mass. Deck roof will be supported by spaced 6X6 posts.
8. We will leave in place existing mature landscaping at West side of the project to assist in screening the property from parking lot.
9. Will use a darker gray for color palate to further reduce perception of bulk and mass.

RECEIVED

DEC 11 2015

City of Morro Bay
Community Development Dept.



AGENDA NO: C-1

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: January 5, 2016

FROM: David Buckingham, City Manager

SUBJECT: Discussion and Direction to Staff Regarding the Morro Bay Aquarium Lease Site

RECOMMENDATION

Staff recommends the City Council give preliminary “consent of landowner” approval to the Central Coast Aquarium proposal to construct a new aquarium on the current aquarium lease site with broad lease conditions as detailed in this report.

ALTERNATIVES

- Direct modifications to this proposal.
- Direct staff to develop a broad RFP for the Aquarium lease site, an RFP not restricted to marine science / aquarium activities.

FISCAL IMPACT

There is no current fiscal impact to approving this recommendation.

This proposal recommends a \$1/year, 40-50 year lease with the Central Coast Aquarium (CCA) for development and operation of a new aquarium on the Embarcadero in Morro Bay. While this lease site, fully redeveloped with restaurant/retail, might generate \$30,000-\$50,000 in annual rents and gross proceeds, staff analysis is the substantial public benefit of a new aquarium, and the indirect fiscal benefits to be accrued by the City broadly, warrant a long-term, low-cost lease.

SUMMARY

Working closely with City staff since the Council directed staff pursue a public/private partnership at the April 14, 2015 Council meeting, the CCA proposes to construct a \$5,000,000-\$10,000,000 new aquarium facility on the current MB Aquarium lease site. In addition to a partnership with the City, CCA is planning a partnership with Cal Poly San Luis Obispo. The new facility will have a first floor aquarium – not housing any marine mammals - open to the public year-round, while also catering to school groups. The second floor will have a multi-purpose space suitable for school group activities, Cal Poly classes and special events. New docks will serve the Cal Poly research vessel and environmentally-focused bay and ocean cruises. CCA and staff plan for the new Morro Bay visitor center, and public restrooms, to be designed and integrated into the first-floor lobby.

01181.0001/276796.1

Prepared By: DWB

Dept Review: _____

City Manager Review: _____

City Attorney Review: JWP

BACKGROUND

The Morro Bay Aquarium has been a significant presence on the Embarcadero for 50 years and the City wants to honor that legacy while building for the future.

In 2011, the City began the normal lease renewal process by contacting the current leaseholder. There was little interest from the leaseholder to make any measurable change to the existing physical site or operating posture. For example, the requirement levied on all lease redevelopments to include a public “bay-side” boardwalk was not included, and no proposal was made to modernize the aquarium in any way, including the continued housing of seals and sea lions in their existing confines.

In 2012 and 2013, including a hearing with the Harbor Advisory Board to take public and Board input on the matter, Council directed staff to develop a Request for Proposals (RFP) for the site. The RFP was to include Aquarium and Marine Education components. The RFP was issued in October 2013.

The City received no responses to the RFP. The City did receive a proposal from the current leaseholder that included minimal changes to the physical site. The City also received inquiries from the CCA, but those conversations did not result in a formal response to the RFP. The RFP deadline was extended, and then expired in October 2014.

On April 14th, 2015, the City Council directed staff to work directly with the CCA’s Board of Directors and executive leadership, and by extension with Cal Poly, to assist the CCA to develop a proposal for the operation and future redevelopment of the Morro Bay Aquarium lease site.

DISCUSSION

City staff and CCA staff have been working since April to develop the outlines of a proposal for a new aquarium to be operated by the non-profit CCA.

The lease on the current aquarium expires in 2018. If the Council approves this proposal, staff and CCA will continue to follow our standard process for new lease development and approval. Following is a brief outline of that process, which will likely take 24 months or more.

1. Council gives “Consent of Landowner” for the current proposal. (This item.)
2. CCA develops Concept Plan for development of the site.
3. Concept Plan goes to Planning Commission and Council for approval.
4. The CEQA process is completed in parallel with the above.
5. Following approval by the Council, if any, the Concept Plan goes to Coastal Commission for approval.
6. Concurrently with 4 and 5, above, a lease is negotiated and a final lease agreement is presented to Council for approval.
7. Following Coastal Commission approval CCA develops a Precise Plan
8. Following approval of the Precise Plan by the Planning Commission building permits may be issued and construction commences.

Proposed Plans for the New Facility.

- Visitor serving aquarium, including traditional seawater tanks featuring local flora and fauna and an interactive “touch tank,” open to the public year-round, while also conducting school programs. No housing of marine mammals will occur.

- Facility to include space for Cal Poly tie-ins, including docking for Cal Poly research vessel and possible on-site research facility for Cal Poly students/researchers.
- Facility to have a large second-floor combination space suitable for school groups, Cal Poly classes and convertible for rent as event space for weddings, group events, etc. Revenue to be used to pay for aquarium operations.
- Facility to include integrated space for a new Morro Bay Visitor Center and associated public restroom.
- Aquarium to arrange for volunteer docents providing free public engagement working from the open (no charge) dock area of the aquarium.
- Aquarium to arrange for environmentally-focused, outside the Bay, educational cruises running (for charge) from the Aquarium dock.
- Facility to include retail space.
- Facility may include a drinks café, perhaps on a second-floor viewing deck, open to the public.
- Lease site to be expanded to include the small parking area north of the current aquarium which will become a pedestrian plaza.

Proposed Lease Terms and other Financial Items.

- Lease terms to be \$1/year with no % of gross proceeds collected by City on admission, retail sales, event sales, etc.
- Other lease terms to be negotiated include length of lease, possible occasional City use of some space, public access.
- CCA will raise/borrow all funds necessary for permitting, construction and operation. The City will have no direct financial stake in construction or operation, but will receive permit fees.
- If the lease site were to be redeveloped with a retail/restaurant use it would generate approximately \$30,000 - \$50,000 per year in lease revenue and percent gross proceeds. This amount effectively represents the “loss” to the City by agreeing to a \$1/year lease with CCA. Integration of the new Morro Bay Visitor Center in the aquarium facility is a significant financial benefit to the City, both in terms of construction and ongoing operation.
- Staff anticipates a new aquarium, providing a first-class indoor attraction in Morro Bay for the next 50 years, will provide significant indirect revenues to the City, in addition to general public benefit, that easily balances out the low cost of the proposed lease.
- This Consent of Landowner will expire on Dec 31, 2016, if a complete application for the Planning Commission to review a Concept Plan has not been filed by CCA before Dec 31, 2016, and if due to any reason within the control of CCA, as reasonably determined by the City Manager, that Concept Plan has not been approved by the Planning Commission on or before December 31, 2016. In addition, unless evidence of sufficient financial and organizational capacity to fund, complete, manage and maintain the project, as reasonably determined by the City Manager, has not been provided, in writing, to the City Manager, or his/her designee, on or before Dec 31, 2016, the City Council may revoke this Consent of Landowner. One or more extensions to any or all of those milestones may be granted by City Council, in its sole discretion.

Facility Design.

The designs and diagrams presented to Council in this proposal phase are very preliminary in nature. As is normal at this point in the process, the designs are quite general/preliminary and will be fully developed in the Concept Plan stage. As noted above, the Concept Plan will proceed through the Planning Commission to the City Council for review and approval. Thus, at this time staff suggests there is no need to overly focus on the design elements of the project.

CCA has had a university architectural student working on the initial design. Some aspects of the initial design, such as public bayside lateral access, are consistent with the Waterfront Master Plan. Some elements incorporate unique ideas, such as transformation of the small parking area adjacent to the aquarium into a pedestrian plaza; that would be included in the Concept Plan. Other elements, such as the flat roof, lack of second-floor setback, and lack of architectural consistency with adjacent buildings on the street frontage will reach conformity during the professional development of the Concept Plan. Copies of the site plan, floor plans and building elevation facing the plaza are provided in Attachment 1.

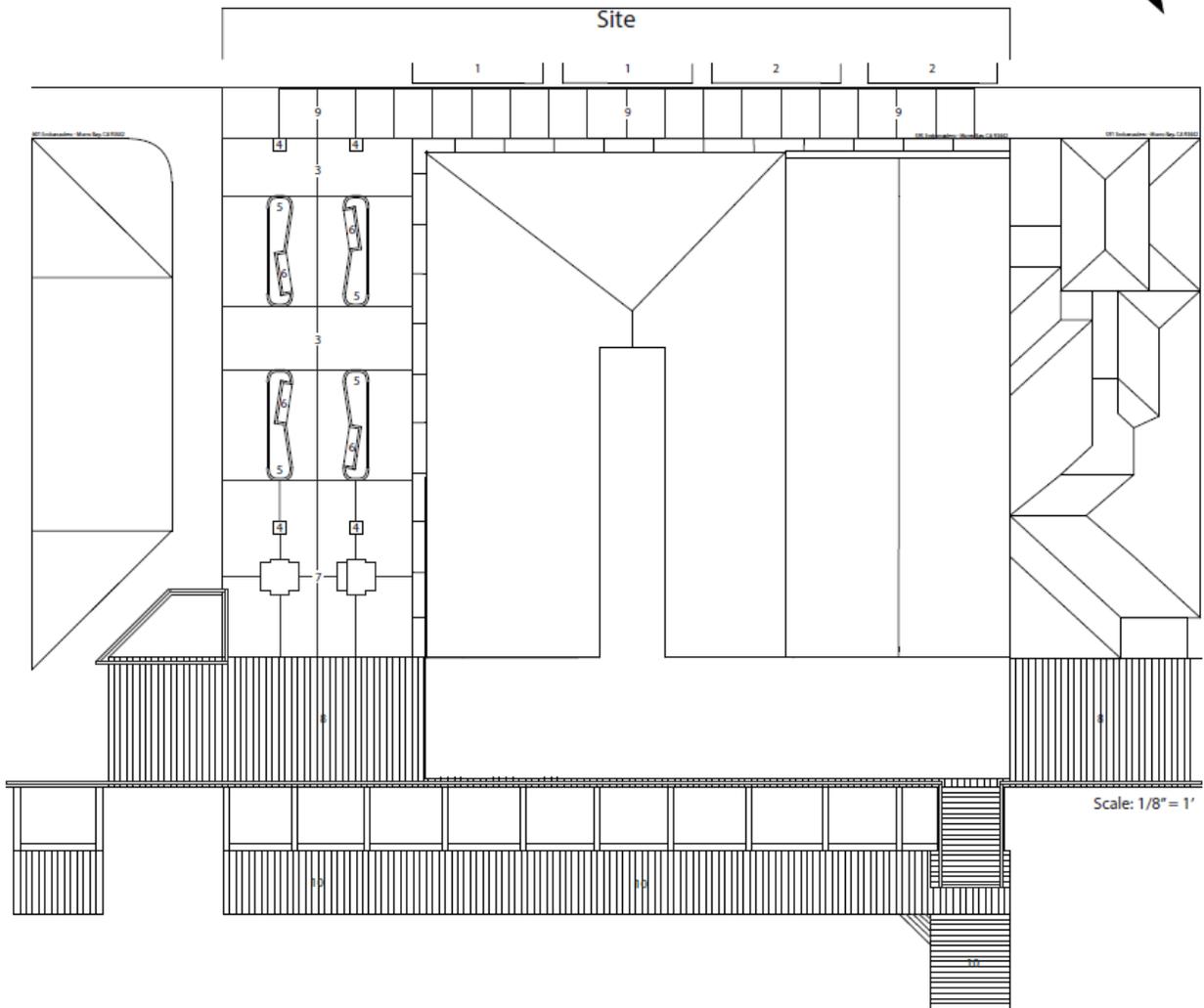
CONCLUSION

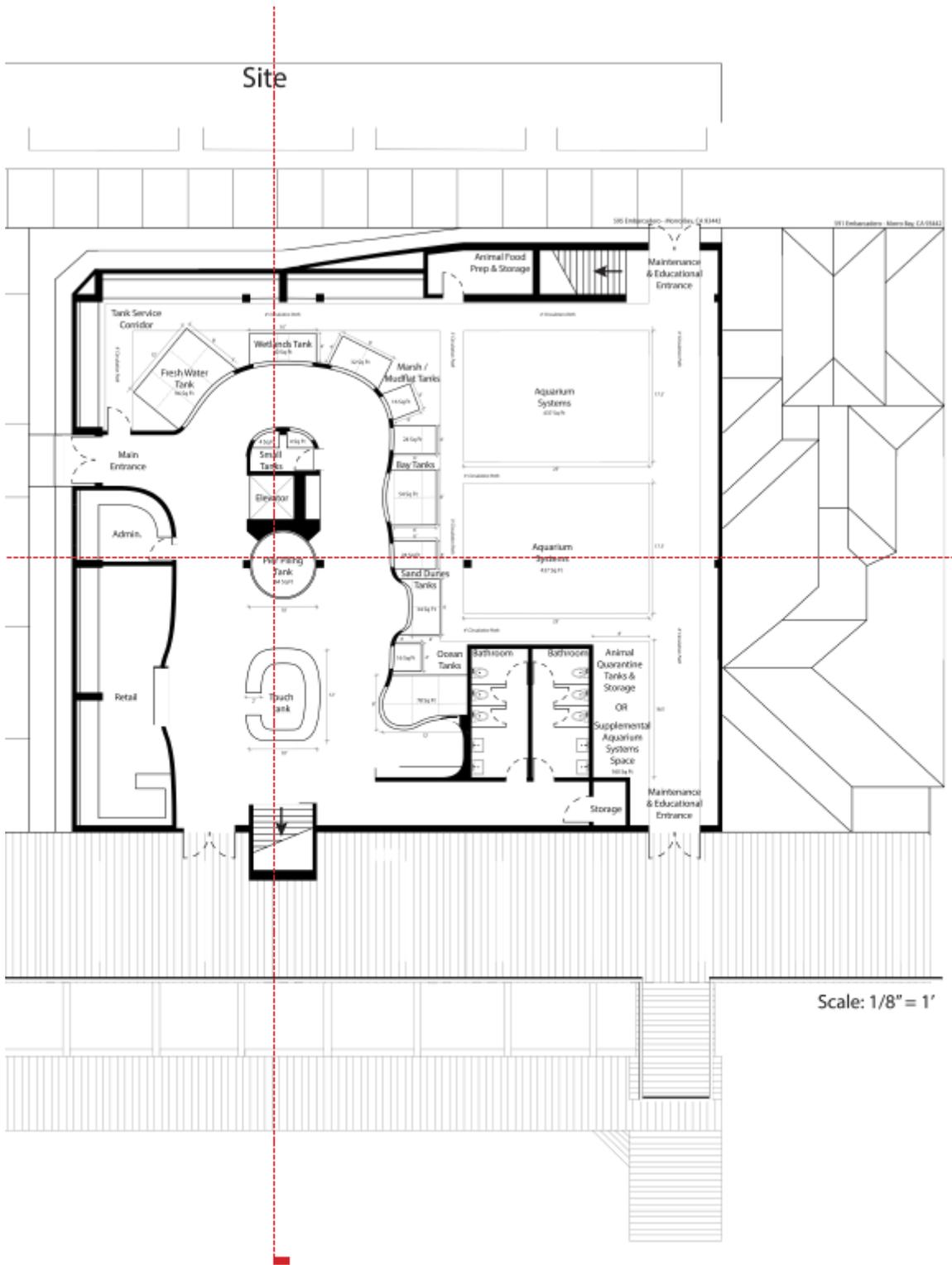
The Morro Bay Aquarium has been an important and significant institution in Morro Bay's first 50 years. We should build on that legacy as we rebuild for the next 50 years. The CCA proposal achieves the directed goals of the City Council by providing a first class, year-round, visitor-serving aquarium and marine research facility that will be a cornerstone of Morro Bay as a destination. The proposed project will deliver substantial public benefit, including the integration of the future Morro Bay visitor center in the aquarium facility design.

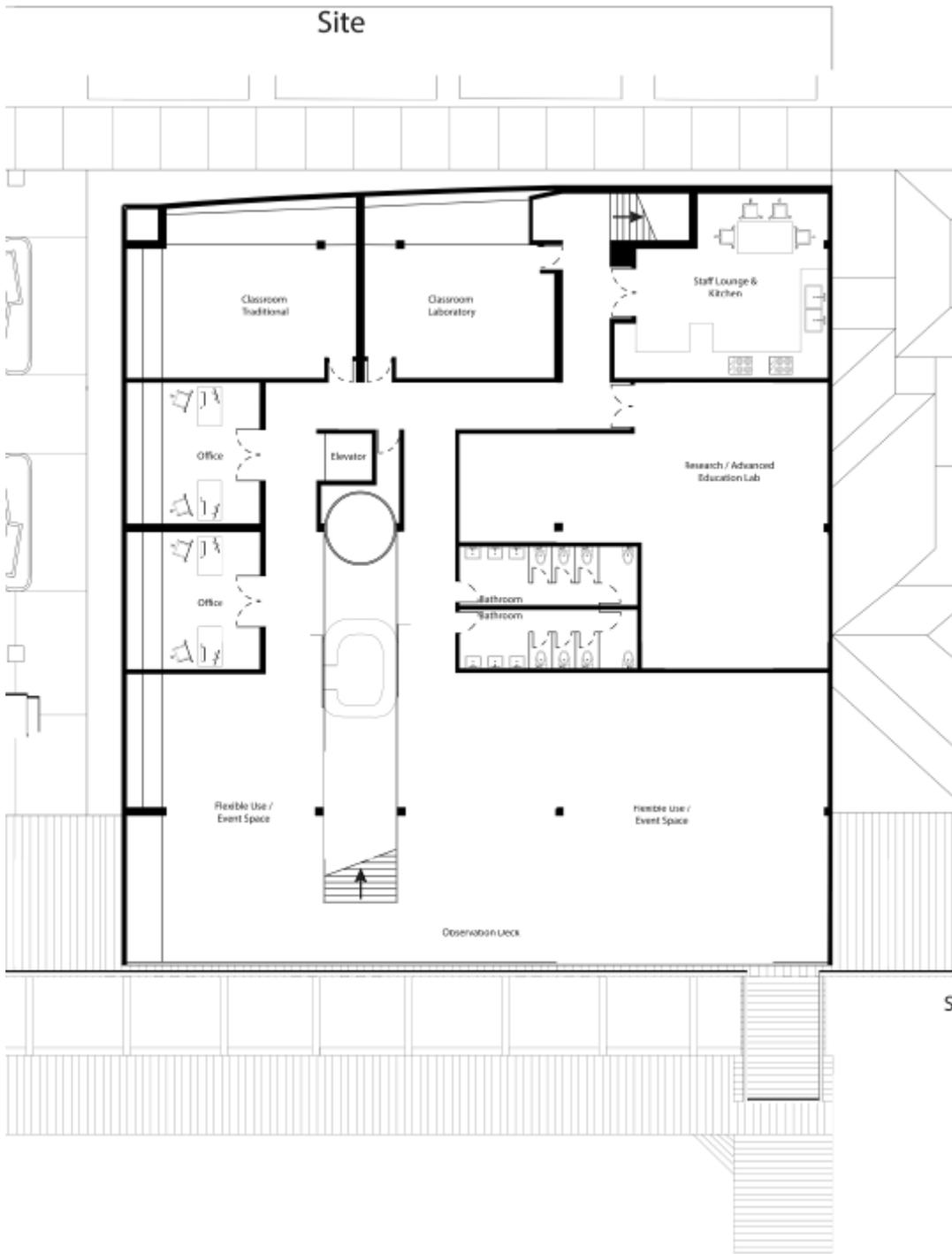
ATTACHMENT

Preliminary design diagrams

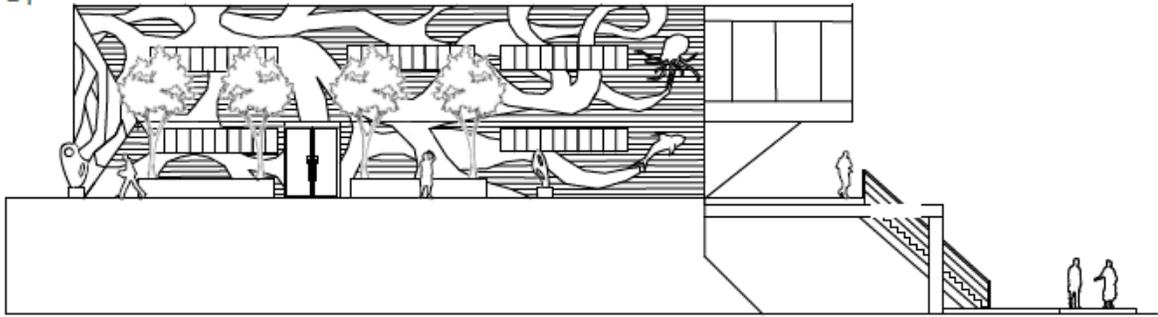
ATTACHMENT 1







Elevation - View Corridor
Scale: 1/8" = 1'





AGENDA NO: C-2

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: December 14, 2015

FROM: Sam Taylor, Deputy City Manager

SUBJECT: Discussion and Direction on City Tourism Marketing and Promotions Management

RECOMMENDATION

Staff recommends the City Council review the alternative management models presented and provide direction to staff related to City tourism marketing and promotions management.

ALTERNATIVES

The City Council can adopt an alternative management model as presented, modify a potential model, suggest a different management system for tourism marketing and promotions, keep the existing contracted organization system, or adopt the recommendation of the Tourism Business Improvement District (TBID) Advisory Board.

FISCAL IMPACT

City staff proposes a commitment of \$300,000 in Transient Occupancy Tax (TOT) funding into the City's largest economic engine: tourism marketing and promotions (staff recommends working up to that level of commitment over a five-year period). The intent of that funding is to alleviate the administrative burden of this important function from the Morro Bay (TBID) assessment funding, and also to provide for additional creativity and innovation related to the promotion of Morro Bay as a destination.

Please see the discussion section for additional detail.

BACKGROUND

City Council members adopted FY 15-16 Goals & Objectives that specifically called for staff to enhance economic development operations.

01181.0001/278882.1

Prepared By: ST

Dept Review: _____

City Manager Review: DWB

City Attorney Review: JWP

In particularly, Goal 6G requires staff to:

“Evaluate, analyze and present to council alternate models for partnerships between the City and both the Chamber of Commerce (Chamber) and the Morro Bay Tourism Bureau (MBTB).”

During the September 22, 2015, City Council workshop, staff partially completed that goal by presenting an alternative model to Council whereby the City would manage tourism marketing and promotions directly using hired expert tourism staff, as opposed to the existing model of contracting that service to the Morro Bay Tourism Bureau (MBTB).

During the workshop, Councilmembers asked staff to provide more detail on the alternative model, including the overall structure and plan for how that model would operate. This staff report seeks to provide full detail on the City managing its own tourism marketing and promotions.

At a December 10, 2015, TBID Advisory Board special meeting, Board Members unanimously rejected consideration of City staff’s proposed resolution and unanimously recommended an alternate resolution. The TBID Board’s proposal would retain the existing relationship with the MBTB, and suggests oversight of this City function can be further strengthened while leaving this private, non-profit entity in place to continue managing the City’s tourism promotions and marketing. Additional detail on this proposal is below.

DISCUSSION

As outlined previously, economic development enhancements are crucial to the long-term sustainability of the community.

During a recent financial and organizational study by Management Partners, the firm recommended the City, “Develop a proposal for integrating Tourism Bureau activities with City operations.”

Management Partners said:

“Having a tourism department housed in city operations has several advantages, including enabling a city to have a coordinated approach to economic development. As Morro Bay’s economic development plan is being completed it will be important to review existing economic development policies to ensure they are still appropriate.”

An alternative model would specifically have expert tourism staff continuing to manage this important function of the City’s economic development strategy. City staff is proposing to offer employment through a contractual relationship to the existing MBTB staff, to ensure a smooth transition and continue the strong work of that staff, but also reduce redundancy of, and better coordinate, economic development initiatives. It is important to note the TBID Advisory Board would be heavily involved in reviewing the success of this expert professional staff. City staff is

proposing to outline, via resolution, the crucial elements of this overall plan, including providing for accountability measures that allow for assessment of the staff by the TBID Advisory Board, as well as input on any potential new hires in the future. It is important the City Manager receive that valuable feedback from our stakeholders.

Over the last year, the City has made a strategic investment in its economic development management and oversight in order to begin diversifying the City's economy to ensure fiscal sustainability. The City went from having no staff focused on economic development to the hiring of staff specifically for that work. In addition, the creation of a rapid response economic development team consisting of the City Manager, Deputy City Manager and Community Development Manager was undertaken to aggressively focus on facilitating increased economic opportunity for businesses and the community. New economic opportunities will increase General Fund revenue in order to fund essential City services for all residents.

It is clear the City's tourism marketing and promotions are crucial legs of the City's economic development stool, which also includes existing business retention and expansion, creation of new businesses in the City, and recruitment of existing businesses to the City. Direct management of those functions allows for the contracted tourism staff members to better coordinate the City's overall brand management rather than only the tourism portion. A strong case can be made the City's overall branding should be under one umbrella, since the City's General Fund relies heavily on the 10% TOT collected to provide essential City services for all residents. Other efficiencies in an alternative model include the ability to enhance support of community events that promote both regional tourism and encourage overnight hotel stays, as well as to ensure quick and efficient response to marketing and promotions opportunities. As of now, the City must request permission from its contractor to receive tourism promotions and marketing funding for relevant projects. A more efficient system would allow the City to make determinations about appropriate expenditures based on an adopted strategic tourism plan and annual work plan recommended by the TBID Advisory Board and approved by Council.

Four major benefits come out of this model and these efficiencies:

- Strategic alignment. Bringing the City's tourism marketing and promotions operations directly within the City structure will strategically align all economic development functions of the City.
- Cost savings. The City will be able to reduce administrative overhead of the MBTB organization. For instance, expenditures are no longer necessary for housing tourism staff, attorneys, IT, audits, or accounting. The City already provides those services through full-time and contract staff. City tourism staff would reside in the City's facility at 695 Harbor Street. That represents a combined cost savings of \$20,000 to \$30,000 per year, which can further focus expenditure of TBID assessed funds into tourism promotions and marketing efforts.
- Reduce bureaucracy and maintain ability to act nimbly. There are multiple layers of

governance now, with City staff focusing on economic development and working off the strategic planning framework of the Council, while a separate tourism office is working off the policy framework of the MBTB, a separate 501(c)(6) organization. The ability to respond quickly to marketing opportunities that arise will be enhanced by the fact the City Manager has spending authority to provide for quick execution of budgeted economic development expenditures up to a threshold of \$125,000. As an example, the City was quickly able to commit to the Amgen Tour of California bicycle race because of that economic development efficiency and authority of the City Manager.

- Strengthen the connection with the TBID Advisory Board. This model allows the City to enhance the involvement of this advisory board in strategy determination for Citywide promotions and marketing. Currently, the TBID meets quarterly for fiscal oversight, while all decisions about tourism marketing and promotions occur monthly through the MBTB board. That has caused questions in the community, with many people confusing those two bodies, which have different missions, but also have the same volunteer members serving on both boards. The alternative model retains the very important TBID Advisory Board, enhances its recommendation authority, streamlines communications and coordination with staff and Council, and reduces community confusion.

The above-described alternative model recommends the City enhance tourism marketing and promotions by allowing TBID assessed funds to be focused on the task of economic development and less on administrative costs. To that end, staff suggests a model similar to Pismo Beach, in which the City sets a benchmark based on the most recent fiscal year's TOT collections and establishes a goal to invest that amount into tourism promotion and destination marketing. It will take time to work up to the full goal amount, but there is a very good argument for having the City make a financial commitment to our most important economic development activity. TOT revenue directly funds essential City services for all residents.

FY14-15 TOT ended at \$2,914,607. Staff proposes setting the benchmark at 10 percent of that amount, rounding up to an even \$300,000. That is the goal amount we want to work up to as a City General Fund investment in our most important economic development activity. The plan below has us reaching that target in five years, if TOT increases at the minimum rate anticipated by our hotel professionals (8% annual increase).

The proposed calculation follows:

- The City would commit \$60,000 of TOT (a General Fund revenue source) to tourism marketing and promotions with the FY16/17 budget and that will serve as the base commitment.
- In subsequent years, 20% of TOT revenues above \$3,000,000 would be added to the base amount and directed to support tourism operations, while the remaining 80% of TOT increases remain for other General Fund expenses.
- General Fund support to tourism operations would be capped, as noted above, at \$300,000.

FY	Projected TOT Revenue*	20% of TOT above \$3M	GF Investment in Tourism Operations
FY14/15	\$3,000,000		
FY15/16	\$3,240,000	\$48,000	
FY16/17	\$3,499,200	\$99,840	\$60,000
FY17/18	\$3,779,136	\$155,827	\$159,840
FY18/19	\$4,081,467	\$216,293	\$215,827
FY19/20	\$4,407,984	\$281,597	\$276,293
FY20/21	\$4,760,623	\$352,125	\$300,000

* Assuming the 8% per year increase anticipated by the hoteliers.

In the annual budget process, staff and TBID Advisory Board Members would recommend and the Council would determine how those General Fund expenditures would supplement the TBID assessment funds.

Following is a recap of the alternative model proposal:

- The City would no longer contract with the MBTB for its tourism marketing and promotions. Instead, the public aspects of tourism activities, including management of TBID assessed funds, would be executed internally by expert tourism City-staff. That expert tourism staff would report to the Deputy City Manager, who is responsible for all aspects of economic development (see attached organization chart).
- Expert City tourism professionals would manage all tourism marketing and promotions. That would include: (i) existing endeavors and work plan (to be reviewed and recommended by the TBID Advisory Board and reaffirmed City Council), (ii) Citywide brand management and destination-promoting projects to enhance Morro Bay’s marketability to further encourage hotel stays, (iii) support for community events that also promote the destination of Morro Bay and (iv) other activities to be outlined in the future based on a multi-year strategic tourism plan, the annual work plan/report, and ensuring the activities promote the destination of Morro Bay and actively support lodging stays.
- Existing MBTB staff would be offered contracted service agreements as the City’s expert tourism professionals. City staff is hopeful the existing MBTB staff would accept those contracted services opportunities by the City, ensuring a smooth transition from the current model to the proposed alternate model. A contracted relationship also reduces overall employment costs – an expressed concern of hoteliers – and ensures the duties are aligned with overall City economic development management.
- Retaining the crucial work of the TBID Advisory Board (the same people as the MBTB Board, but one less layer of bureaucracy) will provide for nimble execution of adopted policies and work plans by expert tourism staff under direction of the City Manager or his designee. The TBID Board would meet monthly to provide oversight and input on all

tourism/destination related subjects, including areas of interest not currently under the auspices of the TBID Board, such as City branding, all events, and other destination-related items. The hotel and destination experts composing the TBID Advisory Board would also provide input to the annual evaluation of the City's tourism manager and would be involved in assessment of any new hires related to this tourism manager position.

- Working with a 5-year goal to reach the full investment level (should TOT revenues increase at the pace expected by the hotelier community), the City intends to work up to an annual commitment of \$300,000 in General Fund revenues (10% of FT14/15 TOT) into tourism marketing and promotions. That would allow 100% of TBID assessment funds to be completely focused on programming for that endeavor with none of that revenue needed of administrative overhead.
- The Tourism Division professionals would be provided office space at 695 Harbor Street, co-locating that staff with the Chamber of Commerce for enhanced partnership.
- Expenditures will no longer be necessary for rent, utilities or telecommunications, and since the Tourism Division will be part of contracted City staff, that staff will be able to rely on existing City services for IT support, legal advice, financial and auditing support, saving further TBID assessed funds to focus on marketing and promotion.
- All agreements in place as of Nov. 17, 2015, would be recognized by the City. That means the MBTB should not let new agreements without direct City approval between now and May 2016.
- The City would assist the MBTB, a private, non-profit 501(c)(6) it created, to wind down and no longer be in existence.
- The City would begin working with the business community on the future formation of an additional Business Improvement District (BID) related to restaurants and retail, and potentially other businesses depending on community conversations and stakeholder outreach. An additional BID would continue to enhance the overall economic engine of the community.

Staff has met with the owners or managers of hotel properties that account for about 76 percent of the hotel rooms in the community.

The feedback from the hoteliers is they would like progress and success to continue. The only concerns mentioned by some were for the new model not to have the community take a step backward. They are very focused on their businesses, and they do not want to see any reduction in the success of the City's tourism marketing and promotion, thanks to the creation of the TBID assessment itself. Since the creation of the TBID, there have been two different management models.

There are some hoteliers who do not support the City undertaking management of its own tourism marketing and promotions. We very much respect their thoughts on this issue, and have tried to address those concerns. We have invited suggestions and solutions on how to make this alternative model the best it can possibly be to respond to concerns, and many of the details of this plan reflect the feedback received. The resolution proposed by staff includes many of the ideas from the hotelier community, and was further refined during the recent TBID Advisory Board meeting on December 10. Though the Board unanimously rejected staff's proposal, staff included some of the final input from Board Members, including refining how the City's would refer to contracted tourism professionals.

Based on stakeholder feedback, staff has built an alternative that will be nimble, cost-effective, and provide for greater efficiencies in overall management of City tourism marketing and promotions. That would result in reduced redundant efforts in brand management, event management and support, and encouragement of more initiatives that promote Morro Bay as a destination.

STAFFING CONSIDERATIONS

City staff has heard concerns from some hoteliers about hiring expert tourism staff and, more recently, have also heard concerns from some of the same hoteliers about entering into contractual relationships with service providers for this professional tourism effort. Initially, those concerned pointed out the City hiring staff would be more expensive than MBTB staff due to costs such as public employee retirement or healthcare.

In response to hotelier concerns, City staff modified its proposal to contractors for this work, and was then criticized as being insufficient for the work because a contractor could not be forced to work solely for the City of Morro Bay. The San Luis Obispo County Tourism Marketing District professional, Chuck Davison, CEO of Visit San Luis Obispo County, has advocated at the TBID Advisory Board meetings that full-time staff should be hired.

Staff believes a contractor relationship would work, and if a contractor does not meet the City's expectations, then their services would be discontinued. However, staff also sees a pathway to hiring those employees as City staff in a way that would not be cost prohibitive.

As noted above, a cost savings of about \$30,000 is expected through utilization of City work space, IT support, accounting services, and more. Based on information from Administrative Services staff, costs of hiring the MBTB staff as City employees would be about \$47,000 for healthcare (for some employees, not all), retirement, Medicare, etc.

When factoring in expected administrative savings, that amounts to a cost increase of about \$17,000, which City staff believes an appropriate expenditure if full-time staff is supported. Those costs could be further mitigated depending on health insurance requirements, as the City's calculations are based on a full family.

Staff suggests, if the City moves forward, then determinations about the best method for staffing of this function be delegated to the City Manager to carry out efficiently and in the best interests of the

community. The attached resolution has been modified to reflect that directive, and to consider the issue as part of the FY 16/17 budget process.

TBID BOARD PROPOSAL

The TBID Board unanimously recommended its own proposal, which is included as Attachment 2.

During discussions by the TBID Board, Members stated the City has seen great success as a result of the existing management model and the system is not broken. Board Members suggested developing a means of repairing communications between the City (both staff and Council), and the MBTB may be the solution to concerns by the City.

Staff did clarify with the Board Members the intent of their proposal is to leave the MBTB in place to manage tourism marketing and promotions for the City, but they were supportive of strengthening City staff oversight of the MBTB and its staff.

The Board was supportive of City staff's proposal of placing TOT revenues into tourism marketing and promotions, but recommended an even larger figure – \$500,000. Board Member Solu suggested the revenue increases will continue into the future and so \$500,000 is estimated to be one-third of what the TBID assessment would generate within five years (about \$900,000 now to her projection of \$1.4 Million later).

Here are the general points of the TBID Board's alternative proposal:

- 1) The City would manage its tourism promotions and marketing, including expenditure of the community's TBID assessment funds. Expenditures would be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, would guide the expenditure of these funds.
- 2) The MBTB expert tourism contractor would report to the City Manager or his designee and the MBTB chairperson and vice chairperson and would manage the City's tourism promotions and marketing. That contractor would be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license. The existing MBTB staff would be offered those positions. The City could modify that contractual relationship in the future if there were a more cost-effective approach to management of tourism marketing and promotions. Changes would be reviewed by the TBID Advisory Board, which would make a recommendation to the City Council prior to operational changes.
- 3) The TBID Advisory Board would participate in the annual review of the City's tourism contractor and would assist in setting goals and metrics to measure the success of the community's tourism promotions and marketing undertaken by this contractor. The Advisory Board would participate in the selection of any future tourism manager hiring process.

- 4) The TBID Advisory Board would have enhanced duties that include, not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. That could also include Citywide brand management, destination-promoting community event management or review, and more. The Advisory Board would assist its staff in developing the overall duties of the Board, and would make a recommendation to City Council in order to update the advisory body's bylaws, as appropriate.
- 5) The City would commit \$500,000 in TOT to the City's tourism operations. It is intended the budget would provide for that amount incrementally, with 20 percent of annual TOT increases being set aside for those purposes until the maximum is reached. The TBID Advisory Board would provide recommendations through its annual report and work plan on the appropriate expenditure of that funding to City Council.
- 6) The City would also hire professional contractor staff who would be provided office space in a City facility. The City's professional tourism contractor would advise on administration of the community Visitor Center for the City of Morro Bay.
- 7) In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City would provide for accounting, legal advice, IT support, as well as the aforementioned office space outside of TBID assessment funds.
- 8) In order to transition to direct management of tourism operations, the City would extend a new, significantly revised contract with the MBTB. The City would coordinate a transition plan to direct management of the MBTB contractor, with a full-time professional employee dedicated to the marketing and promotion of tourism for the tourism industry in Morro Bay and include that resolution in the contract with the contractor. That contract would include direct oversight of the contract by the City and all business would be performed by the TBID Board, i.e. – the tourism promotions and marketing, including expenditure of the community's TBID assessment funds. Expenditures shall be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, would guide the expenditure of those funds.
- 9) The City would work with the local business community on the formation of additional Business Improvement District(s) that could include retail and restaurant, recreation, vacation rental, Recreation Vehicle (RV) Park, camp ground, and property businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination it is. The City would work with the current MBTBID to move to the Property and Business Improvement District Law of 1994. The additional Business Improvement Districts and/or changes to the current TBID shall be voted on by January 2018.

CONCLUSION

City Council members directed staff to evaluate, analyze and report on an alternative City tourism marketing and promotions model. Staff has now executed that goal, and recommends the Council provide direction regarding how the City undertakes its tourism marketing and promotions work in the future.

ATTACHMENTS

1. Staff Proposed Resolution No. 03-16 – Alternative “A”
2. TBID Advisory Board Proposed Resolution No. 03-16 – Alternative “B”
3. Resolution Comparison Chart

RESOLUTION NO. 03-15 – ALTERNATIVE “A”

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DEFINING THE MANAGEMENT OF
TOURISM PROMOTIONS AND MARKETING**

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

WHEREAS, the City Council adopted the Tourism Business Improvement District (“TBID”) Law – Chapter 3.6 MBMC – via Ordinance 546 in 2009; and

WHEREAS, pursuant to MBMC 3.60.030, creation of the TBID is intended to provide a stream of revenue to the City to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination; and

WHEREAS, the City has managed its tourism promotions and marketing operations both internally in the past, though with no specific tourism staff, as well as contracted for said services with the Morro Bay Tourism Bureau (“MBTB”); and

WHEREAS, since the inception of the TBID assessment, tourism has increased tremendously in the City, and Transient Occupancy Taxes collected from hotel stays has increased by more than \$1 Million annually; and

WHEREAS, the City has greatly enhanced its focus on communitywide economic development, which includes tourism as Morro Bay’s major economic engine; and

WHEREAS, it is imperative the City strategically align all economic development operations to ensure efficiency, strong coordination, and enhanced long-term operations; and

WHEREAS, the City recognizes the important commitment to the hotelier stakeholder community when managing the community’s TBID assessment funds; and

WHEREAS, the City Council intends for the City to directly manage its tourism promotions and marketing, and provide for a structure of said management both as a way to outline the program and provide continued commitment to the hotelier stakeholder community;

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

The City Council finds it appropriate for the City to manage its tourism promotions and marketing directly. To that end, the following structure for management of the community's TBID assessment funds shall be as follows:

- 1) The City shall directly manage its tourism promotions and marketing, including expenditure of the community's TBID assessment funds. Expenditures shall be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.
- 2) Expert tourism professionals, reporting to the City Manager or his/her designee, will manage the City's tourism promotions and marketing. They shall be contractors, and will be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license, unless on further study the City Manager recommends an employee relationship and that position is approved and budgeted for in the FY 16/17 budget process. The existing MBTB staff will be offered those positions. The City may modify those contracted, or employee, relationship in the future if the City determines there is a more cost-effective approach to management of tourism marketing and promotions. Changes shall be reviewed by the TBID Advisory Board, which will make a recommendation to the City Council prior to operational changes.
- 3) The TBID Advisory Board shall participate in the annual review of the City's tourism manager and will assist in setting goals and metrics to measure the success of the community's tourism promotions and marketing undertaken by this contracted professional. The Advisory Board shall review and make recommendations for the selection of any future tourism manager.
- 4) The TBID Advisory Board shall have enhanced duties that include, not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. That can include Citywide brand management, destination-promoting community event management or review, and more. The Advisory Board shall assist staff in developing the overall duties of the Board, and will make a recommendation to City Council in order to update the Advisory Body's bylaws as appropriate.
- 5) The City shall commit \$300,000 in Transient Occupancy Taxes to the City's tourism operations. It is intended the budget shall provide for that amount incrementally, with 20 percent of annual TOT increases being set aside for these purposes, until the maximum is reached. The TBID Advisory Board will provide recommendations through its annual report and work plan on the appropriate expenditure of this funding to City Council.
- 6) The City's professional tourism professionals shall be provided office space in a City facility.

- 7) In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City shall provide for accounting, legal advice, IT support, as well as the aforementioned office space.
- 8) In order to transition to direct management of tourism operations, the City does not intend to extend its current contract with the MBTB past the May 2016 expiration of the existing contract. The City will coordinate a transition plan to direct management with MBTB input.
- 9) The City shall work with the local business community on the formation of an additional Business Improvement District that could include retail and restaurant businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination it is. Stakeholder approval, as required by law, shall be sought by January 1, 2018.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this ____ day of _____, 2016 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

RESOLUTION NO. 03-15 – ALTERNATIVE “B”

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DIRECTING THE MANAGEMENT OF
TOURISM PROMOTIONS AND MARKETING**

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

WHEREAS, the City Council adopted the Tourism Business Improvement District (“TBID”) Law – Chapter 3.6 MBMC – via Ordinance 546 in 2009; and

WHEREAS, pursuant to MBMC 3.60.030, creation of the TBID is intended to provide a stream of revenue to the City to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination; and

WHEREAS, the City has managed its tourism promotions and marketing operations both internally in the past, though with no specific tourism staff, as well as contracted for said services with the destination marketing organization Morro Bay Tourism Bureau (“MBTB”) with full-time professional tourism staff dedicated to marketing and promoting the City of Morro Bay’s tourism efforts; and

WHEREAS, since the inception of the TBID assessment, tourism has increased tremendously in the City, and Transient Occupancy Taxes collected from hotel stays has increased by more than \$1 Million annually; and

WHEREAS, the City has greatly enhanced its focus on communitywide economic development, which includes tourism as Morro Bay’s major economic engine; and

WHEREAS, it is imperative the City strategically align all economic development operations to ensure efficiency, strong coordination, and enhanced long-term operations; and

WHEREAS, the City recognizes the important commitment to the hotelier stakeholder community when managing the community’s TBID assessment funds; and

WHEREAS, the City Council intends for the City to directly manage its tourism promotions and marketing, and provide for a structure of said management both as a way to outline the program and provide continued commitment to the hotelier stakeholder community;

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

The City Council finds it appropriate for the City to manage its tourism promotions and marketing ~~directly~~. To that end, the following structure for management of the community's TBID assessment funds shall be as follows:

- 1) The City shall ~~directly~~ manage its tourism promotions and marketing, including expenditure of the community's TBID assessment funds. Expenditures shall be made pursuant to City and state law. A state-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.
- 2) ~~The MBTB Expert~~ tourism ~~staff~~~~contractor~~, ~~reporting reports~~ to the City Manager or his/her designee, ~~the MBTB chairperson and vice chairperson, and~~ will manage the City's tourism promotions and marketing. That ~~staff shall be contractors~~~~contractor~~, ~~and will~~~~shall~~ be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license. The existing MBTB staff will be offered these positions. The City may modify this contracted relationship in the future if there if the City determines a more cost-effective approach to management of tourism marketing and promotions. Changes shall be reviewed by the TBID Advisory Board, which will make a recommendation to the City Council prior to operational changes.
- 3) The TBID Advisory Board shall participate in the annual review of the City's tourism ~~manager~~~~contractor~~ and will assist in setting goals and metrics to measure the success of the community's tourism promotions and marketing undertaken by this ~~contracted~~~~employee~~~~contractor~~. The Advisory Board shall review and make recommendations for the selection of any future tourism manager hiring process.
- 4) The TBID Advisory Board shall have enhanced duties that include not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. That can include Citywide brand management, destination-promoting community event management or review, and more. The Advisory Board shall assist staff in developing the overall duties of the Board, and will make a recommendation to City Council in order to update the Advisory Body's bylaws as appropriate.
- 5) The City shall commit ~~\$300,000~~~~500,000~~ in Transient Occupancy Taxes to the City's tourism operations. It is intended the budget shall provide for that amount incrementally, with 20 percent of annual TOT increases being set aside for these purposes until the maximum is reached. The TBID Advisory Board will provide recommendations through its Annual Report and Workplan on the appropriate expenditure of this funding to City Council.
- 6) The City's professional ~~tourism~~~~contractor~~ staff shall be provided office space in a City facility. The City's professional tourism contractor shall advise on administration of the Community Visitor Center for the City of Morro Bay.

- 7) In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City shall provide for accounting, legal advice, IT support, as well as the aforementioned office space outside of TBID assessment funds.
- 8) In order to transition to direct management of tourism operations, the City ~~does not intend~~ to extend is a new, deeply revised current contract with the MBTB ~~past the May 2016 expiration of the existing contract.~~ The City will coordinate a transition plan to direct management ~~with Bureau input of the contractor, which shall have a full-time professional employee dedicated to the marketing and promotion of tourism for the tourism industry in Morro Bay and include this resolution in the contract with the contractor.~~ The contract shall include direct oversight of the contract by the City and all business will be performed by the TBID board, i.e. – the tourism promotions and marketing, including expenditure of the community’s TBID assessment funds. Expenditures shall be made pursuant to City and state law. A state-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.
- 9) The City ~~intends shall to~~ work with the local business community on the formation of ~~an~~ additional Business Improvement District(s) that could include retail and restaurant, recreation, vacation rental, Recreation Vehicle (RV) park, camp ground, and property businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination that it is. The City shall work with the current MBTBID to move to the Property and Business Improvement District Law of 1994. The additional Business Improvement Districts and/or changes to the current TBID shall be voted on by January 2018.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this ____ day of _____, 2016 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

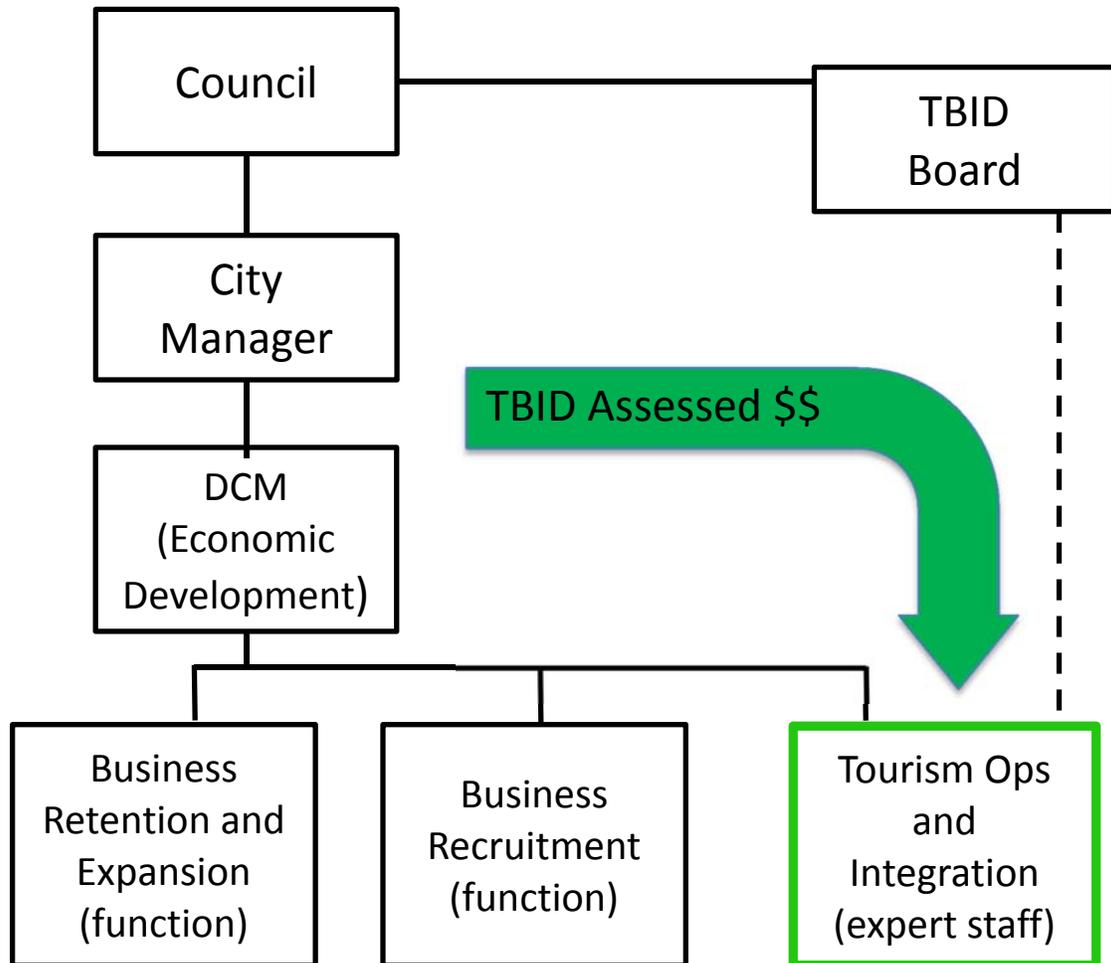
Staff Proposal	TBID Board Proposal
<p>The City shall directly manage its tourism promotions and marketing, including expenditure of the community’s TBID assessment funds. Expenditures shall be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.</p>	<p>The City shall directly manage its tourism promotions and marketing, including expenditure of the community’s TBID assessment funds. Expenditures shall be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.</p>
<p>Expert tourism professionals, reporting to the City Manager or his/her designee, will manage the City’s tourism promotions and marketing. They shall be contractors, and will be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license. The existing Morro Bay Tourism Bureau staff will be offered these positions. The City may modify this contracted relationship in the future should there be a more cost-effective approach to management of tourism marketing and promotions. Changes shall be reviewed by the TBID Advisory Board, which will make a recommendation to the City Council prior to operational changes.</p>	<p>The Bureau Expert tourism staff<u>contractor</u>, reporting—reports to the City Manager or his/her designee, <u>the Bureau chairperson and vice chairperson, and</u> will manage the City’s tourism promotions and marketing. This staff shall be contractors<u>contractor</u>, and will<u>shall</u> be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license. The existing Morro Bay Tourism Bureau staff will be offered these positions. The City may modify this contracted relationship in the future should there be a more cost-effective approach to management of tourism marketing and promotions. Changes shall be reviewed by the TBID Advisory Board, which will make a recommendation to the City Council prior to operational changes.</p>
<p>The TBID Advisory Board shall participate in the annual review of the City’s tourism manager and will assist in setting goals and metrics to measure the success of the community’s tourism promotions and marketing undertaken by this contracted professional. The Advisory Board shall review and make recommendations for the selection of any future tourism manager hiring process.</p>	<p>The TBID Advisory Board shall participate in the annual review of the City’s tourism manager—contractor and will assist in setting goals and metrics to measure the success of the community’s tourism promotions and marketing undertaken by this contracted<u>employee</u>contractor. The Advisory Board shall review and make recommendations for the selection of any future tourism manager hiring process.</p>
<p>The TBID Advisory Board shall have enhanced duties that include not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. This can</p>	<p>The TBID Advisory Board shall have enhanced duties that include not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. This can</p>

<p>include citywide brand management, destination-promoting community event management or review, and more. The Advisory Board shall assist staff in developing the overall duties of the Board, and will make a recommendation to City Council in order to update the Advisory Body's bylaws as appropriate.</p>	<p>include citywide brand management, destination-promoting community event management or review, and more. The Advisory Board shall assist staff in developing the overall duties of the Board, and will make a recommendation to City Council in order to update the Advisory Body's bylaws as appropriate.</p>
<p>The City shall commit \$300,000 in Transient Occupancy Taxes to the City's tourism operations. It is intended that the budget shall provide for this amount incrementally, with 20 percent of annual TOT increases being set aside for these purposes until the maximum is reached. The TBID Advisory Board will provide recommendations through its Annual Report and Workplan on the appropriate expenditure of this funding to City Council.</p>	<p>The City shall commit \$300,000<u>\$500,000</u> in Transient Occupancy Taxes to the City's tourism operations. It is intended that the budget shall provide for this amount incrementally, with 20 percent of annual TOT increases being set aside for these purposes until the maximum is reached. The TBID Advisory Board will provide recommendations through its Annual Report and Workplan on the appropriate expenditure of this funding to City Council.</p>
<p>The City's tourism professionals shall be offered office space in a City facility.</p>	<p>The City's professional tourism contractor staff shall be provided office space in a City facility. <u>The City's professional tourism contractor shall advise on administration of the Community Visitor Center for the City of Morro Bay.</u></p>
<p>In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City shall provide for accounting, legal advice, IT support, as well as the aforementioned office space.</p>	<p>In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City shall provide for accounting, legal advice, IT support, as well as the aforementioned office space <u>outside of TBID assessment funds.</u></p>
<p>In order to transition to direct management of tourism operations, the City does not intend to extend its current contract with the MBTB past the May 2016 expiration of the existing contract. The City will coordinate a transition plan to direct management with Bureau input.</p>	<p>In order to transition to direct management of tourism operations, the City does not intend<u>s</u> to extend is a new, deeply revised current contract with the MBTB past the May 2016 expiration of the existing contract. The City will coordinate a transition plan to direct management with Bureau input of the contractor, which shall have a full-time professional employee dedicated to the marketing and promotion of tourism for the tourism industry in Morro Bay and include</p>

	<p><u>this resolution in the contract with the contractor. The contract shall include direct oversight of the contract by the City and all business will be performed by the TBID board, i.e. – the tourism promotions and marketing, including expenditure of the community’s TBID assessment funds. Expenditures shall be made pursuant to City and state law. A state-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.</u></p>
<p>The City shall work with the local business community on the formation of an additional Business Improvement District that could include retail and restaurant businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination that it is. Stakeholder approval, as required by law, shall be sought by January 1, 2018.</p>	<p>The City intends shall to work with the local business community on the formation of an additional Business Improvement District(s) that could include retail and restaurant, <u>recreation, vacation rental, Recreation Vehicle (RV) park, camp ground, and property</u> businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination that it is. <u>The City shall work with the current MBTBID to move to the Property and Business Improvement District Law of 1994. The additional Business Improvement Districts and/or changes to the current TBID shall be voted on by January 2018.</u></p>

City of Morro Bay

Tourism Marketing & Promotions Operations Model





AGENDA NO: C-3

MEETING DATE: January 12, 2016

Council Report

TO: City Council

DATE: January 4, 2016

FROM: Jamie L. Irons, Mayor

SUBJECT: Appointment of Mayor Pro Tempore and Appointment of Representatives on Discretionary Boards, Council Liaison Assignments and Council Sub-Committees

RECOMMENDATION

Discuss and appoint Councilmember Matt Makowetski as Mayor Pro Tempore as well as appoint Representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2016.

DISCUSSION

The City Council Policies and Procedures Section 3.2 states:

“The appointment of the Mayor Pro Tempore shall be for a one-year term and shall be made at the first meeting in December. For appointment as Mayor Pro Tempore, a Council Member must be on the Council at least one year. Of those who have been on the Council for at least one year, the Council Member who has not yet held the position shall be appointed Mayor Pro Tempore. If there are two Council Members who have not yet held the position, the Council Member receiving the highest number of votes in the most recent election shall be appointed Mayor Pro Tempore.”

Last year Councilmember Smukler was appointed as Mayor Pro Tempore and in the year prior, Councilmember Johnson was appointed as Mayor Pro Tempore. Councilmembers Headding and Makowetski are both eligible, however Councilmember Makowetski received the highest number of votes in the 2014 election and would therefore receive the appointment. As a result, Council should make a motion and formally appoint Councilmember Makowetski as Mayor Pro Tempore for 2016.

The City Council Policies and Procedures Section 6.1 states:

Prepared By: JLIrons

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

“Annually the Mayor shall make appointments to a variety of County and/or regional committees and boards (discretionary appointments). One member of the Council shall serve as a voting representative and one member shall serve as alternate. To the best of their ability, voting delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions.”

Pursuant to Council Policies and Procedures Section 6.1, the Mayor can seek input from City Council regarding the appointment to County and/or Regional Boards, but ultimately, the Mayor is responsible for the appointment of these positions. Attached for your review is a list of the proposed City Council Discretionary Appointments.

The City Council Policies and Procedures Section 6.2.1 States:

“The City Council shall assign a Council liaison to each of the following advisory boards: Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board, and Tourism Business Improvement District Advisory Board.”

“The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the Council’s familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, members should either attend advisory body meetings or watch the meeting broadcasts and maintain communication with the advisory body on a regular basis.”

“Members should be sensitive to the fact that they are not participating members of the advisory body, but are there rather to create a linkage between the City Council and the advisory body. In interacting with advisory bodies, Council Members are to reflect the views of the Council as a body. Being an advisory body liaison bestows no special right with respect to advisory body business.”

Pursuant to City Council Policies and Procedures Section 6.2.1 the City Council shall assign Council Liaisons to the Advisory Bodies, including the Citizens Finance Committee. Attached for your review is a list of the proposed City Council Liaisons. Appointment as a liaison is by Council vote.

The City Council Policies and Procedures Section 6.2.2 States:

“Council may establish several sub-committees of no more than two members to address areas of concern and/or study.”

Attached for your review is a list of the proposed sub-committees that have been established by the Council. Appointment to the sub-committee is by Council vote.

CITY COUNCIL DISCRETIONARY APPOINTMENTS (2016)

INTEGRATED WASTE MANAGEMENT AUTHORITY (meets the 2nd Wednesday of every other odd numbered month; 130pm; Board of Supervisors Chambers, SLO Government Center)

John Headding Designee
Noah Smukler Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE (meets the 1st Wednesday of the month; 130-330pm; City County Library Room, 995 Palm, SLO)

Matt Makowetski Delegate
City Manager (or their designee) Alternate

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (SLORTA) & SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG) (RTA meets the 1st Wednesday of every other odd numbered month; 830am; Board of Supervisors Chambers, SLO County Government Center) (COG meets the 1st Wednesday of every other odd numbered month; at conclusion of RTA meeting; Board of Supervisors Chambers, SLO County Government Center)

Jamie Irons Delegate
Christine Johnson Alternate

CMC CITIZENS' ADVISORY COMMITTEE (1-year term) (meets the 3rd Friday of every other month; 1-2pm; at CMC)

Noah Smukler Member
Jamie Irons Alternate

AIR POLLUTION CONTROL DISTRICT (meets the 4th Wednesday of every other odd numbered month; 9am; Board of Supervisors Chambers, SLO County Government Center)

Noah Smukler Member
John Headding Alternate

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC. (formerly EOC) - (3-year term) (meets the 3rd Thursday of every month; 5pm; CAPSLO Board Room, 1030 Southwood, SLO)

**Morro Bay has rotated off this board and will cycle back in at CAPSLO's request.
No appointments at this time.**

ECONOMIC VITALITY CORPORATION (meets the 3rd Wednesday of every month; 4-530pm; Cannon & Assoc, 1050 Southwood, SLO)

Christine Johnson Liaison
John Headding Alternate

NATIONAL ESTUARY PROGRAM (Executive Committee meets quarterly; 2nd Wednesday of the month in February, May, August and November; 4-6pm)

Matt Makowetski Member
Noah Smukler Alternate

CITY SELECTION COMMITTEE (as needed)

Jamie Irons Member
Mayor Pro Tempore Alternate

LEGISLATIVE DELEGATE (as needed)

Jamie Irons	Member
Mayor Pro Tempore	Alternate

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

City Manager or designee (Community Development) Member

HOMELESS SERVICES OVERSIGHT COMMITTEE (meets the 3rd Wednesday of odd numbered months; 1-3pm; SLO Vets Building Lounge Room, 801 Grand, SLO)

Christine Johnson	Member
John Headding	Alternate

The following City Council Liaison Assignments were made to City Committees and Boards:

PLANNING COMMISSION (meets 1st and 3rd Tuesday of every month; 6pm; Vets Hall)

Jamie Irons	Liaison
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HARBOR ADVISORY BOARD (meets the 1st Thursday of every month; 6pm; Vets Hall)

Matt Makowetski	Liaison
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RECREATION AND PARKS COMMISSION (meets the 3rd Thursday of the month; 5:30pm; Vets Hall)

Christine Johnson	Liaison
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PUBLIC WORKS ADVISORY BOARD (meets the 3rd Wednesday of the month; 5:30pm; Vets Hall)

Noah Smukler	Liaison
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MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD (meets the 2nd Thursday of every month; 9am; Vets Hall)

John Headding	Liaison
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CITIZENS OVERSIGHT/FINANCE COMMITTEE (meets the 3rd Tuesday of every month; 3:30pm; Vets Hall)

John Headding	Liaison
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The following appointments were made on City Council Sub-Committees:

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES (meets as needed)

John Headding	Member
Christine Johnson	Member

JPA SUB-COMMITTEE

Jamie Irons	Member
Noah Smukler	Member

BACKGROUND/DISCUSSION

City staff released a Request for Proposal (RFP) on October 23, 2015 for the update of the City's General Plan, Local Coastal Plan, and Zoning Code, and for preparation of the associated environmental documents, which will likely take the form of an Environmental Impact Report. The RFP was based on the City's earlier "Plan for the Plan" effort which resulted in the preparation of a work plan for the overall update process. The work plan was prepared by PMC, a City hired consultant, and was most recently reviewed by the Planning Commission and City Council at a joint meeting on March 24, 2015. The work plan was subsequently finalized and the process was somewhat put on hold while the City worked on the grant agreements with the Ocean Protection Council and Coastal Commission and while the City prepared the FY 2015/2016 budget.

The RFP, was released in October and posted on the City's website, the American Planning Association website and forwarded to various local consulting firms. The response period closed on November 24, 2015, with only a single proposal received. The one proposal was from Michael Baker International, a multidiscipline consulting firm who has prepared many GP/LCP updates. Michael Baker International recently acquired PMC, which is the consulting firm that prepared the "Plan for the Plan". Michael Baker International is partnering with several local consultants including Rincon Consultants (EIR), RRM Design (Zoning Code Update), Ecological Assets Management, and Central Coast Transportation Consulting as well as Moffatt Nichol (Sea Level Rise). A copy of the entire proposal can be found at the following link: <http://www.morro-bay.ca.us/DocumentCenter/View/9272>.

The General Plan Advisory Committee (GPAC) interviewed the Michael Baker team on December 16, 2015. Eight of the nine GPAC members were present and voted unanimously to recommend Michael Baker International to the City Council. The GPAC also voted to recommend that the Council include the two optional tasks: 1) comprehensive update/overhaul to the GP/LCP (instead of a basic update) and 2) use of the CityVoice phone survey application.

Schedule

The "Plan for the Plan" anticipated that the GP/LCP update would take approximately three years, due to funding constraints, with a cost range from a low of \$806,250, medium cost of \$1,198,525, up to a high of \$1,590,800.

The Council, as part of the FY 2015/2016 budget process, identified \$800,000 (including grants) for the update, which allowed the reduction of the update timeline from three years to two years. The proposed schedule from Michael Baker International is as follows:

Qtr/Year	Phase/Task	Start Date	End Date
TASK 1: PROJECT INITIATION AND VISIONING			
Q1 2016	1.1 Project Kickoff	January 2016	January 2016
Q1 2016	1.2 CityVoice Community Visioning (started September 2015)	Ongoing	March 2016
TASK 2: BLUEPRINT AND GREENPRINT PREPARATION			
Q1-Q2 2016	2.1 Community Baseline Assessment	January 2016	June 2016
Q2 2016	2.2 Key Issues and Policies	April 2016	June 2016
Q3 2016	2.3 Alternatives Analysis	July 2016	September 2016
Q4 2016	2.4 Administrative Draft Blueprint and Greenprint Plans	October 2016	December 2016
Q2-Q3 2017	2.5 Public Review Draft Blueprint and Greenprint Plans (includes 45-day public review)	May 2017	July 2017
Q4 2017	2.6 Final Blueprint and Greenprint Plans	December 2017	December 2017
TASK 3: ENVIRONMENTAL ASSESSMENT			
Q4 2016	3.1 NOP/Scoping Meeting/Agency Consultation (includes 30-day public review)	October 2016	December 2016
Q1-Q2 2017	3.2 Administrative Draft Program EIR	January 2017	April 2017
Q2-Q3 2017	3.3 Public Review Draft Program EIR (includes 45-day public review)	May 2017	July 2017
Q3-Q4 2017	3.4 Responses to Comments/Final Program EIR (includes 10-day review)	August 2017	October 2017
TASK 4: ZONING ORDINANCE UPDATE AND COASTAL IMPLEMENTATION PLAN			
Q4 2016	4.1 Identify Proposed Zoning Ordinance/CIP Revisions	October 2016	December 2016
Q1 2017	4.2 Staff Draft Zoning Ordinance/CIP Amendments	January 2017	February 2017
Q1 2017	4.3 Administrative Draft Zoning Ordinance/CIP Amendments	February 2017	March 2017

Qtr/Year	Phase/Task	Start Date	End Date
Q2-Q3 2017	4.4 Public Review Draft Zoning Ordinance and CIP Amendments (includes 45-day public review)	May 2017	July 2017
Q3-Q4 2017	4.5 Public Hearing Draft Zoning Ordinance/CIP Amendments	August 2017	October 2017
Q4 2017	4.6 Final Zoning Ordinance/CIP Amendments	December 2017	December 2017
TASK 5: COMMUNITY ENGAGEMENT			
Q1 2016-Q2 2017	5.1 General Plan Advisory Committee (up to 16 monthly meetings, started September 2015)	Ongoing	December 2017
Q1 2016	5.2 Visual Identity	January 2016	February 2016
Ongoing	5.3 Website	February 2016	December 2017
Q1 2016	5.4 Stakeholder Interviews and Discussions	February 2016	February 2016
Q1-Q2 2016	5.5 Neighborhood and Community Group Outreach	March 2016	June 2016
Q3 2016 Q2-Q3 2017	5.6 CityVoice Policy Area Surveys Alternatives Draft Plan Review	August 2016 June 2017	September 2016 July 2017
TASK 6: MEETINGS AND PROJECT MANAGEMENT			
Ongoing	6.1 Project Management	January 2016	December 2017
Ongoing	6.2 City Staff Meetings (up to 10 bimonthly meetings throughout process)	March 2016	November 2017
Q1 2016-Q2 2017	6.3 California Coastal Commission Meetings (up to 6 meetings as-needed throughout process)	February 2016	May 2017
Q1 2016-Q3 2017	6.4 Study Sessions Introduction Community Vision Key Issues and Policies Alternatives Preferred Alternative Public Review Draft Plans	February 2016 April 2016 June 2016 August 2016 September 2016 July 2017	February 2016 April 2016 June 2016 August 2016 September 2016 July 2017
Q4 2017	6.5 Public Hearings (up to 4 hearings)	October 2017	December 2017
Ongoing	6.6 Grant Administration	January 2016	December 2017

Fee Schedule

The fee schedule for the project is provided below.

Tasks	Michael Baker International											Sub consultants					Total Budget				
	\$200	\$165	\$125	\$200	Senior Planner - Tech Specialist, Landscaps	\$150	Senior Planner / Fabricator	Associate Planner / Fabricator	Assistant Planner	GIS / Tech Editor	Admin Support	Total Hours	Total Labor	Direct Costs	Marfil and Michel	Rivcon		CCTC	RHM Design	EAM	
1. PROJECT INITIATION AND VISIONING	6	8	3		4	23	50			2	3	99	\$11,975	\$445	\$4,783	\$2,816	\$1,917	\$1,056		\$-	\$22,582
1.1 Project Kickoff	6	6	3			3					3	21	\$3,165	\$445	\$4,783	\$2,816	\$1,917	\$1,056		\$-	\$13,172
1.2 On/Offsite Community Visiting		2			4	20	50			2		78	\$8,810	\$-	\$-	\$-	\$-	\$-		\$-	\$8,810
2. BLUEPRINT AND GEEPRINT PREPARATION	65	176	174	50	119	228	266	568	112	42	1820	\$214,950	\$-	\$126,852	\$27,965	\$75,152	\$-	\$-	\$12,100	\$456,219	
2.1 Community Baseline Assessment	34	68	134	40	72	108	112	308	66	16	892	\$305,800	\$-	\$111,593	\$11,084	\$28,226	\$-	\$-	\$7,700	\$264,412	
Budget	8	36		20	48	96	50	138	48	6	450	\$33,630	\$-	\$-	\$2,225	\$28,226	\$-	\$-	\$6,000	\$91,181	
Geospatial	26	32	68	20	24	12	62	170	18	10	442	\$31,970	\$-	\$111,588	\$8,389	\$-	\$-	\$-	\$1,100	\$73,232	
2.2 Key Issues	4	8	16		8	12	14	14	14	2	2	80	\$9,910	\$-	\$2,279	\$1,968	\$3,905	\$-	\$1,100	\$19,182	
2.3 Blueprint and Geospatial Alternatives Analysis	4	16	20	4	6	24	20	36	24	2	156	\$18,410	\$-	\$2,279	\$2,062	\$24,750	\$-	\$-	\$-	\$48,101	
2.4 Administrative Draft Blueprint and Geospatial Plans	14	60	40	6	24	55	96	120	14	16	445	\$52,825	\$-	\$4,558	\$9,130	\$13,330	\$-	\$-	\$2,200	\$82,048	
Budget	4	34			18	42	32	70	6	8	214	\$25,340	\$-	\$-	\$3,897	\$13,330	\$-	\$-	\$1,100	\$43,661	
Geospatial	10	26	40	6	6	13	64	50	8	8	231	\$27,285	\$-	\$4,558	\$5,440	\$-	\$-	\$-	\$1,100	\$38,283	
2.5 Public Review Draft Blueprint and Geospatial Plans	6	16	20		6	19	32	60	4	4	167	\$19,025	\$-	\$3,071	\$1,271	\$4,741	\$-	\$-	\$550	\$28,658	
2.6 Final Blueprint and Geospatial Plans	3	8	10		3	10	12	30	2	2	80	\$9,180	\$-	\$3,071	\$1,051	\$-	\$-	\$-	\$550	\$13,852	
3. ENVIRONMENTAL ASSESSMENT		20	24								44	\$6,300	\$200	\$-	\$65,514	\$4,268	\$-	\$-	\$-	\$86,282	
3.1 NOP Scoping Meeting and Agency Consultation		4	4								8	\$1,160	\$200	\$-	\$7,309	\$-	\$-	\$-	\$-	\$9,289	
3.2 Administrative Draft Program EIR		6	8								14	\$1,990	\$-	\$-	\$91,116	\$4,268	\$-	\$-	\$-	\$97,374	
3.3 Public Review Draft Program EIR		4	4								8	\$1,160	\$-	\$-	\$6,389	\$-	\$-	\$-	\$-	\$7,748	
3.4 Responses to Comments/Final Program EIR		6	8								14	\$1,990	\$-	\$-	\$9,900	\$-	\$-	\$-	\$-	\$11,890	
4. ZONING ORDINANCE/UPDATE AND CONSTITUENT PLAN		10				18					28	\$4,080	\$-	\$-	\$-	\$-	\$-	\$41,360	\$-	\$45,440	
4.1 Identify Proposed Zoning Ordinance and CP Revisions													\$-	\$-	\$-	\$-	\$-	\$6,072	\$-	\$6,072	
4.2 Staff Draft Zoning Ordinance/CP Amendments		4				6					10	\$1,470	\$-	\$-	\$-	\$-	\$-	\$19,976	\$-	\$21,446	
4.3 Administrative Draft Zoning Ordinance/CP Amendments		2				4					6	\$870	\$-	\$-	\$-	\$-	\$-	\$3,696	\$-	\$4,566	
4.4 Public Review Draft Zoning Ordinance/CP Amendments		2				4					6	\$870	\$-	\$-	\$-	\$-	\$-	\$6,072	\$-	\$9,042	
4.5 Public Hearing Draft Zoning Ordinance/CP Amendments		2				4					6	\$870	\$-	\$-	\$-	\$-	\$-	\$3,168	\$-	\$4,038	
4.6 Final Draft Zoning Ordinance/CP Amendments													\$-	\$-	\$-	\$-	\$-	\$2,376	\$-	\$2,376	

INTERIM REPORT

Tasks	Michael Baker International											Sub consultants						Total Budget		
	Project Director	Project Manager	Assistant Project Manager	Senior Engineer	Senior Planner - Tech Specialist, Landscapes	Senior Planner / Facilitator	Associate Planner / Facilitator	Assistant Planner	GIS / Tech Editor	Admin Support	Total Hours	Total Labor	Direct Costs	Michael	Rincon	CCTC	RPM Design		ERM	
6. COMMITMENT/ENGAGEMENT	\$200	\$165	\$125	\$200	\$150	\$135	\$100	\$90	\$90	\$65	\$18	\$4,000	\$-	\$-	\$-	\$-	\$-	\$-	\$-	
6.1 General Plan Advisory Committee (up to 16 meetings)	16	88	76	8	8	114	148		50		518	\$66,210	\$4,000	\$-	\$-	\$-	\$1,320	\$-	\$71,530	
6.2 Visual Identity		4			10		20		30		64	\$6,880	\$-	\$-	\$-	\$-	\$-	\$-	\$6,880	
6.3 Website						40	20				60	\$7,400	\$-	\$-	\$-	\$-	\$-	\$-	\$7,400	
6.4 Stakeholder Interviews and Discussions				8		12	20				40	\$4,620	\$-	\$-	\$-	\$-	\$-	\$-	\$4,620	
6.5 Neighborhood and Community Group Outreach				8		24	44		20		116	\$13,280	\$1,000	\$-	\$-	\$-	\$-	\$-	\$14,280	
6.6 City/State Policy Area Surveys		4				8	24				36	\$4,140	\$-	\$-	\$-	\$-	\$-	\$-	\$4,140	
6. MEETINGS AND PROJECT MANAGEMENT	56	78	48	48		28		40		10	260	\$38,100	\$5,400	\$33,249	\$21,992	\$6,809	\$7,436	\$1,100	\$114,086	
6.1 Project Management (up to 50 30 min. conf. calls)	16	32	32							80	260	\$12,480	\$-	\$7,161	\$15,666	\$3,014	\$1,100	\$1,100	\$40,511	
6.2 City Staff Meetings (up to 10)	6	12	4			8				30	30	\$4,780	\$2,000	\$15,633	\$2,816	\$1,307	\$1,320	\$-	\$28,636	
6.3 Coastal Commission Staff Meetings (up to 6)	12	12	2			4				30	30	\$5,170	\$1,200	\$5,672	\$-	\$761	\$1,320	\$-	\$14,143	
6.4 Study Sessions (up to 6)	12	12	4			8				36	36	\$5,950	\$1,200	\$-	\$-	\$-	\$2,376	\$-	\$9,536	
6.5 Public Hearings (up to 4)	10	10	4			8				32	32	\$5,290	\$1,000	\$4,783	\$3,520	\$1,307	\$1,320	\$-	\$17,200	
6.6 Grant Administration			2					40		10	52	\$4,500	\$-	\$-	\$-	\$-	\$-	\$-	\$4,500	
Total Hours / Budget	143	380	325	58	141	411	464	606	164	55	2719	\$341,615	\$10,045	\$164,683	\$197,467	\$97,736	\$1,172	\$13,200	\$806,138	
OPTIONAL TASKS																				
4.0 Comprehensive Zoning Ordinance/CIP Update																			\$88K-\$140K	\$88K-\$140K
5.0 Additional City/State Collaboration																			\$-	\$5,000

The above per fee basis are based upon our best estimate of time needed. Actual time spent on individual tasks may not meet or may exceed such estimate. We reserve the right to transfer any and/or budget from one task to another if necessary. The data estimator/budget will not be approved without proper authorization.

CONCLUSION

The GPAC interviewed and recommended award of the contract for update of the GP, LC, and Zoning Code, and preparation of an EIR to Michael Baker International.



AGENDA NO: C-5

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 15, 2015

FROM: Joseph W. Pannone, City Attorney
Brooke Austin, Legal Assistant/Deputy City Clerk

SUBJECT: Introduction and First Reading of Ordinance No. 598 Amending Section 3.08.070 of the Morro Municipal Code relating to Bidding

RECOMMENDATION

Staff recommends the City Council review Ordinance No. 598, accept public comment, and make a motion for the introduction and first reading of Ordinance No. 598, by number and title only, amending Section 3.080.070 of the Morro Bay Municipal Code (MBMC) relating to bidding.

BACKGROUND/DISCUSSION

In August, the Council adopted Ordinance No. 594 amending various sections of Chapter 3.08 of the MBMC relating to contract authority and the purchasing process. In reviewing and implementing those changes, staff became aware of some language in MBMC Section 3.08.070 that conflicts with the changes made or is repetitive of provisions in Ordinance No. 594. Section 3.08.110 allows the purchase of up to \$50,000 without a formal bid process and Section 3.08.170 gives the City Manager the authority to sign any contract, whether open market or bid, up to \$125,000. In addition, language is being suggested to be added to Section 3.08.070 to clarify when bidding and open market procedures can be dispensed with and requiring notification to the Council of that. Therefore, Ordinance No. 598 is being proposed to amend Section 3.08.070 accordingly.

CONCLUSION

Staff recommends the City Council introduce Ordinance No. 598, by reading the number and title only.

01181.0001/278702.1

Prepared By: BRA

Dept Review: _____

City Manager Review: DWB

City Attorney Review: JWP

ORDINANCE NO. 598

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING SECTION 3.08.070 OF THE
MORRO BAY MUNICIPAL CODE RELATING TO BIDDING**

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

WHEREAS, the City Council recently adopted Ordinance No. 594 that made various amendments to Chapter 3.08 of the Morro Bay Municipal Code (MBMC) relating to contract authority and the purchasing process;

WHEREAS, in reviewing and implementing those changes, staff became aware of language in MBMC subsection 3.08.070 that conflicted with the changes made; and

WHEREAS, this Ordinance rectifies that situation.

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:

SECTION 1: Section 3.08.070 of the MBMC is hereby amended to read as follows:

3.08.070 – Exceptions to Requirements of this Chapter. Bidding.

Purchase of supplies, equipment, materials, and public works projects shall be by bid procedures pursuant to Sections 3.08.100 and 3.08.110. Notwithstanding any other provisions of this chapter and subject to applicable State laws, bidding or open market procedure may be dispensed with only when an emergency, as determined by the city manager, requires that an order be placed with the nearest available source of supply, or when the amount involved is less than five hundred dollars, or when the supplies and materials can be obtained from only one vendor. The city manager, or his/her designee, shall, as soon as reasonably possible after the decision, notify the City Council of the decision to proceed as permitted by this section.

SECTION 2: This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 12th day of January, 2016 by motion of Councilmember _____, seconded by Councilmember _____.

PASSED AND ADOPTED on the _____ day of _____, 2016.

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 12th day of January, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2016, by the following vote, to wit:

Ayes:
Noes:
Abstain:
Absent:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

City Clerk of the City of Morro Bay



AGENDA NO: C-6

MEETING DATE: January 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: January 4, 2016

FROM: Joseph W. Pannone, City Attorney
Lindsay M. Tabaian, Special Litigation Counsel

SUBJECT: Introduction and First Reading of Ordinance No. 599 Relating to Medicinal Marijuana Uses and Prohibitions in the City of Morro Bay; Adoption of Resolution No. 04-16 Reaffirming that Medicinal Marijuana Dispensaries and the Cultivation of Marijuana, As Uses Not Specifically Enumerated in the Morro Bay Municipal Code, Are Prohibited

RECOMMENDATION

Staff and the Office of the City Attorney jointly recommend the City Council take the following actions:

- (1) Introduce Ordinance No. 599, and waive further reading, amending Title 9, Chapter 9.06 of the Morro Bay Municipal Code ("MBMC") to rename that Chapter, prohibit medical marijuana cultivation in all zones and make other adjustments to the City's existing medical marijuana dispensary regulations (the "Amended Ordinance") (Attachments 1 and 2); and
- (2) Adopt Resolution No. 04-16, reaffirming and confirming the City's Zoning Code, enumerated under Title 17 of the MBMC, is a permissive Zoning Code such that medical marijuana cultivation, as a use not specifically enumerated in the Zoning Code, is prohibited (the "Resolution") (Attachment 3).

BACKGROUND

Prior Medical Marijuana Regulations

In 1996, California voters adopted the Compassionate Use Act (CUA) as a ballot initiative, codified at Health & Safety Code section 11362.5. The CUA provides a limited defense from prosecution for cultivation and possession of marijuana. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153).

In 2004, California Senate Bill (SB) 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA. Those new regulations and rules became

Prepared By: <u> LMT </u>	Dept Review: _____
City Manager Review: <u> DWB </u>	
City Attorney Review: _____	

known as the Medical Marijuana Program (“MMP”), which among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

The California courts have found neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes. (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.) Rather, the statutes set up limited defenses to state criminal prosecution. The manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act. (21 U.S.C. §§ 812, 841, 844.)

In 2009, the City Council imposed a prohibition on fixed (*i.e.* “brick and mortar”) medical marijuana dispensaries city-wide by adopting Ordinance No. 547, codified in the Morro Bay Municipal Code (“MBMC”) at Title 9 (Public Peace, Morals and Welfare), Chapter 9.06, “MEDICAL MARIJUANA DISPENSARIES” (the “Ordinance”). Those regulations remain lawful and will not be affected by the proposed text amendments.

In 2013, the California Supreme Court found the CUA and MMP do not preempt a city’s local regulatory authority and confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries. (*City of Riverside, supra*, 56 Cal.4th 729 [affirmed authority of cities to prohibit the operation of medical marijuana dispensaries within their jurisdiction through land use laws]; see also, *Maral supra*, 221 Cal.App.4th 975, 978 [state law does “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city”].)

New Marijuana Regulations – the Medical Marijuana Regulation and Safety Act

In September 2015, the state legislature enacted, and the Governor signed into law, three bills – Assembly Bill (AB) 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “MMRSA”). The MMRSA creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.

The statewide regulatory scheme is headed by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The Department of Food and Agriculture will be responsible for regulating cultivation; the Department of Public Health for developing standards for manufacture, testing, and production and labeling of edibles; the Department of Pesticide Regulation for developing pesticide standards; and the Departments of Fish and Wildlife and State Water Board for protecting water quality.

DISCUSSION

Dual Licensing System

Although the Bureau of Medical Marijuana Regulation will issue the state licenses, the MMRSA provides for a system of dual licensing with the city or county in which the business is located. Within approximately two years, all cultivation and distribution of medical marijuana will require one of seventeen different *state* licenses. The licenses will be valid for one year and must be renewed annually. A state license will not be required for individual medical use and cultivation, or the provision of medical marijuana by a “caregiver” to no more than five “patients.”

However, the new laws maintain the authority of local agencies to prohibit, regulate and/or license medical marijuana uses within their jurisdiction. The MMRSA expressly provides it is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.” (Business & Professions Code § 19315.) That is accomplished, in part, by the requirement that before one of the new medical marijuana state licenses will be issued, an applicant must have obtained a *local* license/permit for medical marijuana cultivation or distribution.

Pursuant to the following new statutes, local jurisdictions effectively will have a “veto” over whether a state license can be issued:

(1) Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license *until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.*”

(2) Health & Safety Code § 11362.777(b): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, *from the city.* . . in which the cultivation will occur.”

(3) Business & Professions Code § 19316: “[Local jurisdictions] may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity.”

(4) Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization *shall terminate the ability of a medical cannabis business to operate within that local jurisdiction.* . . .”

(5) Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

The new regulatory regime is akin to the need to secure an alcohol license before serving alcohol – yet with local control over issuance of medical marijuana licenses. For example, the City of Fresno expressly prohibits all medical marijuana cultivation. Because of those local prohibitions, people in Fresno will be ineligible for the necessary state cultivation licenses. Similarly, if the MBMC text amendments described herein are adopted, then the same will be true in Morro Bay.

Time-Sensitive Cultivation Regulation

Some of the new laws created by the MMRSA will take effect on January 1, 2016. After that, the state will need several months (probably more than one year) to set up the necessary agencies, information systems, and regulations to support the issuance of licenses. It is expected state licenses (if not preempted by local government regulations) will start being issued on January 1, 2018. In the interim, local governments may choose to adopt new ordinances to permit or license local businesses

in preparation for state licensing – most of which are not time sensitive.

The issue of cultivation regulations, however, is time sensitive. The MMRSA, as currently written provides, *if a city does not have cultivation regulations or a prohibition in place by March 1, 2016, then when the state begins issuing cultivation licenses (likely in 2018) an individual in that city can skip the need to first secure a local license/permit and apply directly for a state cultivation license.*

Specifically, new-Health & Safety Code § 11362.777(c)(4) provides in part:

“If a city. . .does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city”

Thus, if a city presently has a permissive zoning code or express zoning ordinance which regulates or prohibits cultivation, then there is no need to do anything before March 1, 2016. It is important to note the new Health & Safety Code provision requires the express cultivation ban, to be effective, to be codified within a “land use” regulation. (Health & Safety Code § 11362.777(b)(3).)

Summary of City Ordinance and Recommended Amendments

The City currently has an express prohibition on the establishment of fixed-location medical marijuana dispensaries in the City. This prohibition is codified in the Morro Bay Municipal Code (“MBMC”) at Title 9 (Public Peace, Morals and Welfare), Chapter 9.06, “MEDICAL MARIJUANA DISPENSARIES” (the “Ordinance”). The Ordinance prohibits the establishment and operation of fixed-location medical marijuana dispensaries (MBMC §§ 9.06.010-040) and deems those uses to be a “misdemeanor” pursuant to the City’s police powers, subject to criminal and infraction penalties (MBMC § 9.06.040).

In order to clarify the existing dispensary regulations and maintain local control over the issue of medical marijuana cultivation before the state-mandated deadline, it is recommended that the City Council take the following actions:

(1) Revise the Ordinance’s definition of “dispensary” to clarify that distribution by all persons, not just primary caregivers, is prohibited.

As currently drafted, the Ordinance defines a “dispensary” as “any facility in a single fixed location where a ***primary caregiver*** makes available, sells, transmits, gives, or otherwise provides medical marijuana or cannabis for medical purposes to two or more qualified patients or persons with an identification card in accordance with Health and Safety Code Section 151362.”

This definition should be updated as provided in the attached draft amendment to the Ordinance (the “Amended Ordinance”) to include references to the current state law and clarify that the ban on distribution applies to anyone, not just to primary caregivers.

(2) In order to maintain local control over marijuana cultivation, (i) amend the Ordinance to

include an express ban on medical marijuana cultivation; and (ii) adopt Resolution confirming an implied ban on medical marijuana cultivation in all zones due to City's permissive zoning code.

If the City seeks to also maintain local control over cultivation, then a local cultivation ban is required. As noted, if the City does not have local rules on cultivation in place by March 1, 2016, the State's licensing scheme preempts local control.

While the City's Ordinance currently bans fixed-location medical marijuana *dispensaries* pursuant to the City's police powers, that regulation will not be sufficient to maintain local control over medical marijuana *cultivation* because (1) the Ordinance does not set forth an express cultivation ban and (2) even if it was amended to include an express ban (as proposed), that regulation may not be sufficient since an argument could be made the attached Ordinance is not a "land use" regulation as provided under Health & Safety Code § 11362.777(b)(3).

In order to adopt a cultivation ban which complies with the new Health & Safety Code regulations, the City Attorney's office recommends that the Council take the following two-fold approach:

- i) ***Introduce for first reading Ordinance No. 599 prohibiting the "cultivation of marijuana and medical marijuana" City-wide*** and making other adjustments to existing City regulations; and

The attached Amended Ordinance adopts an express cultivation ban in addition to the existing dispensary ban codified in the City's Municipal Code. If the City Council opts to adopt the recommended cultivation ban, it – of course – retains the ability to adjust and/or rescind the same in order to regulate rather than ban certain or all medical marijuana uses.

- ii) Given that the Ordinance is not a part of the Zoning Code and, therefore, arguably not a "land use" ordinance, in an abundance of caution, also ***adopt Resolution No. 04-16 affirming the City's Zoning Code is a permissive zoning code such that medical marijuana cultivation is impliedly prohibited.***

The City Attorney's office further recommends that the City Council preserve its land use and police powers by adopting a resolution that confirms that the City has a "permissive zoning" code (meaning that all uses not expressly permitted are prohibited) and that marijuana cultivation (the only time-sensitive issue) is therefore prohibited in Morro Bay. We make this recommendation because Health & Safety Code § 1362.777(c) specifically provides, by March 1, 2016, if the City does not have "land use" regulations or ordinances governing marijuana cultivation (either regulating or banning thereof), it cedes all local authority to do so over to the state.

Adopting such a resolution is recommended by the League of California Cities and it allows the City Council a simple, cost-effective way to confirm its express ban on cultivation and to also preserve its regulatory options at the local level while also permitting the City Council to thoughtfully consider local Morro Bay regulations and prohibitions before 2018.

The City's Zoning Code (MBMC Title 17) arguably constitutes a "permissive zoning" code, because the MBMC lists all permitted land uses. If a particular use is not listed, then it is generally

prohibited. The City's situation is, therefore, similar to the situation found in *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 where the court found that the City of Corona had permissive zoning, because of the language within the text of its zoning code.

Although Morro Bay's Zoning Code does not include the specific language deemed by the *Naulls* Court to be important to finding the existence of a permissive zoning code – the statement that “any use not permitted is prohibited” – a compelling argument can be made that this specific language is not required so long as the “intent by the City to prohibit uses not expressly identified” is evident from the text of the zoning code. As the *Naulls* Court observed:

“As previously indicated, the trial court found, based upon its reading of both the City's municipal code and Temple's declaration, that the City's municipal code ‘is drafted in a permissive fashion,’ and that ‘[a]ny use not enumerated therein is presumptively prohibited.’ . . . ***We therefore conclude that, notwithstanding the City's police power to impose zoning ordinances as a means of promoting the public welfare (see, e.g., Hernandez v. City of Hanford (2007) 41 Cal.4th 279, 59 Cal.Rptr.3d 442, 159 P.3d 33), the trial court had ample evidence upon which to conclude that any use not expressly designated by the City was prohibited in the absence of appropriate action to secure a variance.***” (*Naulls, supra*, 166 Cal.App.4th at 431-32 [emphasis added].)

Based upon this same reasoning, Title 17 of the MBMC evidences an “intent by the City to prohibit uses not expressly identified.” As in *Naulls*, Morro Bay is divided into several primary districts (MBMC § 17.24.010) and Title 17 evidences an intent to limit the allowed uses in those districts to those expressly identified in the chapter or those similar in nature (MBMC § 17.24.020). For example, Section 17.08.20 provides that:

“Whenever the planning commission of the city is called upon to determine whether or not the use of land or any structure in any district ***is similar in character to the particular uses allowed in a district***, the planning commission shall consider the following factors as criteria for their determination:

- A. Effect upon the public health, safety and general welfare of the neighborhood involved and the city at large;
- B. Effect upon traffic conditions;
- C. Effect upon the orderly development of the area in question and the city at large in regard to general planning of the whole community.”

MBMC sections 17.30.30 (Special Use Permits) and 17.30.050 (Temporary Use Permits) show that same intent, as does the first sentence of Section 17.60.010 (Use permits) – which provides that “[u]se permits, conditional, special or interim, may be issued as provided in this chapter ***for any of the uses for which such permits are required or permitted by the term of this title, and for only those uses.***”

Moreover, the *Naulls* court also observed that Corona's zoning code could be deemed, in law, to be “permissive” because of the principle in the law that recognizes the expression of certain things in a statute necessarily involves the exclusion of other things not so expressed:

“Our conclusion finds further support by analogy to the rule of statutory construction known as *expression unius est exclusion alterius*, which means ‘the expression of certain things in a statute necessarily involves exclusion of other things not expressed . . .’ [Citation.]” (*Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13, 241 Cal.Rptr. 67, 743 P.2d 1323.) Applying the same rationale, where a particular use of land is not expressly enumerated in a city's municipal code as constituting a permissible use, it follows that such use is impermissible. ***We find unpersuasive the argument that the municipal codes of other cities do include a provision to the effect that any use not specifically permitted is prohibited.***”

On this additional basis, it is our evaluation that the Morro Bay Code may be also characterized as “permissive” in nature. The permissive nature of the Morro Bay Zoning Code is important in regards to maintaining a local ban on cultivation, because even if the City adopts an express ban on medical marijuana cultivation – as proposed by the attached Amended Ordinance – that may still be insufficient to avoid preemption by state law.

Pursuant to the attached Amended Ordinance, the MBMC will make the manufacture, cultivation, sale or storage of medical marijuana a nuisance, thus, expressly banning cultivation. However, that regulation will be enacted solely through the City’s police power and not through its land use authority. That is problematic, because Health & Safety Code § 1362.777(c) specifically provides, by March 1, 2016, if the City does not have “land use” regulations or ordinances governing cultivation (either regulating or banning), it cedes authority to do so to the state. Thus, the City cannot rely *solely* upon those provisions to ensure medical marijuana cultivation is prohibited within the City.

As such, it is recommended, at the minimum, the City further affirm through a resolution that its zoning code is permissive (per the analysis above) and that pursuant to the principles of permissive zoning, all marijuana cultivation is prohibited.¹

(3) Reserve action on mobile dispensaries and delivery of medical marijuana until issue can be further studied by staff and City Attorney’s office in 2016.

Mobile dispensaries are ***not*** currently prohibited under the existing City Ordinance. However, the City will have until ***January 1, 2018*** to determine whether to enact a ban or other local regulatory scheme governing the delivery of medical marijuana into the City, from a lawful dispensary located

1 That prohibition will not prevent a medical marijuana cardholder from cultivating medical marijuana within lawful limitations for personal use. Under the MMRSA, a state license will not be required for individual medical use and cultivation, or the provision of medical marijuana by a “caregiver” to no more than five “patients.” The law limits individual cultivation by a cardholder to 100 square feet, and cultivation by a caregiver for a maximum of 5 patients to 500 square feet. This limitation on individual use is already the subject of a lawsuit which argues that such limits are contrary to Proposition 215 and thus cannot be imposed by the Legislature over the will of the voters.

outside the City². Moreover, it is anticipated that recreational use referendums may be on the ballot(s) in the City's 2016 election cycle that may affect bans or regulations on mobile dispensaries and medical marijuana delivery.

As such, it is recommended that the City reserve action on this issue until after the 2016 election is completed and the issue can be further studied and recommendations formulated by the City Attorney's Office.

CONCLUSION

Recently adopted state law requires the City to act on marijuana cultivation this month or be subject to pre-emptive State regulation in perpetuity. Staff and the City Attorney's office therefore jointly recommend the City Council adopt both an express and implied prohibition on marijuana cultivation in order to retain maximum local regulatory authority. It is recommended that the Council do this through the adoption of both Ordinance No. 599 (express prohibition) and Resolution No. 04-16 (implied prohibition).

Adopting the Amended Ordinance will allow the community to address, in an orderly manner, the possible ballot consideration of recreational use of marijuana in the 2016 election, and then facilitate a robust community conversation in 2017 on the future of marijuana regulations in Morro Bay. Further, adoption of Resolution No. 04-16 will remove all doubt that the City's Zoning Code is a "permissive code" within the meaning of recent case law such that the prohibitions contained in the attached ordinance are to be deemed land-use regulations as well.

² As of January 1, 2018, if neighboring cities issue permits for medical marijuana delivery in general, then out-of-City dispensaries with such delivery licenses (after also securing a state delivery license) can delivery into Carson, unless the City adopts an express prohibition on delivery. (Bus. & Prof. Code § 19340(b)(1) ["deliveries can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance"].)

ORDINANCE NO. 599

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING TITLE 9, CHAPTER 9.06 OF THE MORRO BAY MUNICIPAL CODE,
PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA
DISPENSARIES, TO FURTHER PROHIBIT MARIJUANA CULTIVATION CITYWIDE
AND PROVIDE OTHER MISCELLANEOUS EDITS**

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

WHEREAS, in 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996” (the “CUA”); and

WHEREAS, the CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health; and

WHEREAS, in 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and

WHEREAS, those new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in 2009, the City Council of the City of Morro Bay (“City”) prohibited the establishment of medical marijuana dispensaries City-wide by adopting Ordinance No. 547, codified in the Morro Bay Municipal Code (“MBMC”) at Title 9 (Public Peace, Morals and Welfare), Chapter 9.06, “MEDICAL MARIJUANA DISPENSARIES” (the “Ordinance”); and

WHEREAS, the Ordinance prohibits the establishment and operation of fixed medical marijuana dispensaries (MBMC §§ 9.06.010-040) and deems those uses to be a “misdemeanor” pursuant to the City’s police powers, subject to criminal and infraction penalties (MBMC § 9.06.040); and

WHEREAS, in 2013, the California Supreme Court confirmed cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and

WHEREAS, also in 2013, the California Supreme Court further determined the CUA and MMP do “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city” (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978); and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed into law, three bills – Assembly Bill (AB) 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and

WHEREAS, the Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, in addition to creating those State controls, the Act preserves the City’s authority to prohibit, regulate and/or license medical marijuana uses within its jurisdiction, as it expressly provides that the Act:

- Is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
- Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c));
- Authorizes local jurisdictions like the City with the power to “adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity” (Bus. & Prof. Code § 19316); and

WHEREAS, the Act further expressly allows local governments to enact ordinances expressing their intent to prohibit the *cultivation* of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4)); and

WHEREAS, under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and

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WHEREAS, pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medical marijuana dispensaries and/or cultivation will effectively have a “veto” over whether a state license for the locally regulated activities can be issued:

Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.”

Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur.”

Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .”

Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

WHEREAS, the City hereby re-affirms and confirms the City’s Zoning Code is adopted and operates under the principles of permissive zoning, meaning any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, California Health & Safety Code Section 11362.777(b)(3) expressly provides the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including but not limited to offensive odors, criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana, and public health concerns including fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety and/or “attractive nuisance;” and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, those negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

WHEREAS, based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City has determined, in addition to the existing prohibition on the establishment of medical marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation of medical marijuana is needed to protect the public health, safety and welfare; and

WHEREAS, in light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend Chapter 9.06 of the Morro Bay Municipal Code to further prohibit cultivation of medical marijuana pursuant to the new state law requirements (AB 266 and AB 243), and to make other miscellaneous edits to effectuate the same (the "Amendments"); and

WHEREAS, the Amendments would affect all properties City-wide; and

WHEREAS, the City Council has duly considered all information presented to it, including written staff reports and any public comment regarding same.

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council finds and determines the recitals above are true and correct, and are hereby incorporated by reference. Additionally, the City Council finds and determines as follows:

A. The cultivation and dispensing of marijuana has significant impacts or the potential for significant impacts on the City. Those impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries and cultivation of the same.

B. The proposed Amendments will further the public health, safety and general welfare. These proposed Amendments to the Ordinance will prohibit marijuana and medical marijuana dispensaries and cultivation within City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of marijuana, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.

C. The proposed Amendments will not adversely affect adjoining property as to value, precedent or be detrimental to the area. These proposed Amendments to the Ordinance will further solidify the City's stance on prohibiting medical marijuana dispensaries and cultivation. The prohibition of these uses will help protect property values in the City and discourage a wide range of illicit activities associated with the sale, cultivation and dispensing of medical marijuana.

D. The proposed Amendments are consistent with the General Plan and are in compliance with all applicable provisions of the Municipal Code and other ordinances and regulations of the City. These proposed amendments prohibiting marijuana and medical marijuana dispensaries and cultivation within City limits are consistent with the existing language of Chapter 9.06, "Medical Marijuana Dispensaries," of the MBMC.

E. The proposed Amendments are consistent with Federal Law. The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

SECTION 2. Chapter 9.06 of Title 9 of the Morro Bay Municipal Code is hereby amended, in its entirety, to read as follows:

Chapter 9.06
MEDICAL MARIJUANA REGULATIONS

9.06.010	Purpose.
9.06.020	Findings.
9.06.030	Definitions.
9.06.040	Prohibition.
9.06.050	Use or activity prohibited by state or federal law.
9.06.060	Enforcement.

Section 9.06.010 **Purpose.**

The purpose of this Chapter is to prohibit the establishment of marijuana and medical marijuana dispensaries and the cultivation and processing of marijuana and medical marijuana, as defined herein, within the City of Morro Bay.

Section 9.06.020 **Findings.**

In adopting the prohibitions codified in this Chapter, the City Council makes the following findings and determinations:

A. The prohibitions on marijuana cultivation, processing, and dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council by its police power and state law.

B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act"(the "Act") into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code § 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c)); and

4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code § 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a)).

C. It is recognized the Federal Controlled Substances Act, codified at 21 U.S.C. Section 801 *et seq.*, classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse. The Controlled Substances Act makes it unlawful for any person to cultivate or dispense marijuana without regard to a claimed medical need.

D. The City Council finds this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and not to administer a conditional permit program pursuant to Health & Safety Code § 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; and (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the dispensing, cultivation and processing of marijuana in the City.

Section 9.06.030 Definitions.

A. **"Marijuana"** means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or authorized in strict compliance with the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. **"Marijuana Cultivation"** means the growing, planting, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.

C. **"Marijuana Processing"** means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D. **"Marijuana Dispensary"** means any for-profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana, or allows others to possess and distribute marijuana, to more

than one person, such as a qualified patient, primary caregiver or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5 to 11362.83. A “medical marijuana dispensary” includes a “collective” or “cooperative” as described in Health and Safety Code Section 11362.775, and includes an establishment that delivers marijuana to offsite locations. A “medical marijuana dispensary” shall not include the following uses; provided, that the location of such uses is permitted by the Code and the uses comply with all applicable state laws including Health and Safety Code Section 11362.5 *et seq.*:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
3. A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
4. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or
6. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

E. **“Operation”** means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary, fixed or mobile.

F. **“Person”** means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

G. **“Primary caregiver”** means the individual (or individuals) older than 18 years of age, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that qualified patient.

H. **“Qualified patient”** means a seriously ill person who obtains a recommendation from a physician, licensed to practice medicine in the State of California, to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity related illnesses, migraine, anorexia, severe nausea are presumed to be “qualified patients.”

Section 9.06.040 Prohibition.

A. Marijuana Dispensaries. The establishment or operation of a medical marijuana dispensary, as defined in this Chapter, is prohibited in all zones throughout the City.

B. Marijuana Cultivation. With the potential exception of personal individual cultivation for personal use by the cultivator of medical marijuana, as permitted by the Compassionate Use Act of 1996, marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives and dispensaries, is prohibited in all zones throughout the City.

C. Marijuana-Related Licenses and Permits. No permit or any other applicable license or entitlement for use, whether administrative or discretionary, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a marijuana dispensary within the City limits, marijuana cultivation or marijuana processing, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by federal or state law.

Section 9.06.050 Use or activity prohibited by state or federal law.

Nothing contained in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

Section 9.06.060 Enforcement.

A. Public Nuisance. The violation of any provision in this Chapter shall be and is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy and, at the discretion of the city, create a cause of action for injunctive relief.

B. Penalties. The following nonexclusive remedies may be used by the City as penalties for violations of this Chapter:

1. Criminal. Violation of the prohibition against the establishment or operation of a medical marijuana dispensary, fixed or mobile, as set forth at Section 9.06.040 of this Chapter, or the causing or permitting another to violate said prohibition, is a misdemeanor.
2. Civil. The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief as well as any other available civil remedies.
3. Separate Offense for Each Day. Any person who violates any provision of this Chapter is guilty of a separate offense for each day during any portion of which such person commits, continues, permits, or causes a violation of this Chapter and shall be penalized accordingly.

SECTION 3. This ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 12th day of January, 2016, by motion of Councilmember _____, seconded by Councilmember_____.

PASSED AND ADOPTED on the _____ day of _____, 2016.

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 12th day of January, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the ____ day of _____, 2016, by the following vote, to wit:

Ayes:
Noes:
Abstain:
Absent:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

City Clerk of the City of Morro Bay

RESOLUTION NO. 04-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
REAFFIRMING AND CONFIRMING THE CITY’S ZONING CODE, ENUMERATED
UNDER TITLE 17 OF THE MORRO BAY MUNICIPAL CODE, IS A PERMISSIVE
ZONING CODE, SUCH THAT MARIJUANA CULTIVATION USES, AS USES NOT
SPECIFICALLY ENUMERATED IN THE ZONING CODE, ARE PROHIBITED**

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

WHEREAS, the City of Morro Bay has exercised its land use and zoning authority by enacting a zoning code that is enumerated under Title 17 of the Morro Bay Municipal Code (“Zoning Code”); and

WHEREAS, the State Legislature recently passed, and the Governor Signed, the Medical Marijuana Regulation and Safety Act (“MMRSA”); and

WHEREAS, the MMRSA provides that the California Department of Food and Agriculture is a potential licensing authority for the cultivation of medical marijuana; and

WHEREAS, the MMRSA further provides, in Health & Safety Code § 11362.777(b)(3), if the City “does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city...;” and

WHEREAS, the court in *City of Corona v. Naulls* (2008) 166 Cal. App. 4th 418, 425 (“*Naulls*”), cited in *County of Sonoma v. Superior Court* (2010) 190 Cal. App. 4th 1312, FN 3 (“*County of Sonoma*”) found a permissive zoning code is defined as a zoning code where, if a specific use is not enumerated, then that use is presumptively prohibited; and

WHEREAS, the court in *Naulls* further found the City of Corona’s zoning code was a permissive zoning code; and

WHEREAS, Title 17 of the Morro Bay Municipal Code (“MBMC”) contains language evidencing an intent to prohibit uses not expressly identified; and

WHEREAS, as in *Naulls*, Title 17 of the Morro Bay Municipal Code (“MBMC”) divides the City into several primary districts (MBMC § 17.24.010) and evidences an intent to limit the allowed uses in those districts to those expressly identified in the chapter or those similar in nature, including but not limited to the following sections:

- MBMC § 17.08.020 [land use determination criteria]: “Whenever the planning commission of the city is called upon to determine *whether or not the use of land or any structure in any district is similar in character to the particular uses*

allowed in a district, the planning commission shall consider the following factors as criteria for their determination: A. Effect upon the public health, safety and general welfare of the neighborhood involved and the city at large; B. Effect upon traffic conditions; C. Effect upon the orderly development of the area in question and the city at large in regard to general planning of the whole community.”

- MBMC § 17.12.664 [Use, conditionally permitted]: “‘Conditionally permitted use’ means a new or expanded use of land or building, authorized to be constructed and/or established through issuance of an approved conditional use permit, pursuant to Chapter 17.60”; and
- MBMC § 17.30.30 [Special Use Permits]: “The special uses listed in this section may be allowed by the planning commission upon approval of a conditional use permit processed in accordance with the provisions of Chapter 17.60. All of the uses listed in this section and all matters directly related thereto are declared to be special uses possessing characteristics of such unique and special form as to make impractical their inclusion in any class of use set forth in the various districts defined in this title and, therefore, the authority for a location of the operation of any of the uses designated herein shall be subject to the issuance of a special use permit in accordance with the provisions of this chapter. In making the findings required by Section 17.60.030 the planning commission shall, in addition to other relevant data, explicitly consider the following factors *to determine that the characteristics of the listed uses will not be unreasonably incompatible with the uses permitted in surrounding areas*: damage or nuisance from noise, smoke, odor, dust or vibration; hazard, or nuisance from explosion, contamination, or fire; hazard occasioned by unusual volume or character of traffic or the congregating of a large number of people or vehicles; or height of structure. . . .”
- MBMC § 17.30.050 [Temporary Use Permits]: “The temporary uses listed in this section may be allowed by the zoning administrator under an administrative temporary use permit. *The administrator may attach such conditions to the permit as are necessary to assure that the temporary use complies with the intent of this section.*”
- MBMC § Section 17.60.010 [Use permits]: “Use permits, conditional, special or interim, *may be issued as provided in this chapter for any of the uses for which such permits are required or permitted by the term of this title, and for only those uses.*”

WHEREAS, as the *Naulls* Court found, under the principle the expression of certain things in a statute necessarily involves the exclusion of other things not expressed, any use that is not specifically identified in the Zoning Code is prohibited; and

WHEREAS, based upon the forgoing, the City’s Zoning Code, Title 17 of the MBMC, is a permissive zoning code whereby any use that is not expressly enumerated in the code is presumptively prohibited under the principles of permissive zoning, as contemplated by Health & Safety Code § 11362.777(b)(3) and as provided in *Naulls* and *County of Sonoma*; and

WHEREAS, Chapter 9.06 of the MBMC, as amended, further explicitly bans both dispensaries and cultivation in the City; and

WHEREAS, by this Resolution the City Council desires to re-affirm and confirm that the City's Zoning Code operates as a permissive zoning code within the meaning of Health & Safety Code § 11362.777(b)(3) and *Naulls*, as cited in *County of Sonoma*;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, AS FOLLOWS:

SECTION 1. The forgoing Recitals are true and correct and are incorporated herein.

SECTION 2. The City Council of the City of Morro Bay hereby re-affirms and confirms that the Zoning Code, found under Title 17 of the Morro Bay Municipal Code, is a permissive zoning code, as contemplated by Health & Safety Code § 11362.777(b)(3) and *City of Corona v. Naulls* (2008) 166 Cal. App. 4th 418, 425, cited in *County of Sonoma v. Superior Court* (2010) 190 Cal. App. 4th 1312, FN. 3, such that any use not expressly enumerated in the Zoning Code is presumptively prohibited.

SECTION 3. With the potential exception of personal individual cultivation for personal use by the cultivator of medicinal marijuana, as permitted by the Compassionate Use Act of 1996, the cultivation of marijuana is, therefore, not a permitted use within the City, because it is not expressly enumerated as a permitted use in the City's Zoning Code and, therefore, even in any zoning district or specific plan where medical marijuana cultivation is not expressly prohibited, it is nevertheless a prohibited use under the principles of permissive zoning.

SECTION 4. Based upon the forgoing, the City Council of the City of Morro Bay hereby affirmatively determines, pursuant to Health & Safety Code § 11362.777(b)(3), the California Department of Food and Agriculture, or any other state agency, may not issue a state license to cultivate medical marijuana within the City.

SECTION 5. The City Manager and his authorized designees are hereby authorized and directed to take such other and further actions and sign such other and further documents as is necessary and proper to implement this Resolution 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 the 12th day of January, 2016 on the following vote:

AYES:

NOES:

ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk