

# City of Morro Bay

## City Council Agenda

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### *Mission Statement*

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

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### **REGULAR MEETING TUESDAY, OCTOBER 27, 2015 VETERANS MEMORIAL HALL - 6:00 P.M. 209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS –

PUBLIC PRESENTATIONS – Chamber of Commerce Quarterly Update  
Tourism Bureau Quarterly Update

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

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

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

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON OCTOBER 13, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

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

**RECOMMENDATION: Approve as submitted.**

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

**RECOMMENDATION: Approve as submitted.**

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

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

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

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

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS/SECOND READING AND ADOPTION OF ORDINANCES

C-1 DISCUSSION OF UNWARRANTED TRAFFIC CONTROL DEVICES, RESCISSION OF RESOLUTION NO. 38-15 REGARDING PLACEMENT OF STOP SIGN AT THE INTERSECTION OF PACIFIC AND MAIN STREETS AND CONSIDERATION OF ALTERNATIVE TRAFFIC CALMING MEASURES; (PUBLIC WORKS)

**RECOMMENDATION: Discuss unwarranted traffic control devices and consider adoption of Resolution No. 67-15 rescinding Resolution No. 38-15.**

C-2 ADOPTION OF ORDINANCE NO. 597 AMENDING SUBSECTION 5.08.220 C. OF THE MORRO MUNICIPAL CODE RELATING TO THE \$4,000 EXCEPTION; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Adopt Ordinance 597 after reading the title only and waiving further reading.**

C-3 DISCUSSION AND DIRECTION ON EXPIRING LEASE AT LEASE SITE 62/62W (KRUEGER/KAYAK HORIZONS) LOCATED AT 551 EMBARCADERO; (HARBOR)

**RECOMMENDATION: Direct staff to conduct a Request for Proposal (RFP) process for the future of the lease site.**

D. NEW BUSINESS

D-1 STATUS UPDATE OF THE MEMORANDUM OF UNDERSTANDING FOR POTENTIAL PURCHASE OF THE RANCHO COLINA PROPERTY AS THE CITY'S PREFERRED WATER RECLAMATION FACILITY SITE; (ADMINISTRATION)

**RECOMMENDATION: Receive and file.**

D-2 CONSIDERATION OF A FEE REFUND REQUEST, IN THE AMOUNT OF \$3,298.00, FOR A RESIDENTIAL REMODEL/ADDITION LOCATED AT 938 ANCHOR (SHERROD); (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Deny the refund request.**

D-3 AUTHORIZATION TO CONSENT TO THE BANKRUPTCY ESTATE IN THE MATTER OF CHARLOTTE ELLEN SALWASSER OR GEORGE SALWASSER TO SELL PROPERTY LOCATED AT 781 MARKET AVENUE (INCLUDING THE PARKING LOT) TO THE CITY OF MORRO BAY AND TO PARTICIPATE IN THE BIDDING PROCESS AS AUTHORIZED BY COUNCIL (APNs NO. 066-321-027 AND 066-112-007); (ADMINISTRATION)

**RECOMMENDATION: Authorize staff to consent to the Bankruptcy Estate of either George or Charlotte Salwasser for moving forward with the motion to sell the 781 Market Avenue and adjacent parking lot to the City, and for staff to participate in the sale and bidding process.**

D-4 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 596 ADDING CHAPTER 14.42 TO THE MORRO BAY MUNICIPAL CODE, PROVIDING A STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS AND FINDING THE ORDINANCE EXEMPT FROM THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Move for introduction and first reading of Ordinance No. 596, by number and title only, and waive further reading.**

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, November 10, 2015 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.**

**AGENDA NO: A-1**

**MEETING DATE: October 27, 2015**

MINUTES – MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
OCTOBER 13, 2015  
CITY HALL CONFERENCE ROOM – 9:00 A.M.

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

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 9:07 a.m.

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

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

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

**CS-1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
Title: City Manager

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 12:06 p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – OCTOBER 13, 2015  
VETERAN’S MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	John Headding	Councilmember
	Christine Johnson	Councilmember
ABSENT:	Matt Makowetski	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Sam Taylor	Deputy City Manager
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Eric Endersby	Harbor Director
	Bryan Millard	Police Commander
	Steve Knuckles	Fire Chief
	Janeen Burlingame	Management Analyst
	Cindy Jacinth	Assistant Planner

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:03 p.m.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

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/2H5j5901dwQ?t=2m29s>

Mayor Irons and Councilmembers Johnson, Headding and Smukler provided verbal reports following their attendance at the League of California Cities Annual Conference in San Jose September 29 – October 2, 2015.

PUBLIC PRESENTATIONS

**LEAP Summary Report**

<https://youtu.be/2H5j5901dwQ?t=26m50s>

Don Maruska opened the presentation and, along with several initiative team leaders, provided a final summary. The PowerPoint presentation is available on the City website:

<http://ca-morrobay.civicplus.com/DocumentCenter/View/8881>

## PUBLIC COMMENT

<https://youtu.be/2H5j5901dwQ?t=1h3m13s>

Walter Heath, Morro Bay in Bloom, provided the business spot. Volunteers worked to raise funds and prepare for the city's second year of participation in the America in Bloom contest. He recently returned from the American in Bloom Symposium & Awards in Holland, MI, where Morro Bay earned a 5 out of 5 bloom rating and was the winner in its population category.

Marla Jo Bruton-Sadowski, Chairwoman of COAST Alliance, just learned about acoustic seismic testing planned in Morro Bay and asked why residents had not been informed. She provided information to contact the California State Lands Commission with comments, questions and concerns.

Jon Elliott, Morro Bay resident and business owner, announced a Downtown Trick-or-Treat event to be held on Saturday, October 31<sup>st</sup> from 2-5pm on Morro Bay Blvd. from Main Street to Market Avenue. All local businesses are encouraged to set up a table to participate and can sign up by emailing: [barberjon@morrobaybarbershop.com](mailto:barberjon@morrobaybarbershop.com).

Jennifer Redman, Morro Bay, asked parents to please spread the news and invite the kids to the October 31<sup>st</sup> Downtown Trick-or-Treat event. Local non-profit organizations are also encouraged to bring candy and set up a table. They look forward to a safe, fun event to celebrate downtown Morro Bay.

Jane Heath, Morro Bay resident and business owner, announced the Surfboard Art Festival. Maps are available at [www.mbsurfboardartfest.com](http://www.mbsurfboardartfest.com) and in local businesses and a Gala Auction benefitting Morro Bay in Bloom and Project Surf Camp will be held at the Morro Bay Golf Course on November 7<sup>th</sup> from 2-5pm. More information is available at [www.morrobayinbloom.org](http://www.morrobayinbloom.org).

Steve McElvaine, owner of Rancho Colina site currently being considered for the future WRF, expressed concern about the draft MOU and proposed layout prepared by Black & Veatch. He has been a willing seller to this point but his family was upset with the proposed plan that had grown from 11 to 16 to 21 acres, including a solar farm, corporation yard, waste water collection shed, water treatment plant, hazardous waste facility and parking.

Betty Winholtz, Morro Bay, commented on LEAP initiatives: 1) she hoped the City will not put an aquarium back where the aquarium is, 2) it's great to have citizen input but forming committees and not going through advisory boards can get out of control, and 3) she hoped the 2020 visioning statement has been part of the process. With regard to Item D-2, she doesn't recall the proposed wind farm coming before PWAB and Planning Commission. Regarding Items D-1 and C-3, those items should be public hearings. Regarding Item C-2, she supported those who say we need traffic control; bulb-outs don't work. She also asked why an attorney representing the City appeared at the Grilli civil court hearing.

Lynda Merrill, Morro Bay, spoke regarding Item B-1 and asked Council to postpone the interim rate adjustment pending review of noise concerns and wear and tear on streets. Regarding Item D-2, she urged the Council to consider the potential danger wind turbines create for wildlife, mammals, and birds.

Chuck Stoll, Morro Bay resident and President of Senior Citizens, Inc., congratulated Morro Bay in Bloom and Walter and Jane Heath on their accomplishment. Members of Senior Citizens, Inc. are very active and many enjoy pickle ball. He provided court usage and year-end reports that demonstrate the City could make better use of the roller hockey rink area as permanent pickle ball courts.

The public comment period was closed.

Council and staff responded to issues raised during public comment.

- A. CONSENT AGENDA  
<https://youtu.be/2H5j5901dwQ?t=2h5m56s>

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 SEPTEMBER 22, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON SEPTEMBER 22, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON SEPTEMBER 22, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-4 APPROVAL OF MINUTES FOR THE JOINT MEETINGS OF THE CITY COUNCIL AND THE FOLLOWING ADVISORY BODIES: GENERAL PLAN ADVISORY COMMITTEE (GPAC), CITIZENS ADVISORY/CITIZENS FINANCE COMMITTEE (CFC), PUBLIC WORKS ADVISORY BOARD (PWAB), AND HARBOR ADVISORY BOARD (HAB) HELD ON SEPTEMBER 29, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**



A-5 PROCLAMATION DECLARING OCTOBER 18-24, 2015 AS “FREEDOM FROM WORKPLACE BULLIES WEEK”; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-6 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-7 WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-8 APPROVAL OF A CONTRACT BETWEEN THE CITY OF MORRO BAY AND PG&E RELATED TO ACCESS AND USE FOR THE BMX BIKE PARK AND APPROVAL OF AMENDMENT TO MEMORANDUM OF UNDERSTANDING WITH CENTRAL COAST CONCERNED MOUNTAIN BIKERS, INC. RELATED TO MANAGEMENT OF BMX BIKE PARK; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-9 AWARD OF CONTRACT TO PACIFIC COAST EXCAVATION, INC. OF SANTA MARIA, CA FOR THE PROJECT NO. MB2016-WW06: INTER-STAGE VAULT AND BLENDING VALVE REPLACEMENT PROJECT; (PUBLIC WORKS)

**RECOMMENDATION: Approve as submitted.**

A-10 AWARD OF CONTRACT TO ENVIRONMENTAL SCIENCE ASSOCIATES FOR WRF ENVIRONMENTAL COMPLIANCE SERVICES; (PUBLIC WORKS)

**RECOMMENDATION: Approve as submitted.**

A-11 AUTHORIZATION TO FILE THE NOTICE OF COMPLETION FOR PROJECT NO. MB-2015-WW05, MMRP: DIGESTER # 1 COATING AND REPAIRS PROJECT; (PUBLIC WORKS)

**RECOMMENDATION: Approve as submitted.**

A-12 APPOINTMENT OF COUNCIL MEMBER JOHN HEADDING AS LIAISON TO THE CITIZENS FINANCE COMMITTEE; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

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

Mayor Irons requested Items A-3, A-5 and A-7 be pulled for separate consideration.

Councilmember Heading requested Item A-10 be pulled for separate consideration.

MOTION: Councilmember Johnson moved the Council approve Items A-1, A-2, A-4, A-6, A-8, A-9, A-11 and A-12. The motion was seconded by Councilmember Smukler and carried unanimously, 4-0.

A-3 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON SEPTEMBER 22, 2015; (ADMINISTRATION)  
<https://youtu.be/2H5j5901dwQ?t=2h7m12s>

Mayor Irons requested the September 22, 2015 City Council Minutes be corrected to reflect the order in which business was conducted.

A-5 PROCLAMATION DECLARING OCTOBER 18-24, 2015 AS “FREEDOM FROM WORKPLACE BULLIES WEEK”; (ADMINISTRATION)  
<https://youtu.be/2H5j5901dwQ?t=2h7m54s>

Mayor Irons commented on the importance of being considerate and respectful to others and allow everyone to speak freely at public meetings without fear of being bullied.

A-7 WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC WORKS)  
<https://youtu.be/2H5j5901dwQ?t=2h9m52s>

Mayor Irons noted there was a calculation error in Attachment 1 and requested it be corrected in the future. Public Works Director Livick agreed and noted the report will be improved to provide more detail in the future.

A-10 AWARD OF CONTRACT TO ENVIRONMENTAL SCIENCE ASSOCIATES FOR WRF ENVIRONMENTAL COMPLIANCE SERVICES; (PUBLIC WORKS)  
<https://youtu.be/2H5j5901dwQ?t=2h11m10s>

Councilmember Heading asked for clarification on the fiscal impact section of the report. City Manager Buckingham explained the water and sewer rate increase recently approved was set to fund Phase 1 construction only as those rates cannot extend beyond 5 years. There is a 30% contingency in that project and staff is working to stay under budget. It is anticipated the City will need to look at rates again in 5 years to ensure they are set appropriately for Phase 2.

MOTION: Mayor Irons moved the Council approve Items A-3, A-5, A-7 and A-10 of the Consent Agenda. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

A brief recess was called at 8:23 p.m. and the meeting reconvened at 8:37 p.m.

There was Council consensus to move Item B-2 to the front of the agenda.

**B. PUBLIC HEARINGS**

- B-2 APPROVAL OF CONDITIONAL USE PERMIT (UP0-424) FOR THE CONCEPT AND PRECISE PLANS TO ERECT A FISHERMEN'S FAMILY SCULPTURE STATUE ON COLEMAN DRIVE NEAR TARGET ROCK AND SOUTHEAST OF MORRO ROCK; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/2H5j5901dwQ?t=2h21m50s>

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

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

Cathy Novak, spoke representing Central Coast Women for Fisheries (CCWF), noting the group has been diligently raising money for installation of this important tribute to the families of mariners for seven years. She thanked the City for its continued support of the project, recognizing the hardworking men and women of the commercial fishing industry. Responding to questions from the Council, she noted there are no funds at this time for an interpretive panel and the statue is solid bronze. With regard to vandalism, it would be difficult to get lighting approved by the Coastal Commission.

Lori French, Central Coast Women for Fisheries, thanked Morro Bay 50<sup>th</sup> and the Morro Bay Aquarium for their generous contributions. With regard to vandalism, she was hopeful it will not be a problem. The board will discuss an interpretative panel at their next meeting.

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

Councilmember Headding thanked the CCWF for their fundraising efforts and maintaining the heritage that runs deep in this community. Councilmember Smukler anticipated there will be vandalism at some point and encouraged staff to look into anti-graffiti applications to protect the statue. Mayor Irons suggested using rock to provide a buffer and some protection. Staff agreed this would be fairly simple to do.

**MOTION:** Mayor Irons moved the Council adopt Resolution No. 66-15 approving the Conditional Use Permit (UP0-424) for Concept and Precise Plans to erect a new Fishermen's Family Sculpture memorial, amended to include a condition for City staff to provide a rock barricade to delineate and protect the sculpture. The motion was seconded by Councilmember Smukler and carried unanimously, 4-0

- B-1 PUBLIC HEARING FOR AND CONSIDERATION OF MORRO BAY GARBAGE SERVICE INTERIM RATE ADJUSTMENT APPLICATION AND ADOPTION OF RESOLUTION NO. 65-15; (PUBLIC WORKS)  
<https://youtu.be/2H5j5901dwQ?t=2h47m20s>

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

Mayor Irons opened the public hearing. The City Clerk confirmed notices were mailed on August 28, 2015 to all property owners and customers, and confirmed that two written protests had been received thus far.

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

Mayor Irons closed the public hearing.

Councilmember Headding as the City's representative to IWMA, was present during the evaluation process. The anaerobic oxygen-free decomposition technology being used prevents the accumulation of something detrimental and generates something that is beneficial to the environment. The IWMA considered both 10-year and 20-year bonds; there was a 20% cost savings with the 20-year agreement.

MOTION: Councilmember Headding moved the Council adopt Resolution No. 65-15 increasing the solid waste rates by 3.22% effective January 1, 2016, provided there is not a majority protest against such increase. The motion was seconded by Councilmember Smukler and carried unanimously, 4-0.

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 RESOLUTION NO. 63-15 ESTABLISHING A FEE SUBSIDY AND COST RECOVERY POLICY; (ADMINISTRATION)  
<https://youtu.be/oOF2mkDmP6o?t=1s>

Deputy City Manager Taylor presented the staff report and responded to Council inquiries.

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

Marla Jo Bruton-Sadowski, Morro Bay, asked whether the City was subsidizing the water supply in the harbor on the docks, noting there are no meters there. She also expressed concern about showers at the rock not being operational and requested more frequent cleanings during heavy tourist seasons.

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

Councilmember Johnson supports the advisory board recommendations. As Council liaison to the Recreation & Parks Commission, she appreciated how they balanced quality of life issues and conducted a thoughtful and thorough review.

Councilmember Headding does not support subsidizing an industry that doesn't need to be subsidized. He supports fishing as an important part of the community but would like to see those funds moved to youth programs.

Councilmember Smukler appreciated the phased approach with 85% this year and the next stage likely in future years. He noted that fees support the services and infrastructure we depend on, therefore subsidizing is a serious decision.

Mayor Irons clarified any harbor subsidies come out of the Harbor Enterprise Fund, which is separate from the General Fund.

MOTION: Mayor Irons moved the Council adopt Resolution 63-15 establishing a Fee Subsidy and Cost Recovery Policy. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

In order to facilitate public participation, there was Council consensus to move to Item D-2.

D. NEW BUSINESS

D-2 APPROVAL OF MEMORANDUM OF COOPERATION (“MOC”) BETWEEN THE CITY AND TRIDENT WINDS, LLC, A WASHINGTON LIMITED LIABILITY COMPANY (TRIDENT”), REGARDING A POSSIBLE WIND TURBINE PROJECT LOCATED OFF-SHORE FOR THE PRODUCTION OF ELECTRICITY; (ADMINISTRATION)  
<https://youtu.be/oOF2mkDmP6o?t=29m19s>

City Manager Buckingham introduced Alla Weinstein and Brian Walshe from Trident Winds, LLC who presented information regarding the proposed project and responded to Council inquiries. The PowerPoint presentation is available on the City website: <http://ca-morrobay.civicplus.com/DocumentCenter/View/8885>.

Councilmember Johnson disclosed ex parte communications. She met with Alla Weinstein individually and also with Alla and Erik Markell before bringing the item to the City Council.

Mayor Irons clarified the prior meetings were not Brown Act meetings, just introductions and one-on-one meetings with Trident representatives.

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

Rosalie Valvo, Morro Bay, spoke on behalf of Morro Coast Audubon Society, supports all forms of renewable energy to reduce greenhouse gas emissions. As the first offshore wind energy project proposed in California, this will set a precedent, and the Audubon Society looks forward to meeting with Trident to address concerns and plan a project that is best for our birds.

Marla Jo Bruton-Sadowski, Morro Bay, appreciated the presentation but has concerns and asked for caution before approving an MOC when we don't know what that commitment means.

Betty Winholtz, Morro Bay, believed it would be an advantage to the company for the City to enter into this agreement, not to the City, and suggested more research before taking action.

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

Mr. Pannone stated the agreement specifically says if at any time the City determines what Trident plans to do is not in the public's best interest, the document can be torn up. The City's flexibility in the agreement is very broad and includes exploring the project and providing input during the permitting process.

Mayor Irons shared this is an interesting opportunity to explore and consider, and he supports the MOC as a first step to open dialogue and stay informed along the way. He is hopeful other companies might want to enter into such an agreement on large projects as it provides an opportunity for dialogue and community input.

Councilmember Johnson noted that Morro Bay given its location with wind and wave resources is a likely candidate for renewable energy. It behooves the City to come to a simple agreement, to be at the table and participate in moving forward. The MOC will protect the City from unpleasant surprises and allow our stakeholders and constituents to be informed.

Councilmember Heading requested staff monitor internal resources as we move forward with this project. There are a tremendous number of goals and initiatives so it's appropriate to hear routinely from staff how much time is being spent on this project on a monthly or quarterly basis. This document is not exclusive and does not prevent us from talking to someone else, but it does memorialize the community's desire to buy into the concept of renewable energy and have a seat at the table.

Councilmember Smukler appreciated Trident's responsiveness for a strong public engagement process, which the MOC outlines as a key priority. The City reserves the right to pull back and make comments as the project goes through the process.

**MOTION:** Councilmember Johnson moved the Council approve the Memorandum of Cooperation between the City of Morro Bay and Trident Winds, LLC. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

There was Council consensus to continue Items C-2 and D-1 to a future meeting.

**MOTION:** Councilmember Heading moved the meeting go past 11:00 p.m. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

There was Council consensus to move to Item D-3.

#### D. NEW BUSINESS

D-3 DISCUSSION OF INTENT TO BE A HOST CITY FOR THE START OF ONE LEG OF THE 2016 AMGEN TOUR OF CALIFORNIA BICYCLE RACE; (ADMINISTRATION)  
<https://youtu.be/oOF2mkDmP6o?t=1h41m2s>

Deputy City Manager Taylor presented the staff report and responded to Council inquiries.

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

Robert Davis, Morro Bay, shared his enthusiasm for the City being part of this event as it will give the city international exposure. Tour of California is a major race on the professional circuit including the top bike racers in the world. The San Luis Obispo Bicycle Club has traditionally contributed \$1,000 to host cities in SLO County. If Council approves this tonight, then he requests staff send a letter requesting \$1,000 from the Bike Club.

Betty Winholtz, Morro Bay, supports this wonderful event but requested the Council add a clause to the motion directing staff to track costs so the public can see the financial benefit vs. expenses.

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

**MOTION:** Mayor Irons moved the City Council endorse the intent to agree with the invitation to be a host city for the start of one leg of the 2016 Amgen Tour of California and directs the City Manager to coordinate all details, including the anticipated contract. Council further directs staff to return to Council for approval if the total cost to the General Fund exceeds current budget authorization. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

**C-3 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 597 AMENDING SUBSECTION 5.08.220 C. OF THE MORRO MUNICIPAL CODE RELATING TO THE \$4,000 EXCEPTION: (ADMINISTRATIVE SERVICES)**  
<https://youtu.be/oOF2mkDmP6o?t=2h7m44s>

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

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

**MOTION:** Mayor Irons moved for introduction and first reading of Ordinance 597 by number and title only, and waived further reading. The motion was seconded by Councilmember Smukler and carried unanimously, 4-0.

**C-2 DISCUSSION OF UNWARRANTED TRAFFIC CONTROL DEVICES, RESCISSION OF RESOLUTION NO. 38-15 REGARDING PLACEMENT OF STOP SIGN AT THE INTERSECTION OF PACIFIC AND MAIN STREETS AND CONSIDERATION OF ALTERNATIVE TRAFFIC CALMING MEASURES: (PUBLIC WORKS)**

This item was continued to a future meeting.

**D-1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 596 ADDING CHAPTER 14.42 TO THE MORRO BAY MUNICIPAL CODE, PROVIDING A STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS AND FINDING THE ORDINANCE EXEMPT FROM THE**

CALIFORNIA ENVIRONMENTAL QUALITY ACT; (COMMUNITY DEVELOPMENT)

This item was continued to a future meeting.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<https://youtu.be/oOF2mkDmP6o?t=2h12m8s>

Councilmember Johnson requested a status report on the MOU with Mr. McElvaine regarding the potential WRF site be brought to Council for discussion at the next City Council Meeting; Council concurred.

Mayor Irons requested an acoustic testing policy, statement or resolution be considered by the Harbor Advisory Board then brought to the City Council; Council concurred.

Councilmember Smukler requested a water systems and supply update be brought to Council within the year. Staff agreed and one objective for FY16 is to update the City's clean water master plan. This item will be added to the agenda planning guide.

ADJOURNMENT

The meeting was adjourned at 11:43 p.m. to the next regular City Council meeting will be held on **Tuesday, October 27, 2015** at 6:00 p.m. at the Veteran's Memorial Hall, 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson  
City Clerk





AGENDA NO: A-3

MEETING DATE: October 27, 2015

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 19, 2015

**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer  
Damaris Hanson, Engineering Technician IV

**SUBJECT:** Approval of California Department of Fish and Wildlife (CDFW) Draft Streambed Alteration Agreement

### RECOMMENDATION

Staff recommends the City Council authorize the Public Works director to execute the Streambed Alteration Agreement with CDFW.

### ALTERNATIVES

There are no recommended alternatives.

### FISCAL IMPACT

The City contracted with the Biological Consulting firm, Althouse and Meade, Inc. to prepare the *Site Restoration Plan* for \$6,840. The Restoration plan implementation includes \$19,500 for reconstruction surveys and monitoring installation of plants over the next two years, estimated cost of the planting \$10,000 and semi-annual monitoring inspections for five years with annual reporting to CDFW \$24,300, for a total project cost of \$60,640 over the next six years. That is proposed to be funded from the City’s General Fund, specifically the Storm Drain and Creek Maintenance account and will be included in future budget requests.

### BACKGROUND/DISCUSSION

On October 17, 1988, the City of Morro Bay obtained a Memorandum of Understanding (“MOU”) from CDFW for routine vegetation maintenance at several locations within the City limits. On May 6, 2005, the City submitted an application for a Lake and Streambed Alteration Agreement (LSAA) to CDFW but did not receive a response. On December 13, 2005, the City contacted CDFW requesting the LSAA application be expedited. The City received a letter on December 29, 2005, in which Mr. Rob Floerke, Regional Manager of CDFW’s Central Coast Region, acknowledged Permittee’s LSAA application had been misplaced and authorized Permittee to continue conducting maintenance under the 1988 MOU until a new LSAA was completed. The City never received a new LSAA from CDFW and continued to operate under the existing MOU (Attachment 1).

01181.0001/271870.1

Prepared By:   DH  

Dept Review:   RL  

City Manager Review:   DWB  

City Attorney Review:   JWP

In September 2014, City staff removed vegetation along Alva Paul Creek, Morro Creek, and Willow Camp Creek, acting under authorization of the 1988 MOU. On March 18, 2015, CDFW issued a Notice of Violation (“NOV”) to Permittee pursuant to Fish and Game Code section 1602 and instructed Permittee to submit an application for a Streambed Alteration Agreement and plans to restore riparian habitat on-site using native species (Attachment 2).

The City contracted with Althouse and Meade, Inc., to develop a restoration plan (Attachment 3) to satisfy the NOV issued by CDFW. The plan was submitted to CDFW within the specified timeframe and CDFW issued the Streambed Alteration Agreement (Attachment 4) for the City’s acceptance and signature. The City did ask for several revisions, all of which were denied by CDFW. CDFW responded the agreement has standard language that is included in all its agreements, and that language is vetted and approved by their legal department. The changes we requested would need approval by legal staff and would, therefore, result in delays to the project and potential further violations (Attachment 5).

**CONCLUSION**

Review the Draft Streambed Alteration Agreement, provide any comments to staff, and authorize execution of the agreement with CDFW.

**ATTACHMENTS**

- Attachment 1: 1988 MOU and corresponding request for new LSAA
- Attachment 2: NOV from CDFW
- Attachment 3: Wildlife Assessment and Restoration Plan – Althouse and Meade
- Attachment 4: Streambed Alteration Agreement from CDFW
- Attachment 5: City legal staff requested revisions for draft agreement



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov

POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
(707) 944-5500

Copy to P.S. Bruce  
ATTACHMENT 1



JAN 05 2006

December 29, 2005

Honorable Janice Peters, Mayor  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

RECEIVED  
JAN 9 2006  
City of Morro Bay  
City Services Department

Dear Mayor Peters:

Long-term Stream Maintenance Agreement

Thank you for your letter concerning the City of Morro Bay's application for a stream maintenance agreement. As a result of your letter, we discovered that the application was misplaced during a change in staff assignments shortly after the notification was received. We will be assigning staff to work with the City to develop a new stream maintenance agreement. In the meantime, the City should continue to conduct maintenance activities under the 1988 Memorandum of Understanding until the new agreement is completed.

If you have any questions concerning this matter, please do not hesitate to contact Carl Wilcox, Habitat Conservation Manager, at (707) 944-5525; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

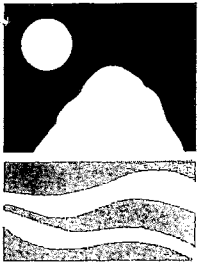
Sincerely,

Robert W. Floerke  
Regional Manager  
Central Coast Region

Post-it® Fax Note	7671	Date	1/30/06	# of pages	1
To	Mark Taylor	From	F. Cunningham		
Co./Dept.	NEP	Co.	City of m.B.		
Phone #	772-3834	Phone #	772-6569		
Fax #	772-4162	Fax #			

Conserving California's Wildlife Since 1870





# City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200  
www.morro-bay.ca.us

December 13, 2005

Rob Floerke, Regional Manager  
California Department of Fish and Game  
Central Coast Region  
P.O. Box 47  
Yountville, CA 94599

Dear Mr. Floerke,

As you know, creek maintenance and flood protection is critically important in the city of Morro Bay. While we are sensitive to your staff cutbacks due to budget constraints, we are also very concerned about the safety and welfare of the residents of our community. As demonstrated in past historic rainfall years, and more recently in 1995, the city of Morro Bay is susceptible to flooding due to creek overflow. As required by your staff, the City of Morro Bay submitted a new application for a "Streambed Alteration Permit" along with the required Biological Assessment Report, environmental documents, and the Creek Maintenance and Management Plan on May 6, 2005. The City is very concerned that this lengthy process has placed the residents of Morro Bay at unnecessary risk. This is the third year now that the City has not been allowed to perform creek maintenance due to this prolonged permit process.

The City of Morro Bay has been performing creek maintenance services since 1988 under a Memorandum of Understanding (MOU) with California Department of Fish and Game (DFG). We can certainly understand the need to periodically review and update the conditions and processes of old agreements or permits. However, given the importance of routine creek maintenance, it would be prudent to have allowed these creek maintenance services to continue while the City goes through this unexpectedly lengthy process.

We request that you expedite the processing of our permit and allow the City to continue creek maintenance under the existing MOU conditions until the application is processed.

If you have any further questions or concerns regarding this request, please feel free to contact Frank Cunningham, City Engineer at (805) 772-6569.

Sincerely,

Janice Peters, Mayor

CC: Representative Lois Capps  
Representative Bill Thomas  
Senator Abel Maldonado  
Assemblyman Sam Blakeslee  
Bob Stafford, Wildlife Biologist

FINANCE  
595 Harbor Street  
HARBOR DEPARTMENT  
275 Embarcadero Road

ADMINISTRATION  
595 Harbor Street  
CITY ATTORNEY  
955 Shasta Avenue

FIRE DEPARTMENT  
715 Harbor Street  
POLICE DEPARTMENT  
850 Morro Bay Boulevard

PUBLIC SERVICES  
955 Shasta Street  
RECREATION AND PARKS  
1001 Kennedy Way

Copy to  
City of Morro Bay

Check # 0168,  
\$25.00

Chuck Marsh  
237-9538

1601

ATTACHMENT 1  
RECEIVED

NOV 01 REC'D

DEPARTMENT OF PUBLIC WORKS  
CITY OF MORRO BAY

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding by and between the California Department of Fish and Game, hereinafter called the Department, and the City of Morro Bay, hereinafter called the City, is for the purpose of defining and delineating routine maintenance.

WHEREAS, the Department is required to issue Streambed Alteration Agreements pursuant to Fish and Game Code Section 1601 or 1603 to or on behalf of City; and

WHEREAS, the Department is required to conserve the fish and wildlife resources of this state; and

WHEREAS, it is essential that City perform routine maintenance and operations that will require alteration of the bed, channel, or bank of rivers, streams, or lakes in San Luis Obispo County.

NOW, THEREFORE, it is hereby agreed between the Department and City that the following shall constitute routine maintenance and operation and shall not require notice to, and agreement with, the Department subsequent to the initial notification and agreement pursuant to Fish and Game Code Section 1601 or 1603 or the associated fees, unless the work as described in this memorandum is substantially changed, or conditions affecting fish and wildlife resources substantially change, or such resources are adversely affected by the activity conducted under this memorandum.

1. Control of weeds and grasses by mowing, except no heavy equipment may be used in the streambed. This activity shall occur between July 1 and October 15 of each year.
2. Routine removal of minimum vegetation to insure proper functioning and operation of streamflow measuring stations, existing water control facilities or other structures necessary for public health, safety, and benefit, except that no heavy equipment may be used in the streambed without prior approval and according to conditions determined by the Department.
3. Removal of woody and herbaceous vegetation with hand tools in that portion of the stream identified as the stream bottom.
4. Removal of fallen trees, branches, and associated debris.
5. Removal of soil, debris, rubbish, and other non-living material from concrete-lined channels.
6. Removal or placement of flashboards in existing diversion dams. Time of placement and removal of flashboards to be determined by the Department.

7. Cleaning, repairs, and replacement of existing functioning flapgates or other existing water control devices. Heavy equipment shall not be operated in the streambed without prior approval and according to conditions determined by the Department.
8. Replenishment of clean rock riprap in previously riprapped areas to maintain bank stabilization. Placement of material shall be done without operating heavy equipment in the streambed or channel.
9. All work in Items 2 through 8 shall be conducted only between April 1 and October 30 of each year, except emergency work, as defined in Fish and Game Code Section 1601 and 1603.
10. The Department may review and amend or cancel this Memorandum of Understanding at its discretion. The Department will confer with the City Director of Public Works or his designated representative prior to amendments or cancellation.
11. City maintains creek beds on an annual basis as follows:

Morro Creek: From City limit sign at Ironwood Avenue to 150 feet west to Highway 1 bridge-approximately .75 mile.

Willow Camp Creek: Morro Bay Boulevard/Highway 1 to PG&E Plant-approximately 1 mile.

Alva Paul Creek: Highway 1 west to Pacific Ocean - approximately .25 mile.

Unnamed Creek: Tide Street west to Pacific Ocean across Highway 1 - approximately 1 mile.

Chorro Creek: Canay Road Creek crossing - approximately 100 feet east and west.

Chorro Creek: Twin Bridges - approximately 100 feet on both sides of bridges, north and south.

Machetes, chainsaws, hoes, and rakes are used to remove trash and brush to clean channels and reduce the risk of downstream flooding. No roots are removed.

12. This Memorandum of Understanding shall run for five (5) years, at which time it will be reviewed and updated as necessary for acceptable maintenance and operational procedures.

WARDEN J. Sparks #296  
Bruce Dent

Regional Manager  
Department of Fish and Game

[Signature]

Director of Public Works  
City of Morro Bay

10-5-88      10-17-88  
Date

9/22/83  
Date



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

ATTACHMENT 2  
EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



RECEIVED

MAR 23 2015

City of Morro Bay  
Public Services Department

Mike Wilcox  
Maintenance Superintendent  
City of Morro Bay  
1001 Kennedy Way  
Morro Bay, California 93442

Subject: Notice of Violation of Fish and Game Code Section 1602  
Violation File No. 1600-2015-0802-R4  
Alva Paul Creek, Morro Creek, and Willow Camp Creek –  
San Luis Obispo County

Dear Mr. Wilcox:

On January 15, 2015, the California Department of Fish and Wildlife (Department) investigated a habitat disturbance that occurred within Alva Paul Creek, Morro Creek, and Willow Camp Creek in the City of Morro Bay, San Luis Obispo County. The site visit was conducted by Department Environmental Scientist Charles Walbridge. During this visit, it was observed that extensive vegetation clearing had taken place within the bed and bank of each of the three creeks. The Department has determined that this work is jurisdictional under Fish and Game Code section 1600 *et seq.*, and the activity is therefore subject to Fish and Game Code section 1602.

Fish and Game Code section 1602 requires a person to notify the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake.

In this case, the Department has determined that notification was required because the activities substantially altered the three creeks by removing a total of approximately 4.87 acres of mature willow riparian habitat along approximately 3,467 total linear feet of stream. In order to address this violation, you will need to immediately stop all ground-disturbing and vegetation removal activities within Alva Paul Creek, Morro Creek, and Willow Camp Creek if you have not done so already; complete the enclosed Notification package; and submit the complete package, Notification fee, and a copy of this Notice to Charles Walbridge, Environmental Scientist, at the above address by April 20, 2015.



When completing the project description in the Notification of Lake or Streambed Alteration form, describe the proposed actions that will remediate the violation, specifically to restore appropriate riparian habitat on-site using native species. A proposal for remediation might require consultation with a stream restoration specialist to evaluate the ability for the sites to be restored. In order to prevent delays, please consult with the Department during this process to ensure that the remediation plan is acceptable prior to submitting it with the Notification.

After the Department receives the Notification and fee, it will process the Notification and issue a draft Streambed Alteration Agreement (Agreement) as described in Fish and Game Code sections 1602 and 1603; however, the draft Agreement will not be subject to arbitration in the event you disagree with any of the protective measures, and you and the Department cannot resolve the disagreement (Fish and Game Code section 1614).

If the Department does not receive the Notification and fee by April 20, 2015 the Department will pursue other enforcement options, including referral of the matter to the District Attorney's Office or the Attorney General's Office for civil or criminal prosecution.

If you have any questions regarding this letter, please contact Charles Walbridge, Environmental Scientist, at (559) 243-4014 extension 352 or by email at [charles.walbridge@wildlife.ca.gov](mailto:charles.walbridge@wildlife.ca.gov).

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

Enclosure

ec: Charles Walbridge  
Wildlife Officer Teri Hickey  
Lieutenant Todd Tognazzini  
Department of Fish and Wildlife

# **Wildlife Assessment and Restoration Plan**

for

## **Alva Paul, Morro, and Willow Camp Creeks Restoration Plan**

Morro Bay, San Luis Obispo County



Prepared for

**City of Morro Bay**  
**Public Works Department**  
1001 Kennedy Way  
Morro Bay, CA 93442

by

**ALTHOUSE AND MEADE, INC.**  
**BIOLOGICAL AND ENVIRONMENTAL SERVICES**  
1602 Spring Street  
Paso Robles, CA 93446  
(805) 237-9626

**April 2015**

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*Cover Photo: Morro Creek facing downstream. April 8, 2015.*

## **1.0 Introduction**

On October 17, 1988 the City of Morro Bay (City) obtained a Memorandum of Understanding (MOU) from the California Department of Fish and Wildlife (CDFW)<sup>1</sup> for routine vegetation maintenance at several locations within City limits (Attachment 1). On May 6, 2005 the City submitted an application for a Lake and Streambed Alteration Agreement (LSAA) to CDFW but did not receive a response. On December 13, 2005 the City contacted CDFW requesting the LSAA application be expedited (Attachment 2). On December 29, 2005 Mr. Rob Floerke, Regional Manager of CDFW's Central Coast Region acknowledge the City's LSAA application had been misplaced and authorized the City to continue conducting maintenance under the 1988 MOU until a new LSAA was completed (Attachment 3). To date, the City has not received a new LSAA to replace the 1988 MOU.

In 2014, staff from the City of Morro Bay (City) removed vegetation along Alva Paul, Morro, and Willow Camp Creeks, acting under authorization of the 1988 MOU. On March 18, 2015, CDFW issued a Notice of Violation (NOV, Attachment 4) and instructed City staff to submit an application for an LSAA and plans for restoring riparian habitat on-site using native species. This Habitat Restoration Plan (Plan) provides a comprehensive restoration work plan, performance criteria, and monitoring requirements that would result in successful revegetation of the impacted riparian habitat within three years. The Plan also includes a wildlife assessment as well as avoidance and minimization measures to less potential environmental impacts.

## **2.0 Baseline Information for the Restoration Site**

### **2.1 Project Locations and Descriptions**

The proposed restoration project is located in the City of Morro Bay, San Luis Obispo County, California (Figure 1). Restoration would occur along the riparian corridor of Alva Paul, Morro, and Willow Camp creeks (Figure 2). Alva Paul Creek is located in the Morro Bay North United States Geological Survey (USGS) 7.5 minute quadrangle, with elevation varying from near sea level to approximately 75 feet above sea level. Morro Creek and Willow Camp Creek are located in the USGS Morro Bay South 7.5 minute quadrangle, with elevation varying from near sea level to approximately 50 feet above sea level. Restoration Project Purpose

Removal of vegetation temporarily impacted approximately 3,467 linear feet and 4.87 acres of mature willow riparian habitat along Alva Paul Creek, Morro Creek, and Willow Camp Creek. Restoration will enhance riparian habitat throughout the impacted areas by replanting native trees, shrubs, forbs, and grasses. The Project would utilize various propagation techniques of regionally appropriate plant material in order to restore disturbed soil and enhance adjacent areas. These techniques would include seeding, plugs, live stakes, and container stock grown from local material.

---

<sup>1</sup> Formerly California Department of Fish and Game

## 2.2 Responsible Parties

TABLE 1. RESPONSIBLE PARTIES. Applicant, biological consultant, and lead agency are provided.

Project Contact	Biological Consultant
<p style="text-align: center;"><b>City of Morro Bay</b> 955 Shasta Ave Morro Bay, CA 93442 (805) 772-6285 Contact: Mike Wilcox</p>	<p style="text-align: center;"><b>Althouse and Meade, Inc.</b> 1602 Spring Street Paso Robles, CA 93446 (805) 237-9626 Contact: Mike Hill, M.S.</p>
Lead Agency	
<p style="text-align: center;"><b>California Department of Fish and Wildlife</b> <b>Central Region</b> 1234 East Shaw Avenue Fresno, CA 93710 (559) 243-4014 ext. 352 Contact: Charles Walbridge</p>	

## 3.0 Environmental Setting

### 3.1 Restoration Sites

Alva Paul Creek meanders in a general east-west direction from the northern border of Del Mar Park, downstream to the Pacific Ocean. The project site is located within the boundaries of Del Mar Park. Vegetation primarily consisting of Arroyo willows (*Salix lasiolepis*) encroached onto grassy areas of the park (Photo 1). Many of these trees were cut near ground level

Willow Camp Creek is an ephemeral drainage that flows into Morro Creek. The project site starts on Willow Camp Creek at Morro Bay Boulevard and extends generally northwesterly along State Route 101 until reaching Morro Creek. Vegetation along Willow Camp Creek consists primarily of Arroyo willows, coyote brush (*Baccharis pilularis*), and extensive areas of ice plant (*Carpobrotus edulis*; *C. chilensis*), with scattered Monterey cypress (*Hesperocyparis [=Cupressus] macrocarpa*) and eucalyptus (*Eucalyptus* spp) trees (Photo 2). Throughout most of its length, Willow Camp Creek is contained in a nearly linear channel with a concrete-lined V-ditch bottom.

Morro Creek is a perennial stream flowing generally northeast to southwest and entering the Pacific Ocean just north of Morro Bay. The project site consists of an area approximately 2,300 feet long from the Highway 1 overpass downstream to the beach. Vegetation at this site consists primarily of Arroyo willows, California sycamores, and invasive species such as periwinkle (*Vinca minor*) and nasturtium (*Nasturtium* sp.) (Photo 3). Much of the vegetation removed from this area consisted of dead and downed trees, low horizontal willow branches, or leaning sycamores. Willows removed in 2014 were cut within a few inches of ground level (Photo 4).

## 4.0 Habitats

Three habitat types are present in the Project area. These include willow woodland, ice-plant ruderal, and anthropogenic. Non-native grasses and shrubs are present in all of these habitats, particularly in the stream channels. Habitats intermix along ecotones, forming a matrix of vegetation that does not always fit cleanly into one of the described habitats. The Highway 1 corridor also passes through and/or adjacent to the Project sites.

### 4.1 Willow Woodland

Willow woodland forms partial canopy over all three creeks within the Project Area. The dominant species is Arroyo willow (*Salix lasiolepis*), with occasional herbaceous wetland plants present beneath the willows. Willows are wind-pruned at the western edge of the Project area where they are more exposed. Willows that are more sheltered to the east have reached full size. Morro Creek is a seasonal coastal stream with perennial pools that is known habitat, or potential habitat for several special status wildlife species. Willow woodlands have some potential to support rare plants where sufficient gaps in the canopy are present.

### 4.2 Ice-plant Ruderal

Areas predominantly supporting ice-plant (*Carpobrotus edulis*; *C. chilensis*) with low or no presence of native species are described as ice-plant dominant ruderal habitat. These areas are primarily adjacent to Willow Camp Creek along Quintana Road where ice-plant has stabilized sand dune movement and crowded out native dune plants. These areas have very low potential to support rare plants.

### 4.3 Anthropogenic Areas

Del Mar Park, Leila Kaiser Park, and other areas within or adjacent to the Project sites have features consistent with anthropogenic habitat. These include existing fences, lack of understory vegetation, and existing recreational use. Much of the previously-existing habitat was modified by construction of parks and recreational areas.



## 5.0 Biological Resources

The Alva Paul, Morro, and Willow Camp sites were surveyed on April 8, 2015 by Althouse and Meade, Inc. Senior Biologist Mike Hill and Biologist Dustin Groh. Surveys were conducted on foot to assess current site condition, compile species lists, search for special status plants, map vegetation types, and photograph the Project area.

### 5.1 Plant List

Plants identified during surveys are listed in Table 2.

TABLE 2. VASCULAR PLANT LIST. The 52 species of vascular plants identified in the Project area consist of 18 native species and 34 planted or introduced species. The vascular plant list is separated into general life form categories, within which the taxa are listed alphabetically by scientific name.

Common Name	Scientific Name	Origin	Status
<b>Trees – 2 Species</b>			
Monterey cypress	<i>Hesperocyparis</i> [= <i>Cupressus</i> ] <i>macrocarpa</i>	Introduced	None
California sycamore	<i>Plantanus racemosa</i>	Native	None
Arroyo willow	<i>Salix lasiolepis</i>	Native	None
<b>Shrubs – 8 Species</b>			
Coastal sagebrush	<i>Artemisia californica</i>	Native	None
Coyote brush	<i>Baccharis pilularis</i>	Native	None
Arroyo lupine	<i>Lupinus succulentus</i>	Native	None
California blackberry	<i>Rubus ursinus</i>	Native	None
Blue elderberry	<i>Sambucus nigra</i> ssp. <i>caerulea</i> [= <i>S. mexicana</i> ]	Native	None
Nasturtium	<i>Tropaeolum majus</i>	Introduced	None
Stinging nettle	<i>Urtica dioica</i> ssp. <i>holosericea</i>	Native	None
Common vetch	<i>Vicia sativa</i>	Introduced	None
<b>Herbs – 33 Species</b>			
Scarlet pimpernel	<i>Anagallis arvensis</i>	Introduced	None
Black mustard	<i>Brassica nigra</i>	Introduced	None
Sedge	<i>Carex</i> spp.	Native	None
Sea fig	<i>Carpobrotus</i> spp.	Introduced	None
Yellow star thistle	<i>Centaurea solstitialis</i>	Introduced	None
Pigweed	<i>Chenopodium</i> spp.	Native	None
Miner's lettuce	<i>Claytonia perfoliata</i>	Native	None
Poison hemlock	<i>Conium maculatum</i>	Introduced	None
Pampas grass	<i>Cortaderia</i> spp.	Introduced	None
Jade plant	<i>Crassula ovata</i>	Introduced	None

Common Name	Scientific Name	Origin	Status
Saltgrass	<i>Distichlis spicata</i>	Native	None
Common horsetail	<i>Equisetum arvense</i>	Native	None
Broadleaf filaree	<i>Erodium botrys</i>	Introduced	None
Redstem filaree	<i>Erodium cicutarium</i>	Introduced	None
Whitestem filaree	<i>Erodium moschatum</i>	Introduced	None
California poppy	<i>Eschscholzia californica</i>	Native	None
Caper spurge	<i>Euphorbia lathyris</i>	Introduced	None
Petty spurge	<i>Euphorbia peplus</i>	Introduced	None
Fennel	<i>Foeniculum vulgare</i>	Introduced	None
Geranium	<i>Geranium dissectum</i>	Introduced	None
English ivy	<i>Hedera helix</i>	Introduced	None
Bristly ox-tongue	<i>Helminthotheca [=Picris] echioides</i>	Introduced	None
Cheeseweed	<i>Malva parviflora</i>	Introduced	None
California burclover	<i>Medicago polymorpha</i>	Introduced	None
Annual sweetclover	<i>Melilotus indicus [=M. indica]</i>	Introduced	None
Bermuda buttercup	<i>Oxalis pes-caprae</i>	Introduced	None
Coastal silverleaf	<i>Potentilla anserina ssp. pacifica</i>	Native	None
Wild radish	<i>Raphanus sativus</i>	Introduced	None
Milk thistle	<i>Silybum marianum</i>	Introduced	None
Prickly sow-thistle	<i>Sonchus asper ssp. asper</i>	Introduced	None
Hedge nettle	<i>Stachys sp.</i>	Native	None
Common tule	<i>Schoenoplectus sp.</i>	Native	None
Salsify	<i>Tragopogon porrifolius</i>	Introduced	None
<b>Grasses – 9 species</b>			
Wild oat	<i>Avena fatua</i>	Introduced	None
Italian rye grass	<i>Festuca perennis [=Lolium multiflorum]</i>	Introduced	None
Foxtail barley	<i>Hordeum murinum</i>	Introduced	None
Ripgut brome	<i>Bromus diandrus</i>	Introduced	None
Red top brome	<i>Bromus madritensis ssp. rubens [= B. rubens]</i>	Introduced	None
Fountaingrass	<i>Pennisetum setaceum</i>	Introduced	None
One-sided bluegrass	<i>Poa secunda ssp. secunda</i>	Native	None
Purple needlegrass	<i>Stipa [=Nassella] pulchra</i>	Native	None
Harding grass	<i>Phalaris sp.</i>	Introduced	None

## 5.2 Wildlife List

Many wildlife species common to the outer Central Coast Range and Central Coast habitats are expected to occur on or near the Project site (Table 3). Steelhead may occur in Morro Creek when it is flowing, but the creek is normally dry and devoid of surface flow. No amphibians were observed in the creek, although suitable habitat is present for California red-legged frog, a federally listed threatened species. Southwestern pond turtle, a California special concern species, are not known to occur in the vicinity of the Project. Raccoon, opossum, and striped skunk are likely to forage along the creek and adjacent upland habitat. Birds are common throughout the riparian habitat and adjacent urban areas.

Nesting birds may occur in the riparian vegetation near and downstream from the Project. Raptor nests were not observed. Large oaks on adjacent properties provide appropriate nesting habitat for raptors, while riparian vegetation at the site provides nesting habitat for many other species. Nesting birds are protected from disturbance by The Migratory Bird Treaty Act of 1918, as regulated by the United States Fish and Wildlife Service, and by the California Department of Fish and Game code sections 3503, 3503.5, and 3800.

TABLE 3. WILDLIFE LIST. The 41 animal species that were observed on or near the Project include 1 reptile, 1 amphibian, 35 birds, and 4 mammals. The Special Status column contains the listing status of the organism under the Federal Endangered Species Act, the State Endangered Species Act, or the CDFW.

Common Name	Scientific Name	Habitat	Status
<b>Reptiles – 1 Species</b>			
Western Fence Lizard	<i>Sceloporus occidentalis</i>	Wide range	None
<b>Amphibians – 1 Species</b>			
Sierran Chorus Frog	<i>Pseudacris sierra</i>	Lakes, ponds, streams	None
<b>Birds – 35 Species</b>			
White-throated Swift	<i>Aeronautes saxatilis</i>	Nests in cliffs	None
Red-winged Blackbird	<i>Agelaius phoeniceus</i>	Marshes, fields	None
Mallard	<i>Anas platyrhynchos</i>	Lakes, ponds, streams	None
Western Scrub-Jay	<i>Aphelocoma californica</i>	Oak, riparian woodlands	None
Great Egret	<i>Ardea alba</i>	Water habitats, grasslands	SSC (Rookery Sites) <sup>2</sup>
Anna’s Hummingbird	<i>Calypte anna</i>	Many habitats	None
Lesser Goldfinch	<i>Carduelis psaltria</i>	Riparian, oak woodlands	None
American Goldfinch	<i>Carduelis tristis</i>	Weedy fields, woodlands	None
House Finch	<i>Carpodacus mexicanus</i>	Riparian, grasslands, chaparral, and woodlands	None
Hermit Thrush	<i>Catharus guttatus</i>	Woodland and brush	None
American Crow	<i>Corvus brachyrhynchos</i>	Many habitats, esp. urban	None

<sup>2</sup> California Species of Special Concern (SSC)

Common Name	Scientific Name	Habitat	Status
Pacific-slope Flycatcher	<i>Empidonax difficilis</i>	Riparian, oak woodlands	None
American Kestrel	<i>Falco sparverius</i>	Open, semi-open country	None
American Coot	<i>Fulica americana</i>	Aquatic habitats	None
Common Yellowthroat	<i>Geothlypis trichas</i>	Marshes, streamsides	None
Dark-eyed Junco	<i>Junco hyemalis</i>	Oak woodland	None
California Gull	<i>Larus californicus</i>	Beach, urban areas	None
Song Sparrow	<i>Melospiza melodia</i>	Oak, riparian woodland	None
Northern Mockingbird	<i>Mimus polyglottos</i>	Riparian, chaparral and woodlands. Also urban	None
House Sparrow	<i>Passer domesticus</i>	Urban	None
Nuttall's Woodpecker	<i>Picoides nuttallii</i>	Oak, riparian woodlands	Special Animal
California Towhee	<i>Pipilo crissalis</i>	Brushy habitats	None
Spotted Towhee	<i>Pipilo maculatus</i>	Dense brushy areas	None
Chestnut-backed Chickadee	<i>Poecile rufescens</i>	Mixed woods	None
Bushtit	<i>Psaltriparus minimus</i>	Woodlands, chaparral	None
Great-tailed Grackle	<i>Quiscalus mexicanus</i>	Rural and developed areas, agricultural, urban areas	None
Black Phoebe	<i>Sayornis nigricans</i>	Near water	None
Eurasian Collared Dove	<i>Streptopelia decaocto</i>	Urban areas	None
European Starling	<i>Sturnus vulgaris</i>	Agricultural, livestock areas	None
Tree Swallow	<i>Tachycineta bicolor</i>	Oak, riparian woodlands, open areas near water	None
Bewick's Wren	<i>Thryomanes bewickii</i>	Riparian woodland, scrub	None
Wilson's Warbler	<i>Wilsonia pusilla</i>	Oak, riparian woodlands	None
Mourning Dove	<i>Zenaidura macroura</i>	Open and semi-open habitats	None
Golden-crowned Sparrow	<i>Zonotrichia atricapilla</i>	Dense woodlands, brushy areas	None
White-crowned Sparrow	<i>Zonotrichia leucophrys</i>	Oak, riparian woodlands	None
<b>Mammals – 4 Species</b>			
Mule Deer	<i>Odocoileus hemionus columbianus</i>	Riparian, chaparral and woodlands. Also urban	None
California Ground Squirrel	<i>Otospermophilus beecheyi</i>	Open, semi-open country	None
Feral Cat	<i>Felis catus</i>	Urban areas	None
Domestic Dog	<i>Canis lupus familiaris</i>	Urban areas	None

## **6.0 Special Status Plants and Animals**

The CNDDDB and the CNPS On-line Inventory of Rare and Endangered Plants of California contain records for 81 special status species and 4 sensitive natural community within the designated search area, which encompasses an area extending 5 miles from the Project sites in the Morro Bay North and Morro Bay South USGS 7.5-minute quadrangles. Because the search area is so large over varied terrain, species with very restricted habitat requirements far from the Study Area are often reported in the search results. Appropriate habitat conditions may be present in the Project area for 15 special status plants and 9 special status animals (Tables 4 and 5). No sensitive habitat type occurs in the Project area. Figures 3 and 4 depict the current GIS data for special status species and critical habitat mapped in the vicinity of the Study Area by the CNDDDB and the U.S. Fish and Wildlife Service (USFWS).

### **6.1 Introduction to California Rare Plant Ranks (Formerly CNPS lists)**

Plant species are considered rare when their distribution is confined to localized areas, when there is a threat to their habitat, when they are declining in abundance, or are threatened in a portion of their range. The California Rare Plant Rank (CRPR) categories range from species with a low threat (CRPR 4) to species that are presumed extinct (CRPR 1A). Plants ranked CRPR 1B are rare throughout their range. All but a few species are endemic to California. All of them are judged to be vulnerable under present circumstances or to have a high potential for becoming vulnerable.

### **6.2 Introduction to CNDDDB Definitions**

"Special Plants" is a broad term used to refer to all the plant taxa inventoried by the CNDDDB, regardless of their legal or protection status (CDFW April 2013). Special plants include vascular plants and high priority bryophytes (mosses, liverworts, and hornworts).

"Special Animals" is a general term that refers to all of the animal taxa inventoried by the CNDDDB, regardless of their legal or protection status (CDFW January 2011). The Special Animals list is also referred to by the California Department of Fish and Wildlife (CDFW) as the list of "species at risk" or "special status species". These taxa may be listed or proposed for listing under the California and/or Federal Endangered Species Acts, but they may also be species deemed biologically rare, restricted in range, declining in abundance, or otherwise vulnerable.

Each species included on the Special Animals list has a corresponding Global and State Rank (refer to Table 4). This ranking system utilizes a numbered hierarchy from one to five following the Global (G-rank) or State (S-rank) category. The threat level of the organism decreases with an increase in the rank number (1=Critically Imperiled, 5=Secure). In some cases where an uncertainty exists in the designation, a question mark (?) is placed after the rank. More information is available at [www.natureserve.org](http://www.natureserve.org).

Animals listed as California Species of Special Concern (SSC) are not listed under the California Endangered Species Act (CESA) and may or may not be listed under the Federal Endangered Species Act (FESA). They are considered rare or declining in abundance in California. The Special Concern designation is intended to provide CDFW, biologists, land planners, and managers with lists of species that require special consideration during the planning process in

order to avert continued population declines and potential costly listing under federal and state endangered species laws. For many species of birds, the primary emphasis is on the breeding population in California. For some species that do not breed in California but winter here, emphasis is on wintering range. The SSC designation thus may include a comment regarding the specific protection provided such as nesting or wintering.

Animals listed as Fully Protected are those species considered by CDFW as rare or faced with possible extinction. Most, but not all, have subsequently been listed under CESA or FESA. Fully Protected species may not be taken or possessed at any time and no provision of the California Fish and Game Code authorizes the issuance of permits or licenses to take any Fully Protected species.

TABLE 4. SPECIAL STATUS PLANT LIST. We list 58 special status plants reported from the vicinity of the site or known from the region with potential to occur in the vicinity of the Project area. Potentially suitable habitat is present on the Project area for 15 special status plant species.

	Common and Scientific Names	Fed/State Status Global/State Rank CA Rare Plant Rank	Blooming Period	Habitat Preference	Potential Habitat?	Observed On-site?
1.	<b>Red Sand-Verbena</b> <i>Abronia maritima</i>	None/None G4/S3S4 4.2	February - November	Coastal dunes; <100m sCCo, SCo, ChI; Baja CA	No. Appropriate habitat is not present.	No
2.	<b>Arroyo de la Cruz Manzanita</b> <i>Arctostaphylos cruzensis</i>	None/None G3/S3 1B.2	December - March	Sandy bluffs; <150 m. c CCo (s Monterey, nw SLO Counties)	No. Project area is south of known occurrences	No
3.	<b>Santa Lucia Manzanita</b> <i>Arctostaphylos luciana</i>	None/None G3/S3 1B.2	December - March	Shale outcrops, slopes, chaparral, 500-700 m. Cuesta Pass, SLO County.	No. Appropriate habitat is not present.	No
4.	<b>Morro Manzanita</b> <i>Arctostaphylos morroensis</i>	Threatened/None G2/S2 1B.1	December - March	Sand dunes; <200 m. s CCo (Morro Bay, SLO County)	No. Appropriate habitat is not present.	No
5.	<b>Bishop Manzanita</b> <i>Arctostaphylos obispoensis</i>	None/None G4/S4 4.3	February - March	Rocky, gen serpentine soils, chaparral, open close-cone forest near coast; 60-950 m; SCoRO	No. Appropriate habitat is not present.	No
6.	<b>Oso Manzanita</b> <i>Arctostaphylos osoensis</i>	None/None G1/S1 1B.2	February - March	Chaparral, woodland; 300-500 m. s CCo (w Los Osos Valley, SLO County)	No. Appropriate habitat is not present.	No
7.	<b>Pecho Manzanita</b> <i>Arctostaphylos pechoensis</i>	None/None G2/S2 1B.2	November - March	Shale outcrops, chaparral, coniferous forest; <850 m. s CCo (Pecho Hills, SLO)	No. Appropriate habitat is not present.	No
8.	<b>Santa Margarita Manzanita</b> <i>Arctostaphylos pilosula</i>	None/None G3/S3 1B.2	December - May	Shale outcrops, slopes, chaparral; 300-1100 m. s SCoRO, Endemic to SLO County	No. Appropriate habitat is not present.	No
9.	<b>Dacite Manzanita</b> <i>Arctostaphylos tomentosa</i> ssp. <i>daciticola</i>	None/None G4T1/S1 1B.1	March - May	Chaparral; <300 m. s CCo (w Los Osos Valley, SLO County)	No. Appropriate habitat is not present.	No

	Common and Scientific Names	Fed/State Status Global/State Rank CA Rare Plant Rank	Blooming Period	Habitat Preference	Potential Habitat?	Observed On-site?
10.	<b>Marsh Sandwort</b> <i>Arenaria paludicola</i>	Endangered/ Endangered G1/S1 1B.1	May - August	Boggy meadows, marshes; <300 m. s CCo (Nipomo Mesa, SLO County, Santa Ana River, SCo)	Yes. Appropriate habitat is present in herbaceous wetlands.	No
11.	<b>Carlotta Hall's Lace Fern</b> <i>Aspidotis carlotta-halliae</i>	None/None G3/S3 4.2	January - December	Generally serpentine slopes, crevices, outcrops	No. Appropriate habitat is not present.	No
12.	<b>Miles' Milk-Vetch</b> <i>Astragalus didymocarpus</i> var. <i>milesianus</i>	None/None G5T2/S2 1B.2	March - June	Clay or serpentine soils in coastal scrub, grassy areas near coast. 0-90 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
13.	<b>Ocean Bluff Milk-Vetch</b> <i>Astragalus nuttallii</i> var. <i>nuttallii</i>	None/None G4T4/S4 4.2	January - November	Rocks, coastal bluff scrub, coastal dunes; 3-120 m.	No. Appropriate habitat is not present.	No
14.	<b>San Joaquin Spearscale</b> <i>Atriplex joaquinana</i>	None/None G2/S2 1B.2	April - October	Alkaline soils; <300 m. s ScV, SnJV, SCoRI (e slope).	No. Appropriate habitat is not present.	No
15.	<b>False Gray Horsehair Lichen</b> <i>Bryoria psuedocapillaris</i>	None/None G3/S2 3.2	?	Coastal dunes (CoDns)(SLO Co.), North Coast coniferous forest (NCFrs)(immediate coast)/Usually on conifers.	No. Appropriate habitat is not present.	No
16.	<b>Twisted Horsehair Lichen</b> <i>Bryoria spiralifera</i>	None/None G3/S1S2 1B.1	?	North Coast coniferous forest (NCFrs)(immediate coast)/Usually on conifers.	No. Appropriate habitat is not present.	No
17.	<b>Club-haired Mariposa Lily</b> <i>Calochortus clavatus</i> var. <i>clavatus</i>	None/None G4T2T3/S2S3 1B.2	March – June	Generally serpentine; <1300m. s SCoRO, n SCoRI, WTR, SnGb	No. Appropriate habitat is not present.	No
18.	<b>Arroyo de la Cruz Mariposa Lily</b> <i>Calochortus clavatus</i> var. <i>recurvifolius</i>	None/None G4T1/S1 1B.2	June - July	Coastal bluff scrub, in maritime chaparral or coastal prairie. Also lower montane coniferous forest. <120 m. SLO County.	No. Appropriate habitat is not present.	No



	<b>Common and Scientific Names</b>	<b>Fed/State Status Global/State Rank CA Rare Plant Rank</b>	<b>Blooming Period</b>	<b>Habitat Preference</b>	<b>Potential Habitat?</b>	<b>Observed On-site?</b>
19.	<b>San Luis Mariposa Lily</b> <i>Calochortus obispoensis</i>	None/None G2/S2 1B.2	May - July	Chaparral, coastal scrub, valley and foothill grassland, often on serpentine but also sandstone; 100-500 m. SCoRO Endemic to SLO County	No. Appropriate habitat is not present.	No
20.	<b>Cambria Morning-Glory</b> <i>Calystegia subacaulis</i> ssp. <i>episcopalis</i>	None/None G3T3/S3 4.2	April - May	Dry, open scrub, woodland, or grassland; <500 m. c SCoRO Endemic to SLO County	No. Appropriate habitat is not present.	No
21.	<b>Hardham's Evening-Primrose</b> <i>Camissoniopsis</i> <i>hardhamiae</i>	None/None G1Q/S1 1B.2	April - May	Decomposed carbonate soils, in chaparral, cismontane woodland. Monterey, SLO Counties	No. Appropriate habitat is not present.	No
22.	<b>San Luis Obispo Sedge</b> <i>Carex obispoensis</i>	None/None G2G3/S2S3 1B.2	April - June	Serpentine springs, stream sides; <600 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
23.	<b>San Luis Obispo Owl's-Clover</b> <i>Castilleja densiflora</i> ssp. <i>obispoensis</i>	None/None G5T2/S2.2 1B.2	April	Coastal grassland, <100 m. Endemic to SLO County.	Yes. Moderately appropriate habitat is present on site.	No
24.	<b>Lompoc Ceanothus</b> <i>Ceanothus cuneatus</i> var. <i>fascicularis</i>	None/None G5T4/S4 4.2	February - April	Maritime chaparral in sandy soils. <275 n, s CCo	No. Soils are appropriate but chaparral vegetation is not present.	No
25.	<b>Monterey Ceanothus</b> <i>Ceanothus rigidus</i>	None/None G3/S34 4.2	February - June	Sandy soils with closed-cone coniferous forest, chaparral. Intergrades with <i>C. cuneatus</i> var. <i>ridigus</i> in SLO County. <400 m. CCo.	No. Soils are appropriate but typical plant communities are not present.	No
26.	<b>Coastal Goosefoot</b> <i>Chenopodium littoreum</i>	None/None G2/S2 1B.2	April - August	Generally sandy soils, dunes; <40m. s CCo	Yes. Appropriate dune habitat is present.	No
27.	<b>Dwarf Soaproot</b> <i>Chlorogalum</i> <i>pomeridianum</i> var. <i>minus</i>	None/None G5T2/S2 1B.2	May - August	Serpentine outcrops in chaparral; gen <750 m. NCoRI, SnFrB, SCoRO	No. Appropriate habitat is not present.	No

	Common and Scientific Names	Fed/State Status Global/State Rank CA Rare Plant Rank	Blooming Period	Habitat Preference	Potential Habitat?	Observed On-site?
28.	<b>Salt Marsh Bird's-Beak</b> <i>Chloropyron maritimum</i> <i>ssp. maritimum</i>	Endangered/ Endangered G4?T1/S1 1B.2	May - October	Coastal salt marshes;<10 m. SCo, n Baja CA	No. Appropriate habitat is not present.	No
29.	<b>Brewer's Spineflower</b> <i>Chorizanthe breweri</i>	None/None G2/S2 1B.3	April - August	Chaparral, foothill woodland on serpentine; <800 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
30.	<b>Chorro Creek Bog Thistle</b> <i>Cirsium fontinale</i> var. <i>obispoense</i>	Endangered/ Endangered G2T2/S2 1B.2	February - July	Serpentine seeps and streams; <300 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
31.	<b>Compact Cobwebby Thistle</b> <i>Cirsium occidentale</i> var. <i>compactum</i>	None/None G3G4T1/S1 1B.2	April - June	Coastal bluffs, on dune sand or clay; 5-155 m. CCo	No. Appropriate habitat is not present.	No
32.	<b>Surf Thistle</b> <i>Cirsium rhotophilum</i>	None/Threatened G1/S1 1B.2	April - June	Dunes, bluffs; <20 m. s CCo (s SLO, n SB Counties)	No. Appropriate habitat is not present.	No
33.	<b>Firm Cup Lichen</b> <i>Cladonia firma</i>	None/None G4/S1 2B.1	n/a	Reported in maritime chaparral and dune scrub typically in stabilized dunes, grows on soil and detritus.	Unlikely. Dune scrub in the Project area is highly disturbed and most shrubs are young individuals without lichens.	No
34.	<b>Paniculate Tarplant</b> <i>Deinandra paniculata</i>	None/None G4/S4 4.2	April - November	Grassland, open chaparral and woodland, disturbed areas. 25-940 m. CCo, SCo, Baja CA	No. Appropriate habitat is not present.	No
35.	<b>Eastwood's Larkspur</b> <i>Delphinium parryi</i> ssp. <i>eastwoodiae</i>	None/None G4T2/S2 1B.2	March	Coastal chaparral, grassland, on serpentine; 100-500m sCCo, SCoRO (San Luis Obispo County)	No. Appropriate habitat is not present.	No
36.	<b>Umbrella Larkspur</b> <i>Delphinium</i> <i>umbracolorum</i>	None/None G3/S3 1B.3	April – June	Chaparral (Chprl), Cismontane woodland (CmWld)	No. Appropriate habitat is not present.	No

	Common and Scientific Names	Fed/State Status Global/State Rank CA Rare Plant Rank	Blooming Period	Habitat Preference	Potential Habitat?	Observed On-site?
37.	<b>Beach Spectaclepod</b> <i>Dithyrea maritima</i>	None/Threatened G2/S2 1B.1	March - May	Sea shores, sandy soils on dunes near the shore; <50 m s CCo, SCo, Baja CA.	No. Appropriate habitat is not present.	No
38.	<b>Betty's Dudleya</b> <i>Dudleya abramsii</i> ssp. <i>bettinae</i>	None/None G4T1/S1 1B.2	May - July	Rocky outcrops in serpentine grassland; <50-180 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
39.	<b>Mouse-Gray Dudleya</b> <i>Dudleya abramsii</i> ssp. <i>murina</i>	None/None G4T2/S2 1B.3	May - June	Serpentine outcrops; 120-300 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
40.	<b>Blochman's Dudleya</b> <i>Dudleya blochmaniae</i> ssp. <i>blochmaniae</i>	None/None G2T2/S2 1B.1	April - June	Open, rocky slopes, often serpentine or clay soils; <450 m. s CCo, SCo	No. Appropriate habitat is not present.	No
41.	<b>Blochman's Leafy Daisy</b> <i>Erigeron blochmaniae</i>	None/None G2/S2 1B.2	June - August	Sand dunes and hills; <30 m. s CCo	No. Appropriate habitat is not present.	No
42.	<b>Hoover's Button-Celery</b> <i>Eryngium aristulatum</i> var. <i>hooveri</i>	None/None G5T1/S1 1B.1	July	Vernal pools, lagunas; 0-1000 m. s SnFrB, SCoR	No. Appropriate habitat is not present.	No
43.	<b>Suffrutescent Wallflower</b> <i>Erysimum suffrutescens</i>	None/None G3/S3 4.2	January - July	Coastal dunes and bluffs; 0-150 m. CCo, SCo	No. Appropriate habitat is not present.	No
44.	<b>San Benito Fritillary</b> <i>Fritillaria viridea</i>	None/None G2/S2 1B.2	March - May	Serpentine slopes; 200-1500 m. SCoR (San Benito, SLO Counties)	No. Appropriate habitat is not present.	No
45.	<b>Kellogg's Horkelia</b> <i>Horkelia cuneata</i> var. <i>sericea</i>	None/None G4T2/S2? List 1B.1	April - September	Old dunes, coastal sand hills; <200 m. CCo	No. Appropriate habitat is present.	No
46.	<b>Coulter's Goldfields</b> <i>Lasthenia glabrata</i> ssp. <i>coulteri</i>	None/None G4T2/S2 1B.1	February - June	Saline places, vernal pools; <1000 m. s SCoRO, SCo, n ChI, PR, w DMoj	No. Appropriate habitat is not present.	No
47.	<b>Jones' Layia</b> <i>Layia jonesii</i>	None/None G2/S2 1B.2	March - May	Open serpentine or clay slopes; <400 m. Endemic to SLO County	No. Appropriate habitat is not present.	No
48.	<b>Santa Lucia Bush-Mallow</b> <i>Malacothamnus palmeri</i> var. <i>palmeri</i>	None/None G3T2Q/S2 1B.2	May - July	Chaparral, cismontane woodland, coastal scrub; 30-1100 m. s CCo, SCoRO	No. Appropriate habitat is not present.	No

	Common and Scientific Names	Fed/State Status Global/State Rank CA Rare Plant Rank	Blooming Period	Habitat Preference	Potential Habitat?	Observed On-site?
49.	<b>Palmer's Monardella</b> <i>Monardella palmeri</i>	None/None G2/S2 1B.2	June - August	Serpentine soils in chaparral, forest; 200-800 m. SCoRO	No. Appropriate habitat is not present.	No
50.	<b>San Luis Obispo Monardella</b> <i>Monardella undulata</i> ssp. <i>undulata</i> [= <i>M.</i> <i>frutescens</i> ]	None/None G2/S2 1B.2	May - September	Stabilized dunes, sandy scrub; <200 m. s CCo (SLO, Santa Barbara Counties)	No. Appropriate habitat is not present.	No
51.	<b>Coast Woolly-Heads</b> <i>Nemacaulis denudata</i> var. <i>denudata</i>	None/None G3G4T2/S2 1B.2	April- September	Coastal dunes; 0-100 m.	No. Appropriate habitat is not present.	No
52.	<b>Northern Curly-Leaved Monardella</b> <i>Monardella sinuata</i> ssp. <i>sinuata</i>	None/None G3T2/S2 1B.2	April- September	Sandy, Chaparral, Cismontane woodland, Coastal dunes, Coastal scrub (openings)	No. Appropriate habitat is not present.	No
53.	<b>Diablo Canyon Blue Grass</b> <i>Poa diaboli</i>	None/None G2/S2 1B.2	March - April	Coastal scrub, chaparral, cismontane woodland in shale. San Luis Range	No. Appropriate habitat is not present.	No
54.	<b>Hoffmann's Sanicle</b> <i>Sanicula hoffmannii</i>	None/None G3/S3 4.3	March – May	Shrubby coastal hills, pine woodland; <500m. CCo, SCo, n ChI	No. Appropriate habitat is not present.	No
55.	<b>Adobe Sanicle</b> <i>Sanicula maritima</i>	None/Rare G2/S2 1B.1	February - May	Coastal, grassy, open wet meadows, ravines; ±150 m. CCo (SLO County)	No. Appropriate habitat is not present.	No
56.	<b>Blochman's Ragwort*</b> <i>Senecio blochmaniae</i>	None/None G3/S3 4.2	May-October	Coastal dunes. <100 m. San Luis Obispo and Santa Barbara Counties.	No. Appropriate habitat is not present.	Yes
57.	<b>Most Beautiful Jewel- Flower</b> <i>Streptanthus albidus</i> ssp. <i>peramoenus</i>	None/None G2T2/S2 1B.2	April - September	Open, grassy or ±barren slopes, often serpentine; ±150-800 m. c SCoRO	No. Appropriate habitat is not present.	No
58.	<b>California Seablite</b> <i>Suaeda californica</i>	Endangered/None G1/S1 1B.1	July - October	Margins of coastal salt marshes; <5 m. CCo	No. Appropriate habitat is not present.	No

**Habitat Preference Abbreviations:**

CCo: Central Coast	SnFrB: San Francisco Bay	SLO: San Luis Obispo	CW: Central West
SCo: South Coast	TR: Transverse Ranges	SN: Sierra Nevada	SW: South West
SCoR: South Coast Ranges	WTR: Western Transverse Ranges	SnJt: San Jacinto Mtns	DMoj: Mojave Desert
SCoRO: Outer South Coast Ranges	SnJV: San Joaquin Valley	SnBr: San Bernardino	PR: Peninsular Range
SCoRI: Inner South Coast Ranges	ScV: Sacramento Valley	Teh: Tehachapi Mtn Area	

**State/Rank Abbreviations:**

FE: Federally Endangered	PT: Proposed Federally Threatened	CT: California Threatened
FT: Federally Threatened	CE: California Endangered	Cand. CE: Candidate for California Endangered
PE: Proposed Federally Endangered	CR: California Rare	Cand. CT: Candidate for California Threatened

**California Rare Plant Ranks:**

CRPR 1A: Plants presumed extirpated in California and either rare or extinct elsewhere  
 CRPR 1B: Plants rare, threatened, or endangered in California and elsewhere  
 CRPR 2A: Plants presumed extirpated in California, but common elsewhere  
 CRPR 2B: Plants rare, threatened, or endangered in California, but more common elsewhere  
 CRPR 4: Plants of limited distribution - a watch list

**CRPR Threat Ranks:**

0.1 - Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)  
 0.2 - Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)  
 0.3 - Not very threatened in California (less than 20% of occurrences threatened / low degree and immediacy of threat or no current threats known)

### 6.3 Special Status Plants Discussion

Three special status plant species could potentially occur in the Project areas based on an analysis of known ecological requirements of these species and the habitat conditions observed in the Project area. We discuss each species and describe habitat, range restrictions, known occurrences, and survey results for the Project area.

- A. **Marsh Sandwort** (*Arenaria paludicola*) is listed as endangered under FESA and the California Endangered Species Act (CESA), and is on CRPR 1B.1. The closest reported occurrence to the subject property is at Sweet Springs Nature Preserve in Los Osos (CNDDDB #14). Marsh sandwort occurs in freshwater marshes with cattails and rushes. Habitat in the Project area near Alva Paul Creek is suitable for marsh sandwort in the eastern portions of the site.
- B. **San Luis Obispo** (*Castilleja densiflora* ssp. *obispoensis*) is a CRPR 1B.2 subspecies endemic to San Luis Obispo County. It is an annual wildflower that occurs in coastal grasslands in sandy or clay soils. This species was not observed during April 2015 surveys, but appropriate habitat is present in the project areas.
- C. **Coastal Goosefoot** (*Chenopodium littoreum*) is a CRPR 1B.2 species known from sandy soils and dunes. This species is reported from loose sandy dunes in Montana De Oro, approximately 5 miles south of the Project area. This species was not identified in the Project area during April 2015 surveys.

TABLE 5. SPECIAL STATUS ANIMAL LIST. We list 23 special status animals reported from the vicinity of the site or known from the region with potential to occur in the vicinity of the Project area. Potentially suitable habitat is present on the Project area for 9 special status animal species.

	<b>Common and Scientific Names</b>	<b>Fed/State Status Global/State Rank CDFW Rank</b>	<b>Nesting/ Breeding Period</b>	<b>Habitat Preference</b>	<b>Potential Habitat?</b>	<b>Observed On-site?</b>	<b>Effect of Proposed Activity</b>
1.	<b>Cooper's Hawk</b> <i>Accipiter cooperii</i>	None/None G5S3 Special Animal (Nesting)	March 15 - August 15	Oak woodland, riparian, open fields. Nests in dense trees, esp. coast live oak.	Yes. Appropriate nesting habitat is present in the along riparian habitat.	No	Potentially Adverse Effect Can Be Mitigated
2.	<b>Western Pond Turtle</b> <i>Actinemys (=Emys) marmorata pallida</i>	None/None G3G4T2T3Q/S2 SSC	April - August	Permanent or semi- permanent streams, ponds, lakes.	Yes. Appropriate habitat conditions are present on-site, particularly at Cloisters Park.	No	Not Significant With Avoidance
3.	<b>Black Legless Lizard</b> <i>Anniella pulchra nigra</i>	None/None G3G4T2T3Q/S2 SSC	May - September	Inhabits sandy soil/dune areas with bush lupine and mock heather, from Morro Bay to Monterey Bay.	No. Appropriate habitat conditions are not present on site.	No	No Effect
4.	<b>Silvery Legless Lizard</b> <i>Anniella pulchra pulchra</i>	None/None G3G4T3T4Q/S3 SSC	May - September	Sandy or loose loamy soils under coastal scrub or oak trees. Soil moisture essential.	No. Appropriate habitat conditions are not present on site.	No	No Effect
5.	<b>Pallid Bat</b> <i>Antrozous pallidus</i>	None/None G5/S3 SSC	Spring - Summer	Rock crevices, caves, tree hollows, mines, old buildings, and bridges.	Yes. Appropriate roosting areas may be present in the existing residence.	No	Not Significant With Avoidance
6.	<b>Sandy Beach Tiger Beetle</b> <i>Cicindela hirticollis gravida</i>	None/None G5T4/S1 Special Animal	n/a	Adjacent to non-brackish water near the coast from San Francisco to N. Mexico. Clean, dry, light-colored sand in the upper zone.	No. Appropriate habitat is not present on-site.	No	No Effect
7.	<b>Western Snowy Plover</b> <i>Charadrius alexandrinus nivosus</i>	Threatened/None G3T3/S2 SSC	March 15 - August 15	Sandy beaches, salt pond levees, & shorelines of large alkali lakes. Needs friable soils for nesting.	No. Appropriate habitat conditions are not present on site.	No	No Effect

	Common and Scientific Names	Fed/State Status Global/State Rank CDFW Rank	Nesting/ Breeding Period	Habitat Preference	Potential Habitat?	Observed On-site?	Effect of Proposed Activity
8.	<b>Townsend's Big-Eared Bat</b> <i>Corynorhinus townsendii</i>	None/None G4T3T4/S2S3 SSC	Spring - Summer	Caves, buildings, and mine tunnels. Cave like attics as day roosts. On coast roosts are normally within 100 m. of creeks.	No. Appropriate habitat is not present on the Project.	No	No Effect
9.	<b>Globose Dune Beetle</b> <i>Coelus globosus</i>	None/None G1/S1 Special Animal	n/a	Coastal sand dune habitat. Inhabits foredunes and sand hummocks.	No. Appropriate dune habitat is not present on the Project.	No	No Effect
10.	<b>Monarch Butterfly</b> <i>Danaus plexippus</i>	None/None G5/S3 Special Animal	September - March (aggregations)	Roosts located in wind-protected tree groves with nectar and water nearby.	Yes. Appropriate soil and habitat type are present along Willow Camp Creek.	No	Not Significant With Avoidance
11.	<b>Morro Bay Kangaroo Rat</b> <i>Dipodomys heermanii morroensis</i>	Endangered/ Endangered G3G4T1/S1 Special Animal	n/a	Coastal sage scrub on the south side of Morro Bay. Needs sandy soil, but not active dunes, prefers early seral stages.	No. Appropriate soil and habitat type not present on-site.	No	No Effect
12.	<b>Tidewater Goby</b> <i>Eucyclogobius newberryi</i>	Endangered/None G3/S2S3 SSC	n/a	Found in shallow lagoons and lower stream reaches, they need fairly still but not stagnant water and high oxygen levels.	No. Appropriate habitat is not present on-site.	No	No Effect
13.	<b>Morro Shoulderband (=banded) Snail</b> <i>Helminthoglypta walkeriana</i>	Endangered/None G1/S1 Special Animal	n/a	Restricted to the coastal strand and sage scrub habitats in the immediate vicinity of Morro Bay.	Yes. Appropriate habitat conditions may be present on-site at Cloister Park.	No	Potentially Adverse Effect Can Be Mitigated
14.	<b>California Black Rail</b> <i>Laterallus jamaicensis coturniculus</i>	None/Threatened G4T1/S1 Special Animal	March 15 - August 15	Occurs in tidal salt marsh heavily grown to pickleweed, also in freshwater and brackish marshes near the coast.	No. Appropriate habitat is not present on-site.	No	No Effect
15.	<b>Big Free-tailed Bat</b> <i>Nyctinomops macrotis</i>	None/None G5/S2 SSC	Spring - Summer	Low lying arid areas in Southern California with rock outcrops or cliffs.	No. Appropriate roosting sites not present on site.	No	No Effect



	Common and Scientific Names	Fed/State Status Global/State Rank CDFW Rank	Nesting/ Breeding Period	Habitat Preference	Potential Habitat?	Observed On-site?	Effect of Proposed Activity
16.	<b>South-Central California Coast steelhead</b> <i>Oncorhynchus mykiss</i>	Threatened/None G5T2/S2 None	February - April	Fed listing refers to runs in coastal basins from Pajaro River south to, but not including, the Santa Maria River.	Yes. Appropriate migration habitat is present on-site.	No	Not Significant With Avoidance
17.	<b>Coast Horned Lizard</b> <i>Phrynosoma blainvillii</i>	None/None G3G4/S3S4 SSC	May - September	Frequents a wide variety of habitats, most common in lowlands along sandy washes with scattered low bushes.	No. Appropriate habitat conditions are not present on-site.	No	No Effect
18.	<b>Nuttall's Woodpecker*</b> <i>Picoides nuttallii</i>	None/None G5/SNR Special Animal (Nesting)	March 15 - August 15	Nests in standing snag or hollow tree in oak woodland and oak forest habitats.	Yes. Appropriate nesting habitat is present at the Site.	Yes	Not Significant With Avoidance
19.	<b>Morro Bay Blue Butterfly</b> <i>Plebejus icarioides moroensis</i>	None/None G5T1T3/S1S3 Special Animal	n/a	Inhabits stabilized dunes and surrounding areas in coastal SLO County (Morro Bay) and nw SB County.	No. Appropriate habitat conditions are not present on-site.	No	No Effect
20.	<b>California Clapper Rail</b> <i>Rallus longirostris obsoletus</i>	Endangered/ Endangered G5T1/S1 Special Animal	March 15 - August 15	Saltwater & brackish marshes traversed by tidal sloughs.	No. Salt marsh habitat does not occur on the Project sites.	No	No Effect
21.	<b>California Red-legged Frog</b> <i>Rana draytonii</i>	Threatened/None G2G3/S2S3 SSC	January - September	Lowlands and foothills in or near sources of deep water with dense, shrubby or emergent riparian vegetation. Requires 11-20 weeks for larval development.	Yes. Limited habitat is present in the riparian corridor along the Project sites.	No	Not Significant With Avoidance
22.	<b>American Badger</b> <i>Taxidea taxus</i>	None/None G5/S4 SSC	February – May	Needs friable soils in open ground with abundant food source such as California ground squirrels.	No. Appropriate habitat conditions are not present on-site.	No	No Effect

	Common and Scientific Names	Fed/State Status Global/State Rank CDFW Rank	Nesting/ Breeding Period	Habitat Preference	Potential Habitat?	Observed On-site?	Effect of Proposed Activity
23.	<b>Mimic Tryonia</b> <i>Tryonia imitator</i>	None/None G2G3/S2S3 Special Animal	n/a	Inhabits coastal lagoons, estuaries, salt marshes from Sonoma to San Diego Counties.	No. Appropriate habitat conditions are not present on-site.	No	No Effect

Habitat characteristics are from the Jepson Manual and the CDNNB.

\*not listed in the CNDDDB or CNPS for the search area, but possibly for the location.

**Abbreviations:**

FE: Federally Endangered

FT: Federally Threatened

PE: Proposed Federally Endangered

PT: Proposed Federally Threatened

CE: California Endangered

CT: California Threatened

Cand. CE: Candidate for California Endangered

Cand. CT: Candidate for California Threatened

SA: CDFW Special Animal

SSC: CDFW Species of Special Concern

FP: CDFW Fully-Protected

WL: CDFW Watch List

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#### 6.4 Special Status Animals Discussion

Nine special status animal species could potentially occur in the Project areas based on an analysis of known ecological requirements of these species and the habitat conditions observed in the Project area. We discuss each species and describe habitat, range restrictions, known occurrences, and survey results for the Project area.

- A. Cooper's Hawk** (*Accipiter cooperii*) is a Special Animal species that occurs regularly in San Luis Obispo County during the winter months and during spring and fall migration. It is generally regarded as a regular but uncommon nesting species in San Luis Obispo County. Cooper's hawks frequent oak and riparian woodland habitats, and increasingly urban areas, where they prey primarily upon small birds. Moderately appropriate tree canopy is present near the Property for nesting Cooper's hawks.
- B. Western Pond Turtle** (*Actinemys marmorata*, [=*Emys marmorata*]) is a California Species of Special Concern that inhabits ponds, lakes, reservoirs, marshes, brackish lagoons, and slow moving streams with adequate pools. In colder environments these pond turtles are active February to November, but in coastal San Luis Obispo County they can be active year-round if water is present. In areas where surface water dries out during summer months, pond turtles can aestivate in wooded areas. Mating is in the spring, eggs are laid in shallowly dug nests near water during the summer, and hatchlings emerge in the fall or overwinter in the nest. Appropriate habitat is present near the Project sites for western pond turtle.
- C. Pallid Bat** (*Antrozous pallidus*) is a California Species of Special Concern. This is a large, long-eared bat occurring throughout the state from deserts to moist forests. *Antrozous pallidus* is primarily a crevice roosting species and selects roosts where they can retreat from view. They frequently occur in oak woodlands where they roost in tree cavities. These roosts are generally day or night roosts for one or a few bats. Attics may be used as roosts and during hot days they may emerge from crevices and roost on open rafters. Communal wintering or maternity colonies are more common in rock crevices and caves. This species has been recorded at 22 localities in San Luis Obispo County). Pallid bat could occur in oak tree cavities on the subject property.
- D. Western Snowy Plover** (*Charadrius alexandrinus nivosus*) is a federally listed threatened species that nests on sandy beaches in San Luis Obispo County. In other areas of California this plover may nest on salt pond levees and shores of large alkali lakes. Five nesting locations are listed in the CNDDDB for San Luis Obispo County, including near the mouth of Alva Paul Creek. However, Project activities along Alva Paul Creek are limited to that portion within the boundaries of Del Mar Park, where habitat for this species is not present.
- E. Monarch Butterfly** (*Danaus plexippus*) is a Special Animal that migrates in the fall to wintering locations along the coast of central and southern California, and on mainland Mexico. Eucalyptus groves adjacent to Project sites may harbor winter aggregations of thousands of monarch butterflies. However, Project activities are limited to the stream channel, bed, and bank, and eucalyptus trees are unlikely to be affected.
- F. Morro Shoulderband (=Banded Dune) Snail** (*Helminthoglypta walkeriana*) is a federally listed endangered species endemic to San Luis Obispo County. This species

occurs in coastal dune and scrub communities and maritime chaparral (USFWS, 2001). Until recently, populations were restricted to areas south of Morro Bay; however, a population was discovered at Morro Strand State Beach near Cayucos in 2001 (CDPR, 2015). It is often found under iceplant as well. Appropriate habitat for Morro shoulderband snail is present near the Morro Creek and Willow Camp Creek.

- G. Steelhead - South/Central California ESU** (*Oncorhynchus mykiss irideus*) is a federally listed threatened species in this area of California. Steelhead are known to occur in coastal streams and rivers in San Luis Obispo County, including Morro Creek. This species is not present in Alva Paul or Willow Camp Creek. Project activities can be scheduled to eliminate potential impacts on steelhead.
- H. Nuttall's Woodpecker** (*Picoides nuttallii*) is a Special Animal tracked by the CDFW due to statewide reduction in preferred oak woodland habitats. Nuttall's woodpeckers remain fairly common residents in oak woodland habitats throughout Santa Barbara and San Luis Obispo Counties. They regularly occur in oak habitats and may nest in oak woodlands near the Project sites. Nuttall's woodpeckers were observed on-site.
- I. California Red-Legged Frog** (*Rana draytonii*) is a federally listed threatened species known from sporadic occurrences documented throughout San Luis Obispo County. It generally requires seasonal pools or streams that hold water until late summer for successful breeding. Bullfrogs and introduced fish are detrimental to its breeding success, and have severely reduced many populations in larger watercourses and perennial ponds. All three creeks provide potential habitat for California red-legged frogs.

TABLE 6. SENSITIVE NATURAL COMMUNITIES LIST. We list four sensitive natural communities reported from the vicinity of the site or known from the region with potential to occur in the vicinity of the Project area. Potentially suitable habitat is not present on the Project area for any of these sensitive natural communities.

	Common Name	Federal/State Status Global/State Rank	Potential Habitat?	Effect of Proposed Activity
1.	<b>Central Dune Scrub</b>	None/None G2/S2.2	No. Central Dune Scrub habitat is not present on-site	No Effect
2.	<b>Central Maritime Chaparral</b>	None/None G2/S2.2	No. Central maritime chaparral habitat is not present on the sites.	No Effect
3.	<b>Coastal Brackish Marsh</b>	None/None G2/S2.1	No. Brackish marsh habitat is not found on-site.	No Effect
4.	<b>Northern Coastal Salt Marsh</b>	None/None G3/S3.2	No. Salt marsh habitat is not found on-site.	No Effect

## 6.5 Sensitive Natural Communities Discussion

Four sensitive natural communities were identified within five miles of the Project sites. However, these communities are not present at the sites and therefore would not be affected by the Project.

## 6.6 General Recommendations to Protect Fish, Wildlife, and Other Sensitive Resources

- BR-1. Western Pond Turtles.** Preconstruction surveys shall be conducted within 48 hours prior to starting work in or within 50 feet of habitats likely to support western pond turtle such as seasonal drainages and riparian corridors. The survey shall be conducted by a qualified biologist approved to relocate pond turtles should they occur. If pond turtles are located during the pre-construction survey, a biologist would monitor ground-breaking work conducted within 50 feet of turtle habitats.
- BR-2. Relocate Western Pond Turtles.** Any turtles discovered at the site immediately prior to or during Project activities shall be captured by a qualified biologist and relocated out of harm's way to the nearest suitable habitat immediately upstream or downstream from the Project site.
- BR-3. California Red-Legged Frogs.** Within 48 hours prior to commencing any Project activity, the Project site shall be surveyed for California red-legged frog by a qualified biologist. If any red- legged frogs are found prior to the Project or at any time during Project activities, work shall cease within 50 feet of the frog's location until CDFW and the U.S. Fish and Wildlife Service (USFWS) have been contacted and have given approval for work to continue.
- BR-4. Steelhead.** To protect steelhead, no work will occur when flowing or standing water is present at the Project sites in Morro Creek.
- BR-5. Nesting Birds.** If construction occurs during the typical bird nesting season of February 15 to August 1, surveys will be conducted for nesting birds within 300 feet of the Project before the onset of construction. If present, active raptor nests shall be avoided by a 200-foot buffer to avoid project-related nest abandonment. All other active nests shall be avoided by a 100-foot buffer to avoid project-related nest abandonment. Construction activities may resume in buffered areas when it is determined that the nests are no longer active. Upon concurrence with applicable regulatory agencies, nest buffers may be reduced if a qualified ornithologist determines that a species (e.g., house finch) may not be adversely affected by construction activities.
- BR-6. Morro Shoulderband Snail.** If ice plant is removed during project activities, only the minimum amount of ice plant will be removed to complete project activities. Prior to removal of ice plant, a biological monitor shall inspect the ice plant to be removed for the presence of Morro shoulderband snails. If Morro shoulderband snails are found, project activities within 25 feet of the snail(s) shall immediately cease until the USFWS has been contacted and have given approval for work to continue.
- BR-7. Monitor Construction.** A biological monitor will be on-site as needed to monitor Project activities. The biological monitor shall have authority to stop project activities if necessary to protect nesting birds and sensitive resources.

- BR-8. Worker Training.** Prior to Project initiation, a qualified biologist shall conduct training sessions to familiarize all workers with identification of sensitive species that could occur in the Project area, their habitat, general measures and protections afforded by state and federal Endangered Species Acts, measures implemented to protect these species, and a review of the Project boundaries.
- BR-9. Trimming Vegetation.** Any trees measuring 4 inches diameter at breast height (DBH) that were removed as part of the project shall be replaced at a minimum ratio of 1:1 for trees that survived and resprouted or 3:1 for trees that died. Upon concurrence with applicable regulatory agencies, appropriate riparian and understory species may be substituted and planted in lieu of willows.
- BR-10. Water Quality.** Only handheld tools and equipment will be used to install plants. Stockpiles of mulch or planting soil, if used, will be stored outside the stream channels.
- BR-11. Herbicides.** Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Permittee shall employ only those herbicides that are approved for aquatic use. If surfactants are required, they shall be restricted by Permittee to non-ionic chemicals that are approved for aquatic use.
- BR-12. Invasive Vegetation.** Invasive exotic plant species shall be removed from the project site where practicable. Species such as Vinca, cape or German ivy, castor bean, tree of heaven, or Arundo shall be bagged and disposed of at a landfill. Exotic species shall not be used in composting or left otherwise exposed in or around the project site. Only suitable native riparian and upland species shall be used for mulch at the project sites.
- BR-13. Equipment Cleaning.** To prevent the movement of aquatic and terrestrial invasive plant and animal species, fungi, their propagules, and other biotic agents, all equipment shall be cleaned prior to entering each Project Site.
- BR-14. Trash.** All trash shall be removed from the site daily during Project activities or secured in a predator-resistant container to avoid attracting predators to the site.

## 7.0 Habitat Restoration Goals and Objectives

The primary goal of the restoration project is to return temporarily impacted areas to their original condition and to enhance surrounding riparian habitat. Visually the site will be consistent with the surrounding vegetation with respect to percent total cover, species composition, and canopy height. This result will be obtained by using plants propagated from high quality on-site material, hand-broadcasting seeds of native shrubs and grasses, and providing summer water and seasonal weeding as needed. In addition, this project will strive to maintain the Restoration Site free from invasive plant species, with a low percent cover of non-native species. We expect that throughout the monitoring period the Restoration Site will support a lower percent cover of invasive and non-native plants

Revegetation with willows is a concern because willows can overwhelm adjacent areas, as has started along the northern perimeter of Del Mar Park. Where deemed appropriate, willows will be replaced using riparian species such as California sycamore, blue elderberry, California blackberry, California rose (*Rosa californica*), and other plants to enhance and diversify habitat.

For public safety reasons, portions of the creeks must be visible from adjacent areas for police observation.

## 8.0 Restoration Work Plan

Vegetation maintenance activities conducted in 2014 resulted in the removal of 384 willows and one California sycamore tree over 4 inches DBH (Table 7). Of these trees, 211 were found to be dead when inspected in April 2015, while 174 had resprouted and most exhibited signs of vigorous growth.

TABLE 7. TREES REMOVED DURING VEGETATION MAINTENANCE IN 2014.

Species and DBH of Cut Trees*	Alva Paul Creek	Morro Creek	Willow Camp Creek	Total
Willow, dead, $\geq 4''$ DBH	0	155	56	211
Willow, live, $\geq 4''$ DBH	59	91	0	150
Willow, multitrunk live, $\geq 4''$ DBH	19	4	0	23
Sycamore, live, $\geq 4''$ DBH	0	1	0	1
<b>Total</b>	<b>78</b>	<b>251</b>	<b>56</b>	<b>385</b>

\* Trees that were determined to have died prior to being cut were not counted for purposes of site restoration.

Restoration will consist of replacing dead trees at a ratio of 3:1 (replaced:removed) for 211 trees that were cut and were killed, and 1:1 for 174 trees that were cut but not killed. Forty-one willows were determined to be dead when they were cut. These trees were cut near ground level and the root system left intact. Because they were already dead when they were cut, these trees were not counted for purposes of restoration.

The purpose of this Plan is to replace trees that were cut or removed and replicate the condition that existed prior to work occurring at each site. Oftentimes vegetation is replaced using in-kind species. However, this Plan is intended to restore riparian vegetation while increasing habitat diversity, thereby improving habitat quality for birds and other local wildlife. The impacted streams are heavily vegetated with willows, but lack other appropriate riparian trees or shrubs. Replanting willows could return the sites to pre-Project conditions but would not contribute significantly to improving habitat value.

This plan would increase habitat diversity and value by planting sycamore, cottonwood, elderberry, and other species in lieu of some willows at each site. One California sycamore could be planted in place of three willow live stakes (Dave Highland, CDFW, personal communication). Other species to be planted may include, but not be limited to elderberry, toyon (*Heteromeles arbutifolia*), California rose, California blackberry, fuchsia-flowering gooseberry (*Ribes speciosum*), Chaparral currant (*Ribes malvaceum*), bush monkeyflower (*Mimulus aurantiacus*), and coffeeberry (*Rhamnus californica*) substituted at a 1:1 ratio for willows.



Restoration work shall be implemented in four phases: plant propagation, site preparation, plant installation, and maintenance and monitoring. Phase 1 shall begin immediately upon approval of this Plan by CDFW. Phases 2 and 3 shall commence in fall 2015 to take advantage of cooler weather and winter rains. Phase 4 will be conducted annually throughout a three-year monitoring period of 2016 through 2018.

### **8.1 Phase 1: Plant Propagation**

Phase 1 will be implemented immediately upon approval by CDFW. We anticipate approval of the Plan by the middle of May 2015. A qualified native plant horticulturist with demonstrated experience propagating native plants shall be retained by contract to grow the required container stock by Fall 2015. Refer to Tables 8-10 for lists of species to be propagated.

- Propagules shall be collected from the Restoration Site or nearest vicinity.
- Where practicable, container stock shall be propagated by seed collected from the project vicinity in order to maintain natural genetic diversity.
- Propagation medium shall be determined by the horticulturist. When potted up to one gallon size, the soil shall either contain fifty percent local soil, or be designed to imitate the drainage and water-holding capacity of the native soil (i.e. high clay content). Inoculation with local topsoil or mycorrhizal fungi is highly recommended if local soil is not used in potting media. Local soil can be collected on the property.
- All container stock shall be “hardened off” (acclimated to outside weather under natural conditions for an appropriate period) if kept in a greenhouse during the establishment period.

### **8.2 Phase 2: Site Preparation**

Phase 2 will be implemented in Fall 2015 and shall be completed no later than October 31, 2015. The primary site preparation activity will be elimination of Italian thistle and yellow starthistle from the restoration sites. For these species, remove all standing dead and live material by hand, bag, and take to legal landfill. Young plants may be removed by hand-hoe, spot sprayed with a permitted herbicide, or burned with a torch (when surrounding vegetation is moist or wet).

Temporary irrigation shall be supplied to the restoration sites. The irrigation system shall be designed and installed by City personnel or contractor. Irrigation will be used to artificially “extend” the rainy season by providing irrigation starting in October and extending into May, with supplemental irrigation supplied during summer months as needed.

### **8.3 Phase 3: Plant Installation**

Plants shall be installed beginning in October until December 31, 2015. If unforeseen circumstances arise, the installation period may be extended upon approval from CDFW.

California rose and blackberry plugs will be planted at an average spacing of three feet on-center. Blue elderberry, coffeeberry, chaparral current, and bush monkeyflower shall be planted from seeds, plugs, or container stock at an average spacing of six feet on-center. Red willow and Fremont cottonwood live stakes shall be planted at an average spacing of six feet on-center.

California sycamore shall be planted from one- to five-gallon container stock at an average spacing of 15 feet on-center. At Morro and Willow Camp creeks, plants shall be planted along the bank or outside edge of the stream margin in order to leave a less-vegetated channel and enhance flow through the sites.

A planting plan is not included in this document; the placement of each species within the Restoration Site shall be evenly mixed and distributed across each restoration site at the ratios and spacing provided in Table 8, below. Species shall be grouped in a manner that mimics the vegetation composition of the surrounding habitat. Planting shall be overseen by the project restoration biologist to verify that planting locations are appropriate. Recommended spacing is specified for each species in Table 8. In addition to replacement vegetation being planted, we anticipate natural resprouting to occur and supplement recovery of native vegetation at the Restoration sites.

Tables 8-10 lists all plant species to be used in the restoration effort, and provides the approximate quantity of each species to be used, container size/type, plant spacing, and propagation method. The plant palette is designed to mimic the species composition of the surrounding riparian habitat, with a few additional species to increase plant diversity in the Restoration Site. The project manager should obtain a contract with a native plant nursery to produce the material from local populations of the species listed in Tables 8, 9, and 10. The contract should be obtained several months in advance of anticipated delivery of materials for October 2015.

TABLE 8. REPLACEMENT PLANT SELECTION, ALVA PAUL CREEK. Quantity of plants installed, container size, recommended plant spacing, and propagation method are provided for each of the native plants to be used at the Restoration Site.

Species	Container Size	Quantity	Plant Spacing	Propagation Method
<b>Alva Paul Creek (Minimum 78 plants)</b>				
California rose ( <i>Rosa californica</i> )	Plugs	10	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	15	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	10	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	15	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	10	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	10	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	15	6 ft.	Seed, cuttings
<b>Total</b>		<b>85 plants</b>		

TABLE 9. REPLACEMENT PLANT SELECTION, MORRO CREEK. Quantity of plants installed, container size, recommended plant spacing, and propagation method are provided for each of the native plants to be used at the Restoration Site.

Species	Container Size	Quantity	Plant Spacing	Propagation Method
<b>Morro Creek (Minimum 561 plants)</b>				
California rose ( <i>Rosa californica</i> )	plugs	75	3 ft.	Cuttings, mulch around all plugs
Blackberry ( <i>Rubus ursinus</i> )	plugs	50	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	75	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	75	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	50	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	35	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	50	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	75	6 ft.	Seed, cuttings
Red willow ( <i>Salix laevigata</i> )	Live stake	100	6 ft.	Live stake cuttings
<b>Total</b>		<b>585 plants</b>		

TABLE 10. REPLACEMENT PLANT SELECTION, WILLOW CAMP CREEK. Quantity of plants installed, container size, recommended plant spacing, and propagation method are provided for each of the native plants to be used at the Restoration Site.

Species	Container Size	Quantity	Plant Spacing	Propagation Method
<b>Willow Camp Creek (Minimum 168 plants)</b>				
California rose ( <i>Rosa californica</i> )	Plugs	30	3 ft.	Cuttings, mulch around all plugs
Blackberry ( <i>Rubus ursinus</i> )	Plugs	30	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	15	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	15	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	20	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	15	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	15	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	20	6 ft.	Seed, cuttings
Red willow ( <i>Salix laevigata</i> )	Live stake	20	6 ft.	Live stake cuttings
<b>Total</b>		<b>180 plants</b>		

#### 8.4 Phase 4: Maintenance and Monitoring

The Restoration Sites will be maintained and monitored for three years following installation of plants. The Restoration Sites shall be inspected not less than twice annually (early Spring and Fall) to evaluate the condition of plantings and provide weed abatement and plant replacement, as needed. Weeding shall be accomplished by hand tools only, unless the Restoration Sites succumb to invasive species in which case the City shall coordinate herbicide applications.

Irrigation shall be adjusted annually to taper watering by Year 3 or until no supplemental irrigation is required, whichever occurs later.

The Restoration Site shall be monitored by a qualified restoration biologist annually for three years (refer to Section 8.7), or until the primary performance standard is achieved (refer to Section 9.1). A written report to shall be provided annually to CDFW (refer to Section 8.7).

#### 8.5 Restoration Task Descriptions

Trees shall be planted outside the low-flow channel at all three sites. Willow and cottonwood live stakes and sycamores container stock shall be planted following guidelines from the CDFW's California Salmonid Stream Habitat Restoration Manual for planting dormant willow cuttings and container stock (Attachments 5 and 6, respectively) except that protective tree tubes will not be required.

Weeds and competition from non-native species by providing mulch four to six inches deep in a 3-foot circle around each planted tree. Mulch will not be placed next to the tree stem.

If target weeds occur in the restoration area, they shall be controlled via hand removal, weed whacking, and/or appropriate herbicide application. Target weeds known from the vicinity that may require weed control efforts are Italian thistle (*Carduus pycnocephalus*), star thistle (*Centaurea solstitialis*), and perennial mustard (*Hirschfeldia incana*). If other non-native plant species are identified as invading the restoration area, they shall be controlled. Preferred methods of control are to prevent spread via hand removal and mowing or weed whacking. If herbicide application is required to control persistent invasive species, an herbicide safe for use near aquatic habitats shall be required, with recommendation from a licensed Pest Control Advisor.

Supplemental water shall be provided to promote germination and good early vegetative cover. Water can be provided via a hose from a water truck, tank, pasture sprinkler, or connection to existing landscape facilities once every two weeks until winter rains begin.

Planting shall be delayed until fall 2015 to take advantage of winter rains and cooler weather. All planting shall be completed by December 15, 2015, unless a later date is approved in advance by CDFW.

## **8.6 Maintenance Plan**

Maintain sites and monitor for problems monthly for the first year, quarterly for years 2 and 3. During maintenance site visits:

1. Control weeds growing near planted trees via hand pulling or weed whacking.
2. Control target weeds in the restoration areas via hand pulling, mowing/weed whacking, or if persistent, herbicide application to control species such as mustard that could contribute to fire fuel.
3. Provide irrigation to trees from April through October, and during any month from November to March with below-normal precipitation.
4. Identify any problems with erosion, trash, or wildlife browse. Consult with biologist to solve problems as they arise.
5. Germination and growth shall be monitored monthly for the first year. If poor germination or erosion cause problems achieving good vegetative cover, supplemental seed shall be applied via broadcast.
6. Follow-up monitoring shall be quarterly for years 2 and 3.

## **8.7 Monitoring Plan**

The Restoration Site shall be monitored by a qualified restoration biologist at least twice annually for three years (refer to Section 9.2), or until the primary performance standard is achieved (refer to Section 9.0). Annual reports evaluating the Restoration Site shall be provided to CDFW by January 31 of the following year. Annual reports shall include a discussion of restoration sites and identify remedial actions to be taken if the success criteria are not met.

All trees and shrubs measuring 4 inches diameter at breast height (DBH) or larger that were cut within 2 feet of ground level shall be replaced at a ratio of 3:1 (replaced:removed) using

appropriate native species. Trees 24 inches or larger DBH will be replaced at a ratio of 10:1. However, many trees cut during 2014 have resprouted and exhibit robust growth (Photo 6). Many areas within the Project sites also need to be visible by police to minimize or prevent criminal activity. Therefore, willow trees may be replaced using California sycamore, Fremont cottonwood (*Populus fremontii*), elderberry (*Sambucus mexicana*), California blackberry (*Rubus ursinus*), coffeeberry (*Rhamnus californica*), or other suitable riparian trees or shrubs. Willow stumps that have resprouted shall be allowed to grow but may be pruned to form one to two new vertical trunks. If shrubs are planted in the project site, they shall be planted between and among the willow stumps and along the tops or banks of creeks.

## 9.0 Performance Standards and Monitoring Requirements

### 9.1 Performance Standards

The goal of the project is to enhance riparian habitat where vegetation was removed along the three creeks. In order to quantify the progress of the restoration project on an annual basis, project-specific performance standards were developed and are outlined in Table 8. Survival rate of mitigation plants is the primary performance standard for this project. Success rates that are below the stated minimum target for each criterion indicate the need for additional revegetation, plant protection, irrigation, or weed eradication. An adaptive management strategy for failure to meet the performance standards is provided in Section 10.0. Restoration success is expected to be attained approximately three years following completion of installation.

TABLE 11. PERFORMANCE STANDARDS. Performance standards for Years 1 – 3 of restoration are shown below.

Feature	Performance Criteria and Assessment Method	Year 1	Year 2	Year 3
Plant Installation	Survival Rate*	>80%	>70%	>70%
Weed Eradication	Percent cover by invasive weeds	<20%	<10%	<10%

\* Percent of originally-planted replacement plants.

Enhancement of the Restoration Site is expected to attain a success rate of at least 70 percent of plants installed within three years. Propagation of on-site plant material and use of a native soil blend will ensure that the plugs, live stakes, and container stock are suited to the conditions at the site. Timely plant installation and late spring/early fall irrigation will facilitate high survival and quick establishment. The existing seed bank is expected to produce a strong natural recruitment during the first two years that will complement the plant installations and fill in empty spaces. Annual rainfall amounts during the first two years will influence the survival of plants and seeds; below-average annual rainfall during this period could negatively affect survival and percent total cover.

## **9.2 Monitoring Requirements**

It is expected to take up to three years for successful restoration. At the end of the three year monitoring period, the project restoration biologist shall provide a written report to the California Department of Fish and Wildlife. A Project update report will be provided to CDFW within 30 days of completing restoration planting at all sites.

Monitoring will be conducted weekly during the installation phase, quarterly during the first year of monitoring, and semiannually thereafter. All parameters stated below shall be documented annually and included in all reports:

- Photo points will be established at each restoration site during Year 0 after installation is complete. Photographs will be taken from each photo site to document restoration success.
- Annual reports will be filed annually prior to January 31 of the following year. Each site will be documented annually to assess site condition issues such as trash, erosion, invasive vegetation, or pests. A general description of the vegetation condition will be included. A determination will be made whether the restoration site is expected to meet Year 3 performance standards during the Fall monitoring of the sites. If the project is not expected to meet the performance standards, an adaptive management strategy shall be implemented immediately (see Section 10.1).
- The Year 3 final monitoring report shall summarize all data collected during the previous monitoring periods. If Year 3 performance standards are met, the final monitoring report shall include a notice of project completion.
- If the restoration site does not meet the required performance standards by Year 3, a remediation plan shall be prepared and annual monitoring of the site shall be continued until success criteria are achieved.

## **10.0 Long-Term Management Plan**

Upon completion of restoration efforts, the Project sites would be maintained to meet success criteria requirements. Trees and shrubs would provide protective cover to the soil and enhance the diversity of habitat within the Project sites while providing visibility from adjacent areas for law enforcement personnel.

### **10.1 Adaptive Management**

If Year 3 performance standards are not met, the monitoring report shall indicate the source(s) of problem(s) and recommend remediation. If at any time during the monitoring period the percent of live plants remaining does not meet the performance standard due to plant death, all dead plants shall be replaced immediately. Annual monitoring reports shall indicate additional steps that would lead to better plant survival in the following year (e.g. additional water, weeding, mulch, weed mats).

Annual monitoring site visits shall indicate whether or not the Restoration Site is expected to meet the Year 3 final performance standards. If the performance standards for Year 3 are not



expected to be met, the annual report shall provide details on problem areas and include recommendations for remediation.

Should the restoration project fail to meet the performance standards outlined in this document by Year 3, a remediation plan shall be prepared outlining the work that would need to be implemented for project success, including replanting, irrigation, maintenance, and continued monitoring. The site shall be monitored annually until the primary performance standard is met.

## 11.0 References

- California Department of Fish and Wildlife. 2015. Notice of Violation of Fish and Game Code Section 1602, Violation File No. 1600-2015-0802-R4. March 18.
- California Natural Diversity Data Base. Accessed April 9, 2015.
- California Salmonid Stream Habitat Restoration Manual. 4<sup>th</sup> Edition.
- California Department of Parks and Recreation. Morro Shoulderband Snail. California Department of Parks and Recreation. [http://www.parks.ca.gov/?page\\_id=21578](http://www.parks.ca.gov/?page_id=21578). Accessed on April 21, 2015.
- CNPS, Rare Plant Program. 2015. Inventory of Rare and Endangered Plants (online edition, v8-02). California Native Plant Society, Sacramento, CA. Website <http://www.rareplants.cnps.org> [accessed 07 April 2015].
- U.S. Fish and Wildlife Service (USFWS). 2001. Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Morro Shoulderband Snail (*Helminthoglypta walkeriana*). Federal Register 66:9233-9246. February 7.

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## **12.0 Figures**

- Figure 1. Location Map
- Figure 2. Project Locations Map
- Figure 3. CNDDDB Animals
- Figure 4. CNDDDB Plants and Communities

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# Figure 1. Location Map

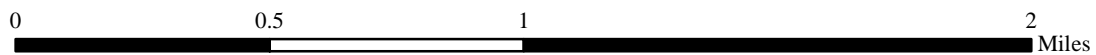


Service Layer Credits: Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community  
Copyright: © 2013 National Geographic Society



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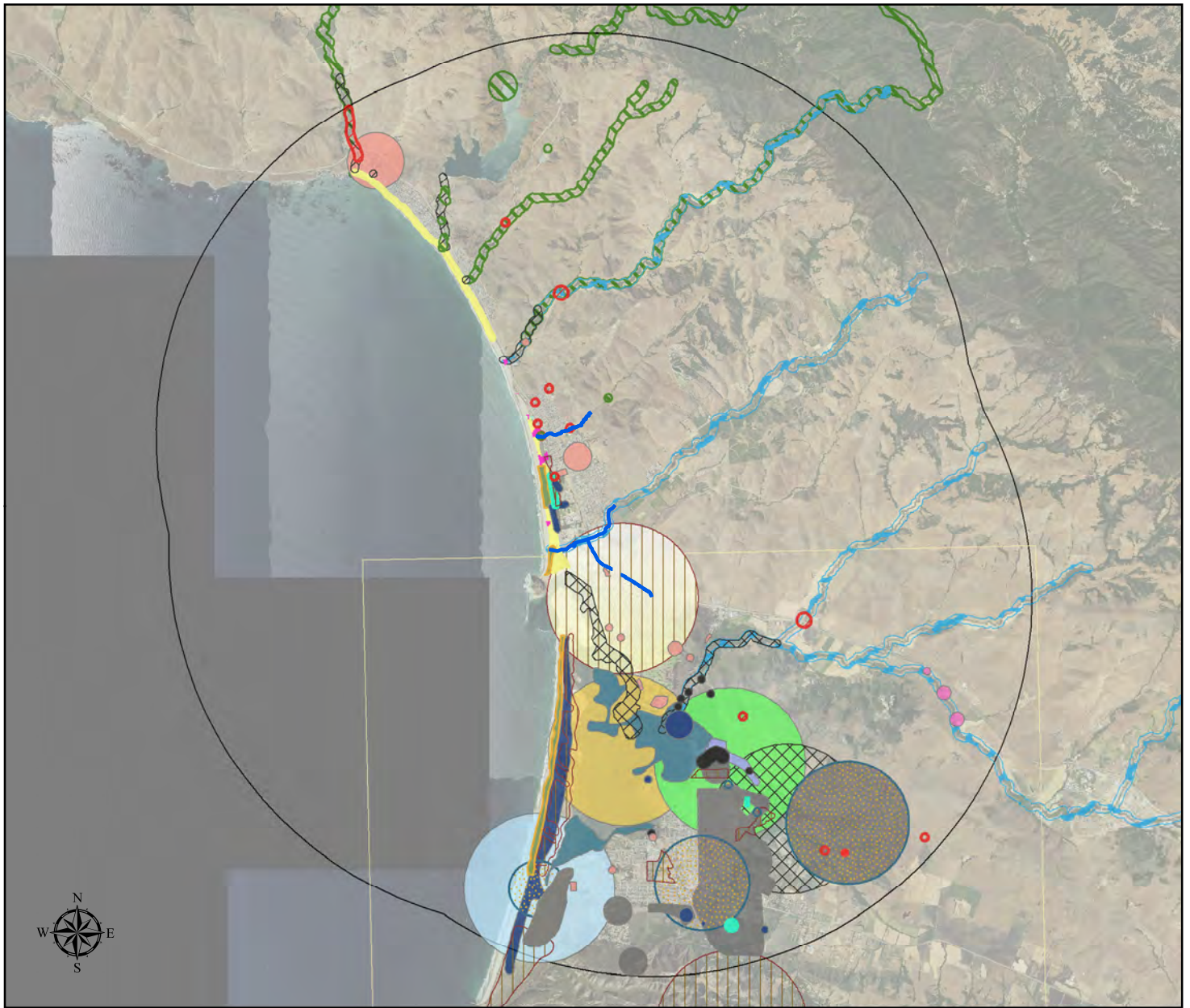
# Figure 2. Project Locations Map





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### Figure 3. CNDDDB Animals



0 2.5 5 10 Miles

- |                            |   |  |
|----------------------------|---|--|
| Morro Bay Creeks           | Morro shoulderband (=banded dune) snail         | monarch butterfly                              |
| American badger            | Northern Coastal Salt Marsh                     | pallid bat                                     |
| California black rail      | Townsend's big-eared bat                        | sandy beach tiger beetle                       |
| California clapper rail    | big free-tailed bat                             | silvery legless lizard                         |
| California red-legged frog | black legless lizard                            | steelhead - south/central California coast DPS |
| Cooper's hawk              | coast horned lizard                             | tidewater goby                                 |
| Morro Bay blue butterfly   | globose dune beetle                             | western pond turtle                            |
| Morro Bay kangaroo rat     | mimic tryonia (=California brackishwater snail) | western snowy plover                           |
|                            |   | 5 Mile Radius                                  |

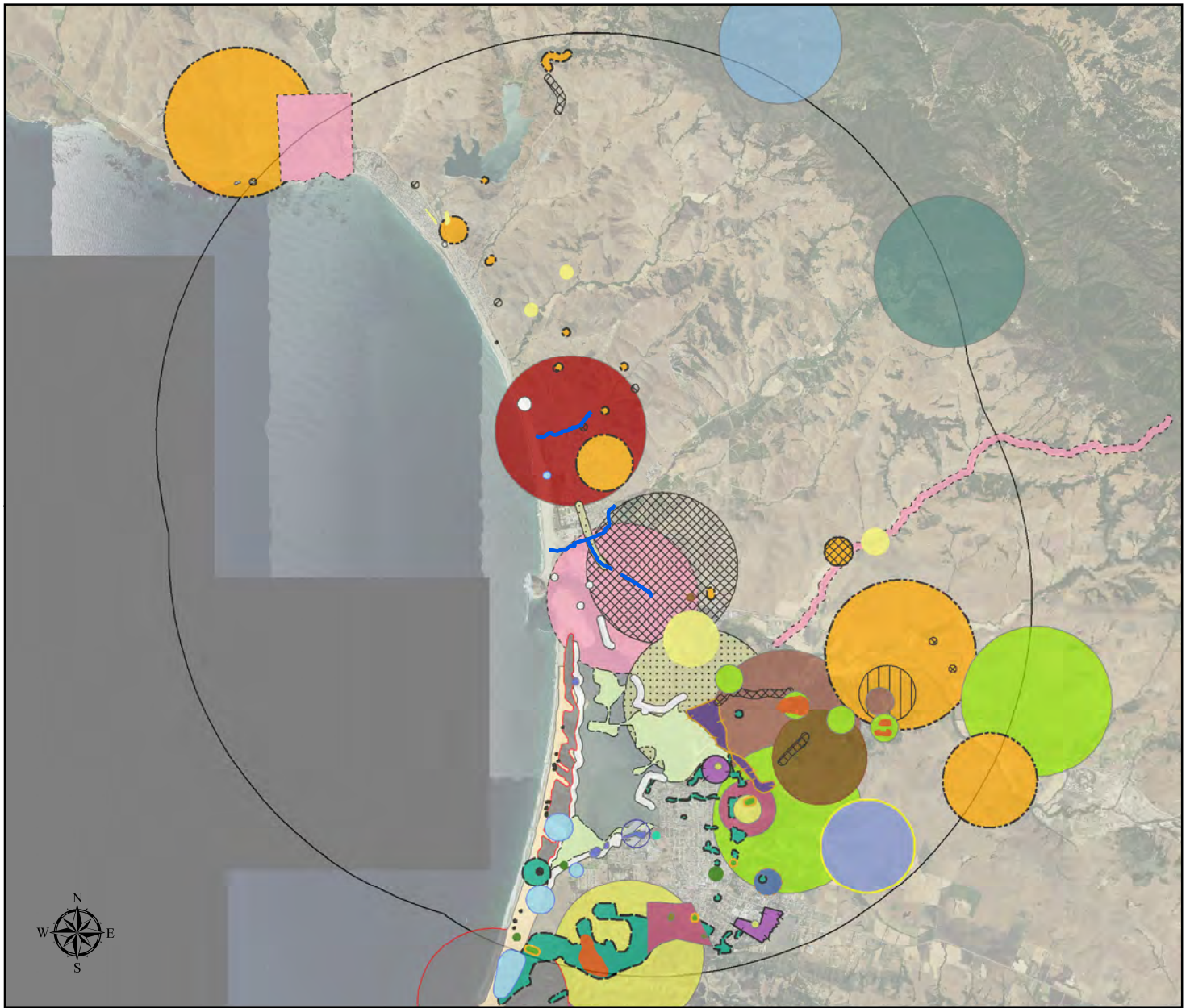
**City of Morro Bay**  
Vegetation Maintenance

CNDDDB Data from March 2015  
2014 San Luis Obispo County  
NAIP Aerial Photography  
Map Updated: April 09, 2015, 11:14 AM by JB



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# Figure 4. CNDDDB Plants and Communities



0 2.5 5 10 Miles

- |                             |                             |                              |                                  |
|-----------------------------|-----------------------------|------------------------------|----------------------------------|
| Morro Bay Creeks            | Coastal Brackish Marsh      | Oso manzanita                | marsh sandwort                   |
| Arroyo de la Cruz manzanita | Coulter's goldfields        | Pecho manzanita              | popcorn lichen                   |
| Betty's dudleya             | Eastwood's larkspur         | San Benito fritillary        | salt marsh bird's-beak           |
| Blochman's dudleya          | Hardham's evening-primrose  | San Joaquin spearscale       | southern curly-leaved monardella |
| Blochman's leafy daisy      | Indian Knob mountainbalm    | San Luis Obispo owl's-clover | splitting yarn lichen            |
| California seablite         | Jones' layia                | beach spectaclepod           | twisted horsehair lichen         |
| Cambria morning-glory       | Miles' milk-vetch           | coast woolly-heads           | umbrella larkspur                |
| Central Dune Scrub          | Morro manzanita             | coastal goosefoot            | 5 Mile Radius                    |
| Central Maritime Chaparral  | Northern Coastal Salt Marsh | dacite manzanita             |                                  |



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### 13.0 Photographs



Photo 1. Alva Paul Creek. Trees were cut near ground level in area to left of grass. View east. April 3, 2015.



Photo 2. Willow Camp Creek. Trees were cut near ground level. View North. April 8, 2015.



Photo 3. Morro Creek. Willows that formed canopy and riparian corridor in the stream channel were removed in 2014. View west. April 8, 2015.



Photo 4. Willows in Morro Creek channel were cut within a few inches of the ground. April 8, 2015.



Photo 5. Willows cut along Alva Paul have resprouted and are showing excellent growth and vigor. April 8, 2015.



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**Attachment 1 – 1988 MOU for Routine Vegetation Maintenance**

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Copy to  
City of Morro Bay

016818  
#25

Chuck Marsh #1  
237-9538

Creek cleaning  
ATTACHMENT 3

1601 # RECEIVED

NOV 01 REC'D

DEPARTMENT OF PUBLIC WORKS  
CITY OF MORRO BAY

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding by and between the California Department of Fish and Game, hereinafter called the Department, and the City of Morro Bay, hereinafter called the City, is for the purpose of defining and delineating routine maintenance.

WHEREAS, the Department is required to issue Streambed Alteration Agreements pursuant to Fish and Game Code Section 1601 or 1603 to or on behalf of City; and

WHEREAS, the Department is required to conserve the fish and wildlife resources of this state; and

WHEREAS, it is essential that City perform routine maintenance and operations that will require alteration of the bed, channel, or bank of rivers, streams, or lakes in San Luis Obispo County.

NOW, THEREFORE, it is hereby agreed between the Department and City that the following shall constitute routine maintenance and operation and shall not require notice to, and agreement with, the Department subsequent to the initial notification and agreement pursuant to Fish and Game Code Section 1601 or 1603 or the associated fees, unless the work as described in this memorandum is substantially changed, or conditions affecting fish and wildlife resources substantially change, or such resources are adversely affected by the activity conducted under this memorandum.

1. Control of weeds and grasses by mowing, except no heavy equipment may be used in the streambed. This activity shall occur between July 1 and October 15 of each year.
2. Routine removal of minimum vegetation to insure proper functioning and operation of streamflow measuring stations, existing water control facilities or other structures necessary for public health, safety, and benefit, except that no heavy equipment may be used in the streambed without prior approval and according to conditions determined by the Department.
3. Removal of woody and herbaceous vegetation with hand tools in that portion of the stream identified as the stream bottom.
4. Removal of fallen trees, branches, and associated debris.
5. Removal of soil, debris, rubbish, and other non-living material from concrete-lined channels.
6. Removal or placement of flashboards in existing diversion dams. Time of placement and removal of flashboards to be determined by the Department.

7. Cleaning, repairs, and replacement of existing functioning flapgates or other existing water control devices. Heavy equipment shall not be operated in the streambed without prior approval and according to conditions determined by the Department.
8. Replenishment of clean rock riprap in previously riprapped areas to maintain bank stabilization. Placement of material shall be done without operating heavy equipment in the streambed or channel.
9. All work in Items 2 through 8 shall be conducted only between April 1 and October 30 of each year, except emergency work, as defined in Fish and Game Code Section 1601 and 1603.
10. The Department may review and amend or cancel this Memorandum of Understanding at its discretion. The Department will confer with the City Director of Public Works or his designated representative prior to amendments or cancellation.
11. City maintains creek beds on an annual basis as follows:

Morro Creek: From City limit sign at Ironwood Avenue to 150 feet west to Highway 1 bridge-approximately .75 mile.

Willow Camp Creek: Morro Bay Boulevard/Highway 1 to PG&E Plant-approximately 1 mile.

Alva Paul Creek: Highway 1 west to Pacific Ocean - approximately .25 mile.

Unnamed Creek: Tide Street west to Pacific Ocean across Highway 1 - approximately 1 mile.

Chorro Creek: Canay Road Creek crossing - approximately 100 feet east and west.

Chorro Creek: Twin Bridges - approximately 100 feet on both sides of bridges, north and south.

Machetes, chainsaws, hoes, and rakes are used to remove trash and brush to clean channels and reduce the risk of downstream flooding. No roots are removed.

12. This Memorandum of Understanding shall run for five (5) years, at which time it will be reviewed and updated as necessary for acceptable maintenance and operational procedures.

WARDEN J. Sparks #296  
Bruce Dent

Regional Manager  
Department of Fish and Game

[Signature]

Director of Public Works  
City of Morro Bay

10-5-88      10-17-88  
Date

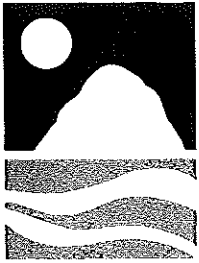
9/22/83  
Date

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**Attachment 2. December 13, 2005 Letter from City of Morro Bay to CDFW**



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# City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200  
www.morro-bay.ca.us

December 13, 2005

Rob Floerke, Regional Manager  
California Department of Fish and Game  
Central Coast Region  
P.O. Box 47  
Yountville, CA 94599

Dear Mr. Floerke,

As you know, creek maintenance and flood protection is critically important in the city of Morro Bay. While we are sensitive to your staff cutbacks due to budget constraints, we are also very concerned about the safety and welfare of the residents of our community. As demonstrated in past historic rainfall years, and more recently in 1995, the city of Morro Bay is susceptible to flooding due to creek overflow. As required by your staff, the City of Morro Bay submitted a new application for a "Streambed Alteration Permit" along with the required Biological Assessment Report, environmental documents, and the Creek Maintenance and Management Plan on May 6, 2005. The City is very concerned that this lengthy process has placed the residents of Morro Bay at unnecessary risk. This is the third year now that the City has not been allowed to perform creek maintenance due to this prolonged permit process.

The City of Morro Bay has been performing creek maintenance services since 1988 under a Memorandum of Understanding (MOU) with California Department of Fish and Game (DFG). We can certainly understand the need to periodically review and update the conditions and processes of old agreements or permits. However, given the importance of routine creek maintenance, it would be prudent to have allowed these creek maintenance services to continue while the City goes through this unexpectedly lengthy process.

We request that you expedite the processing of our permit and allow the City to continue creek maintenance under the existing MOU conditions until the application is processed.

If you have any further questions or concerns regarding this request, please feel free to contact Frank Cunningham, City Engineer at (805) 772-6569.

Sincerely,

Janice Peters, Mayor

CC: Representative Lois Capps  
Representative Bill Thomas  
Senator Abel Maldonado  
Assemblyman Sam Blakeslee  
Bob Stafford, Wildlife Biologist

FINANCE  
595 Harbor Street  
  
HARBOR DEPARTMENT  
1275 Embarcadero Road

ADMINISTRATION  
595 Harbor Street  
  
CITY ATTORNEY  
955 Shasta Avenue

FIRE DEPARTMENT  
715 Harbor Street  
  
POLICE DEPARTMENT  
850 Morro Bay Boulevard

PUBLIC SERVICES  
955 Shasta Street  
  
RECREATION AND PARKS  
1001 Kennedy Way

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**Attachment 3 – December 29, 2005 CDFW Response to City of Morro Bay**

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State of California - The Resources Agency

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
(707) 944-5500

cc City Manager, Council  
ARNOLD SCHWARZENEGGER, Governor

copy to P.S. - Bruce



JAN 05 2006

December 29, 2005

Honorable Janice Peters, Mayor  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

RECEIVED  
JAN 9 2006  
City of Morro Bay  
Janice Peters, Mayor

Dear Mayor Peters:

Long-term Stream Maintenance Agreement

Thank you for your letter concerning the City of Morro Bay's application for a stream maintenance agreement. As a result of your letter, we discovered that the application was misplaced during a change in staff assignments shortly after the notification was received. We will be assigning staff to work with the City to develop a new stream maintenance agreement. In the meantime, the City should continue to conduct maintenance activities under the 1988 Memorandum of Understanding until the new agreement is completed.

If you have any questions concerning this matter, please do not hesitate to contact Carl Wilcox, Habitat Conservation Manager, at (707) 944-5525; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,  
  
Robert W. Floerke  
Regional Manager  
Central Coast Region

Post-it® Fax Note	7671	Date	1/30/06	# of pages	1
To	Mark Taylor	From	F. Cunningham		
Co./Dept.	NEP	Co.	City of Morro Bay		
Phone #	772-3834	Phone #	772-6569		
Fax #	772-4162	Fax #			

NEP  
Mark Taylor  
772-3834  
Fax 772-4162

Conserving California's Wildlife Since 1870



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## **Attachment 4 – CDFW Notice of Violation**



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State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

ATTACHMENT 3  
EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



RECEIVED

MAR 23 2015

City of Morro Bay  
Public Services Department

Mike Wilcox  
Maintenance Superintendent  
City of Morro Bay  
1001 Kennedy Way  
Morro Bay, California 93442

Subject: Notice of Violation of Fish and Game Code Section 1602  
Violation File No. 1600-2015-0802-R4  
Alva Paul Creek, Morro Creek, and Willow Camp Creek –  
San Luis Obispo County

Dear Mr. Wilcox:

On January 15, 2015, the California Department of Fish and Wildlife (Department) investigated a habitat disturbance that occurred within Alva Paul Creek, Morro Creek, and Willow Camp Creek in the City of Morro Bay, San Luis Obispo County. The site visit was conducted by Department Environmental Scientist Charles Walbridge. During this visit, it was observed that extensive vegetation clearing had taken place within the bed and bank of each of the three creeks. The Department has determined that this work is jurisdictional under Fish and Game Code section 1600 *et seq.*, and the activity is therefore subject to Fish and Game Code section 1602.

Fish and Game Code section 1602 requires a person to notify the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake.

In this case, the Department has determined that notification was required because the activities substantially altered the three creeks by removing a total of approximately 4.87 acres of mature willow riparian habitat along approximately 3,467 total linear feet of stream. In order to address this violation, you will need to immediately stop all ground-disturbing and vegetation removal activities within Alva Paul Creek, Morro Creek, and Willow Camp Creek if you have not done so already; complete the enclosed Notification package; and submit the complete package, Notification fee, and a copy of this Notice to Charles Walbridge, Environmental Scientist, at the above address by April 20, 2015.

When completing the project description in the Notification of Lake or Streambed Alteration form, describe the proposed actions that will remediate the violation, specifically to restore appropriate riparian habitat on-site using native species. A proposal for remediation might require consultation with a stream restoration specialist to evaluate the ability for the sites to be restored. In order to prevent delays, please consult with the Department during this process to ensure that the remediation plan is acceptable prior to submitting it with the Notification.

After the Department receives the Notification and fee, it will process the Notification and issue a draft Streambed Alteration Agreement (Agreement) as described in Fish and Game Code sections 1602 and 1603; however, the draft Agreement will not be subject to arbitration in the event you disagree with any of the protective measures, and you and the Department cannot resolve the disagreement (Fish and Game Code section 1614).

If the Department does not receive the Notification and fee by April 20, 2015 the Department will pursue other enforcement options, including referral of the matter to the District Attorney's Office or the Attorney General's Office for civil or criminal prosecution.

If you have any questions regarding this letter, please contact Charles Walbridge, Environmental Scientist, at (559) 243-4014 extension 352 or by email at [charles.walbridge@wildlife.ca.gov](mailto:charles.walbridge@wildlife.ca.gov).

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

Enclosure

ec: Charles Walbridge  
Wildlife Officer Teri Hickey  
Lieutenant Todd Tognazzini  
Department of Fish and Wildlife

## **Attachment 5 – Dormant Willow or Cottonwood Sprig Installation**

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## CALIFORNIA SALMONID STREAM HABITAT RESTORATION MANUAL

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### Dormant Willow or Cottonwood Sprig Installation

Willows and cottonwoods are in the willow family (*Salicaceae*) and are generally adapted to bankfull channel environments. Species in this family form specialized roots along their stems, allowing for vegetative reproduction in riparian corridors. This feature makes them good candidates for installation as sprigs or dormant cuttings. In general, willows need significant amounts of light and a year-round source of moisture. They are good candidates for revegetation as long as their root zone remains moist during the summer. Because of their ability to withstand flood flows, they are often a good choice for bank stabilization projects in bankfull channel areas. There are many varieties of willow and cottonwood in California. Some (such as the curly willow and Lombardy poplar) are not native and should never be planted in riparian areas. They may not supply the same habitat values as the native plants, and may hybridize with them. Cuttings should be harvested from a variety of parent plants in order to avoid out-planting genetically identical material. These techniques result in a more successful project, will ensure genetic diversity, and do the least damage to the collection site.



*Sharp, clean loppers produce high quality sprigs and cuttings*



*Typical dimensions for willow and cottonwood sprigs*

Steps required to install dormant willow and cottonwood cuttings:

- Harvest cuttings during the winter months when plants are dormant (usually December-January). Although willows and cottonwoods will grow from cuttings at other times of the year, dormant cuttings are more resistant to disease, have higher survival rates, and do not require irrigation if planted in the appropriate location. Sprigs may be harvested using sharp, clean loppers, hand shears, or a chainsaw. The cuttings



*Store cuttings in a moist environment*

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**CALIFORNIA SALMONID STREAM  
HABITAT RESTORATION MANUAL**

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may be collected at a range of sizes (i.e., ½ inch to 4 inches diameter and up to 8 feet long). It is important to select material that has not become too woody, and that has several viable buds along the stem.

- Cuttings may be used immediately, stored on-site in the stream, or stored off-site in a bucket of cool water. Ideally, material should be harvested and installed the same day.
- Sprigs should be installed with buds pointing up, with approximately ¾ of the cutting in the soil, and ¼ exposed. Holes may be dug with a pick, with a piece of rebar, with an auger, or a backhoe (for large material). In areas with soft soil, you may avoid digging a hole by cutting the bottom at an angle and pounding it into the ground with a small sledge hammer. If the top is damaged by the hammer, cut off the top of the sprig to allow for clean healing or place a driving shield over the top to drive in the sprig.



*Auger used for planting holes*



*Small sledge hammer for installing sprig*



*Clean, sharp loppers cut off damaged top of sprig*

## **Attachment 6 – Container Plant Installation with Shelters**



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## CALIFORNIA SALMONID STREAM HABITAT RESTORATION MANUAL

### Container Plant Installation with Shelters

Container plants need to be ordered or propagated months in advance and may be grown by a native plants nursery or an individual practitioner (see page XI-16). Although the installation of container plant material requires more up-front planning than sprigging, emergent transplants and direct seeding, it also allows for the installation of a more diverse plant palette. Some projects use a two-phased approach, with cuttings, emergents and direct seeded species installed the first year, followed by installation of container plants the second year.

Steps required for installing container plants with shelters:

- Plants should be installed during the winter. Plants that will not be irrigated should be planted from December through February, after rains have thoroughly saturated the ground. Plants that will be drip irrigated can be installed at other times during the year. Because of the dangers of planting on the bank of a stream during high flow periods, when stream banks are slippery and the current swift, it may be best to delay some projects until conditions are safe.
- When installing plants, dig holes to twice the depth of the root-ball of the plant to be installed, crumbling any large soil clumps. Partially refill the hole, firmly tamping the soil to create a firm base for the new plant. Place the plant so the top of the root-ball is slightly above finish grade, to allow for future settling. Fill the hole and tamp firmly to remove any air pockets. Irrigate immediately, ensuring the water soaks deeply, unless the ground is already saturated.



*Remove weeds from the planting area*



*Dig the planting hole twice the depth of the root ball*



*Water the plant immediately, ensuring that the water soaks deeply. If planting in low moisture conditions, plants should be watered during the planting process and thereafter until rains begin.*

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## CALIFORNIA SALMONID STREAM HABITAT RESTORATION MANUAL

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- Where damage from domestic animals and wildlife is a concern, consider protecting plants with shelters (except those that will be in flood-scoured areas). Shelters should be firmly staked and tied so they will remain upright. There are a variety of shelters available, ranging from chicken wire enclosures (screen and collar, shown in photo at bottom) to plastic tubes (a.k.a., *supertubes*, shown in photo at right). All of these methods have proven successful, if they are maintained and weeds are controlled. Shelters should be removed as soon as the plants begin to outgrow them (3-5 years is typical for riparian plants).
- Weeds should be carefully controlled in revegetation areas before and after installation. Plants can become lost in the weeds, increasing maintenance costs and reducing project success. Mow tall weeds before installation, and consider using weed mats (3-foot-diameter sheets of specially designed woven or perforated plastic) around each new plant.



*Installation of supertube on newly planted native seedling*



*Installation of weed mat*

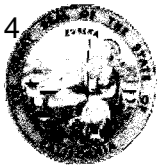


*Installation of screen and collar protective hardware*



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR. GOVERNMENT 4  
CHARLTON H. BONHAM, Director



RECEIVED

AUG 03 2015

City of Morro Bay  
Community Development Dept.

July 30, 2015

Rob Livick  
City of Morro Bay, Department of Public Works  
955 Shasta Avenue  
Morro Bay, California 93442

Subject: Draft Lake or Streambed Alteration Agreement  
Notification No. 1600-2015-0086-R4  
Morro Bay Creeks Revegetation – San Luis Obispo County

Dear Mr. Livick:

The California Department of Fish and Wildlife (Department) has determined that your project requires a Lake or Streambed Alteration Agreement (Agreement) because it could substantially adversely affect an existing fish or wildlife resource. Enclosed is a draft Agreement that includes measures the Department has determined are necessary to protect existing fish and wildlife resources.

Within 30 days of receipt of this draft Agreement, you must notify the Department in writing whether the measures to protect fish and wildlife resources are acceptable (Fish and Game Code section 1603). If you agree with the measures set forth in the draft Agreement, you or your authorized representative must return the two copies of the draft Agreement with original signatures to the above address.

If you disagree with any measures in the draft Agreement, please contact the Department staff identified below. In the event that mutual agreement is not reached, you may follow the dispute resolution process described in Fish and Game Code section 1603(a), Part III of the "Notification Instructions and Process." If you fail to respond in writing within 90 days of receiving the draft Agreement, the Department may withdraw the draft Agreement.

Please be advised the Department may not execute the Agreement until it has complied with the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 *et seq.*) as the lead or a responsible agency. Please note that the draft Agreement may be subject to change upon receipt and review of the environmental document for the project.

When acting as a CEQA responsible agency, the Department must first receive the following: 1) a certified or approved environmental document prepared in accordance with CEQA; 2) Notice of Determination, if one is filed; 3) CEQA Findings; and 4) proof that the environmental filing fee required under Fish and Game Code section 711.4 has

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been paid (e.g., a copy of the filing fee receipt). Alternately, if no CEQA environmental document has been prepared, the Department may determine that issuance of the Agreement is exempt from the provisions of CEQA, in which case the Department will file a Notice of Exemption with the State Clearinghouse.

After you receive a final Agreement executed by the Department, you may begin the project the Agreement authorizes provided you have obtained all other necessary local, state, and federal permits or other authorizations.

For more information on the process described above, please refer to Part IV in the "Notification Instructions and Process" included with your notification materials, which is also available at [www.dfg.ca.gov/habcon/1600/forms.html](http://www.dfg.ca.gov/habcon/1600/forms.html).

If you have any questions regarding this letter, please contact Charles Walbridge, Environmental Scientist, at (559) 243-4014 extension 246 or [charles.walbridge@wildlife.ca.gov](mailto:charles.walbridge@wildlife.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Dean Marston".

Dean Marston  
Acting Regional Manager

Enclosure

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
REGION 4 - CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710

RECEIVED

AUG 03 2015

City of Morro Bay  
Community Development Dept.



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2015-0086-R4  
ALVA PAUL CREEK, MORRO CREEK, AND WILLOW CAMP CREEK  
SAN LUIS OBISPO COUNTY

ROB LIVICK  
**CITY OF MORRO BAY**  
**DEPARTMENT OF PUBLIC WORKS**  
955 SHASTA AVENUE  
MORRO BAY, CALIFORNIA 93442

**MORRO BAY CREEKS REVEGETATION (PROJECT)**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Morro Bay (referred to as Permittee), as represented by Rob Livick.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on April 30, 2015 that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included Protective Measures in this Agreement necessary to protect those resources.

WHEREAS, Permittee failed to notify CDFW pursuant to Fish and Game Code Section 1602, of a Project that would alter the bank, bed, or channel of a stream. Therefore, this is a **Post Hoc** Agreement between CDFW and Permittee, as a result of a Fail to Notify Violation (Fish and Game Code Section 1602) and to correct and to mitigate for damages to Alva Paul Creek, Morro Creek, and Willow Camp Creek in San Luis Obispo County.

WHEREAS, Permittee has reviewed this Agreement and accepts its terms and conditions, including the Protective Measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with this Agreement.

## PROJECT LOCATION

The Project will occur within and adjacent to Alva Paul Creek, Morro Creek, and Willow Camp Creek at Assessor's Parcel Numbers 065-075-017, 065-149-017, 065-149-001, 066-331-028, 066-331-035, 066-280-021, 066-280-022, 066-280-007, 066-280-008, and 066-280-010 in the City of Morro Bay, San Luis Obispo County, California; Sections 13 and 25, Township 29 South, Range 10 East, USGS 7.5 Minute Quad Map Morro Bay South and Morro Bay North, MDB & M (Figure 1).

## PROJECT DESCRIPTION

The following activity was conducted prior to Permittee submitting a Notification pursuant to CDFW Code Section 1600 *et seq.*:

- Approximately 4.87 cumulative acres of willow-dominated habitat along approximately 3,467 linear feet of stream was cleared of vegetation along the beds and banks of Alva Paul Creek, Morro Creek, and Willow Camp Creek.
- This activity is subject to Fish and Game Code Section 1602.

The Project authorized by this Agreement is limited to activities related to the restoration of the previously disturbed sites outside of the low-flow channel. The species, container size, quantity, spacing and propagation methods of the replacement plantings for each of the three creeks will be according to the following tables.

<b>Alva Paul Creek (Minimum 78 plants)</b>				
<b>Species</b>	<b>Container Size</b>	<b>Quantity</b>	<b>Plant Spacing</b>	<b>Propagation Method</b>
California rose ( <i>Rosa californica</i> )	Plugs	10	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	15	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	10	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	15	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	10	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	10	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	15	6 ft.	Seed, cuttings
<b>Total</b>			<b>85 plants</b>	

<b>Morro Creek (Minimum 561 plants)</b>				
<b>Species</b>	<b>Container Size</b>	<b>Quantity</b>	<b>Plant Spacing</b>	<b>Propagation Method</b>
California rose ( <i>Rosa californica</i> )	plugs	75	3 ft.	Cuttings, mulch around all plugs
Blackberry ( <i>Rubus ursinus</i> )	plugs	50	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	75	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	75	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	50	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	35	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	50	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	75	6 ft.	Seed, cuttings
Red willow ( <i>Salix laevigata</i> )	Live stake	100	6 ft.	Live stake cuttings
<b>Total</b>			<b>585 plants</b>	

<b>Willow Camp Creek (Minimum 168 plants)</b>				
<b>Species</b>	<b>Container Size</b>	<b>Quantity</b>	<b>Plant Spacing</b>	<b>Propagation Method</b>
California rose ( <i>Rosa californica</i> )	Plugs	30	3 ft.	Cuttings, mulch around all plugs
Blackberry ( <i>Rubus ursinus</i> )	Plugs	30	3 ft.	Cuttings, mulch around all plugs
Coffeeberry ( <i>Rhamnus californica</i> )	1 gallon	15	6 ft.	Seed, cuttings
Chaparral currant ( <i>Ribes malvaceum</i> )	1 gallon	15	6 ft.	Seed, cuttings
Bush monkeyflower ( <i>Mimulus aurantiacus</i> )	1 gallon	20	6 ft.	Seed, cuttings
California sycamore ( <i>Platanus racemosa</i> )	1 to 5 gallon	15	15 ft.	Seed, cuttings
Fremont cottonwood ( <i>Populus fremontii</i> )	Live stake	15	6 ft.	Live stake cuttings
Blue elderberry ( <i>Sambucus mexicana</i> )	1 gallon	20	6 ft.	Seed, cuttings
Red willow ( <i>Salix laevigata</i> )	Live stake	20	6 ft.	Live stake cuttings
<b>Total</b>			<b>180 plants</b>	



- The plantings will be installed by hand and using hand tools, and will be irrigated via water truck, tank, pasture sprinkler, and/or connection to existing landscape irrigation.
- The plantings will be monitored twice annually for at least five (5) years. Plantings will be provided supplemental water for up to three (3) years, and at least two (2) years of monitoring will follow with no supplemental water provided. A record of the monitoring effort will be submitted to CDFW by January of each year indicating the status of the revegetation effort during the previous calendar year.
- At each of the three locations, a minimum of 70% survival of tree species (sycamore, cottonwood, elderberry, and willow) and 70% of the other (shrub) species will be maintained over the minimum five (5) year monitoring period; should survival drop below this requirement, additional plantings will be installed and the minimum monitoring period will start over for those new plantings.
- Nonnative “weed” species including Italian thistle, star thistle, and perennial mustard will be removed from the restoration areas. Plants will be pulled by hand, mowed, weed whacked using handheld equipment, or treated with herbicides.
- Bare areas between plantings will be seeded with a native seed mix.
- All work will occur outside of the wetted channel.
- No trees will be removed during the Project.
- Plantings will be completed during the term of this Agreement.

## **PROJECT IMPACTS**

The Project is intended to remediate previous unauthorized impacts of removing the vegetation from the bed and bank of Alva Paul Creek, Morro Creek, and Willow Camp Creek, over a total 4.87 acres.

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the wildlife resources that occupy the Project areas and adjacent habitats. Absent implementation of the Protective Measures required by this Agreement, the species presented in Table A in addition to other species of birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that compose the local riparian ecosystem could potentially be impacted by the Project.

TABLE A				
Name	Scientific Name	Listing		
		Federal	State	Other
California red-legged frog	<i>Rana draytonii</i>	T	SSC	---
Steelhead – south/central California coast DPS	<i>Oncorhynchus mykiss irideus</i>	T	SSC	---
Western pond turtle	<i>Emys marmorata</i>	---	SSC	---
American badger	<i>Taxidea taxus</i>	---	SSC	---
Morro shoulderband snail	<i>Helminthoglypta walkeriana</i>	E	---	---
Marsh sandwort	<i>Arenaria paludicola</i>	E	E	1B.1
San Luis Obispo owl's clover	<i>Castilleja densiflora</i> ssp. <i>obispoensis</i>	---	---	1B.2
Coastal goosefoot	<i>Chenopodium littoreum</i>	---	---	1B.2

T = Threatened, E = Endangered, SSC = Species of Special Concern, 1B.1=seriously threatened in CA, 1B.2=moderately threatened in CA

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative Protective Measure described below.

- 1.1 Documentation at Project Site. Permittee shall make this Agreement, any extensions and amendments to this Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel or personnel from another State, Federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of this Agreement and any extensions and amendments to this Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a Protective Measure in this Agreement might conflict with a provision imposed on the Project by another local, State, or Federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with this Agreement.
- 1.5 Legal Obligations. This Agreement does not exempt Permittee from complying with all other applicable local, State, and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" (defined in Fish and Game Code Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or

endangered species. Any such take shall require separate permitting as may be required.

- 1.7 Property Not Owned by Permittee. To the extent that the Protective Measures of this Agreement provide for activities that require Permittee to enter on another owner's property, they are agreed to with the understanding that Permittee possesses the legal right to so enter.
- 1.8 Work Schedule. Permittee shall submit a work schedule to CDFW prior to beginning any activities covered by this Agreement. Permittee shall also notify CDFW upon the completion of the activities covered by this Agreement.
- 1.9 Training. Prior to starting any activity within the stream bed or bank, all employees, contractors, and visitors who will be present during Project activities shall receive training from a qualified individual on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance.

## **2 Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each Protective Measure listed below.

- 2.1 Work Hours. All work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.
- 2.2 Flagging/Fencing. Prior to starting Project activity at each location, Permittee shall identify the limits of the required access routes and encroachment. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All CDFW jurisdictional areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed.
- 2.3 Listed and Other Special Status Species.
  - (a) This Agreement does not allow for the take of any State- or Federally-listed threatened or endangered species. Liability for any take of such listed species remains the separate responsibility of Permittee for the duration of the Project.
  - (b) Permittee affirms that no take of listed species shall occur as a result of this Project and will take prudent measures to ensure that all take is avoided. Permittee acknowledges and fully understands that it does not have State incidental take authority. If any State- or Federally-listed threatened or endangered species occur within the proposed work area or could be impacted by the work proposed, and thus taken as a result of Project activities, Permittee is responsible for obtaining and complying with required

- State and Federally threatened and endangered species permits or other written authorization before proceeding with this Project.
- (c) Permittee shall immediately notify CDFW of the discovery of any such threatened or endangered species prior to and/or during Project implementation.
  - (d) Pre-activity surveys for sensitive status species shall be conducted by a qualified biologist within 30 days prior to commencement of Project activity at each site. Surveys shall be conducted on the Project area and all access routes to avoid and minimize incidental take, confirm previous observations, identify any areas potentially occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any State- or Federally-listed threatened or endangered species are found or could be impacted by the work proposed, Permittee shall notify CDFW of the discovery prior to commencement of any activity. A revised Agreement and/or a 2081(b) State Incidental Take Permit may be necessary and a new CEQA analysis may need to be conducted, before work can begin. All fully protected species shall be completely avoided.
  - (e) Sensitive Plant Species: Sensitive status plant species have the potential to occur on the Project sites; therefore, where suitable habitat is present, Permittee shall conduct surveys for these plants and natural communities on the Project sites in advance of ground-disturbing activities. Repeated floristic surveys shall be conducted by a qualified botanist multiple times during the appropriate blooming period(s). If surveys identify any sensitive status plant, Permittee shall submit survey results to CDFW at least one (1) week in advance of starting Project activities. If sensitive plant species are identified, Permittee shall identify them with flagging and avoid with a 25-foot no-disturbance buffer during Project activities. If this avoidance is not feasible, Permittee shall consult with CDFW to determine whether alternative avoidance measures are possible. CDFW may provide alternative guidance in writing.
  - (f) Western Pond Turtle: Any Western pond turtles discovered at the Project sites immediately prior to or during Project activities shall be allowed to move out of the area of their own volition; if this is not feasible, they shall be captured by a qualified biologist and relocated out of harm's way to the nearest suitable habitat immediately upstream or downstream from the Project site.
  - (g) California Red-Legged Frog: A qualified biologist shall survey each Project site for California red-legged frog within 48 hours prior to commencing work. If any red-legged frogs are found prior to the Project or at any time during Project activities, work shall cease or shall not commence (whichever applies) until CDFW has been contacted and have given written approval for work to continue. Additional Protective Measures may be warranted. Permittee shall contact CDFW within 24 hours of any detection.

- (h) Southern Steelhead (South Central California Coast DPS): Project activity shall not occur within the wetted channels.
- (i) American Badger: Any American badger detected within the Project work areas during Project activities shall be allowed to move out of the work area of its own volition. If American badger is denning on or immediately adjacent to a Project work area, Permittee shall consult with CDFW to determine whether the animal(s) may be evicted from the den. Eviction of badgers will not be approved by CDFW unless it is confirmed that no dependent young are present.
- (j) Morro Shoulderband Snail: If ice plant will be removed to accommodate planting or reduce the amount of nonnative ground cover, a qualified biologist shall inspect the ice plant for the presence of Morro shoulderband snails. If Morro shoulderband snails are found, the area will be designated an ESA and protected with a 25-foot buffer.

## 2.4 Fish and Wildlife

- (a) If any fish or wildlife is encountered during the course of Project activities, said fish or wildlife shall be allowed to leave the Project area unharmed.
- (b) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to take, possess, or destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no Project activity shall be completed from March 1 through August 31 at any Project site unless the following Avian Nesting Surveys are completed by a qualified biologist within 30 days prior to commencing Project activities.

Raptors: Survey for nesting activity of raptors within a 500-foot radius of the site. Surveys shall be conducted at appropriate nesting times and concentrate on trees with the potential to support raptor nests. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected with a minimum 500-foot buffer until young have fledged and are no longer reliant on the nest site or parental care.

Other Avian Species: Survey for nesting activity within a 250-foot radius of the defined work area. If any nesting activity is found, these nests shall be designated an ESA and protected with a minimum 250-foot buffer until young have fledged and are no longer reliant on the nest site or parental care.

CDFW may consider variances from these buffers when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography.

## 2.5 Vegetation.

- (a) No trees shall be removed.
- (b) Vegetation or material removed from the Project site shall be disposed of at an appropriate and legal off-site location where the material cannot enter the stream channel. No such material shall be stockpiled in the streambed, banks, or channel.
- (c) Heavy equipment and other machinery shall be inspected for the presence of undesirable species and cleaned prior to on-site use to reduce the risk of introducing exotic, invasive plant species into the Project site.
- (d) Where control of non-native vegetation is required within the bed or bank of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, Permittee shall employ only those herbicides that are approved for aquatic use. If surfactants are required, they shall be restricted by Permittee to non-ionic chemicals that are approved for aquatic use.
- (e) No herbicide sprays shall be used when wind speed exceeds 5 miles per hour (mph). All sprays shall contain a dye to prevent overspray.
- (f) The application and use of herbicides shall be environmentally safe, and shall be conducted in a manner consistent with directed and recommended methods. Permittee shall ensure compliance with all local, State, and Federal regulations, and ensure that workers applying these chemical agents possess appropriate licenses.

## 2.6 Vehicles and Equipment.

- (a) Vehicles shall not be operated between the banks of the stream.
- (b) Any equipment or vehicles driven or operated adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (c) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

## 2.7 Fill/Spoil.

- (a) Spoil storage sites shall not be located within the stream, or where spoil could be washed into the stream. Rock, gravel, and/or other materials shall not be

imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

- (b) Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Excess fill material shall be moved off-site at Project completion.

## 2.8 Erosion.

- (a) No ground disturbing work shall occur during or within 24 hours following significant rainfall events, defined as 1/4-inch or more of rain in a 24-hour period.
- (b) All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following Project implementation. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. To minimize the risk of ensnaring and strangling wildlife, coir rolls, erosion control mats or blankets, straw or fiber wattles, or similar erosion control products shall be composed entirely of natural-fiber, biodegradable materials. Permittee shall not use "photodegradable" or other plastic erosion control materials.

## 2.9 Pollution.

- (a) Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and 12015.
- (b) Raw cement, concrete or washings thereof, asphalt, drilling fluids or lubricants, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to fish or wildlife resulting from or disturbed by Project-related activities, shall be prevented from contaminating the soil and/or entering the "Waters of the State".
- (c) The cleanup of all spilled materials shall begin immediately. CDFW shall be notified immediately by Permittee of any spills and shall be consulted regarding cleanup procedures.
- (d) All Project-generated debris, building materials, and rubbish shall be removed from the stream and from areas where such materials could be washed into the stream.

## **3 Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each Protective Measure listed below.

### 3.1 Revegetation and Restoration.

- (a) The plantings shall be completed according to the Project Description, and prior to the expiration of this Agreement, December 31, 2016. Following planting, Permittee shall submit a Revegetation Report to CDFW that shows the configuration of plantings on the site. Permittee shall provide supplemental water for no more than three years after planting, to meet the success criterion of the successful establishment of a minimum of 70% of planted trees and shrubs at each site after five (5) years. For a minimum of five (5) years Permittee shall submit Annual Monitoring Reports to CDFW by January 31 documenting the success of plantings in becoming established during the previous calendar year, including photo documentation. Reports shall describe any remedial actions required to meet the success criterion, such as subsequent plantings. Any subsequent remedial plantings shall start a new five-year monitoring and reporting period to document the successful establishment of those plantings.
- (b) Any exposed areas that remain following plantings shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species. One (1) or two (2) sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Locally native wildflower and/or shrub seeds may also be included in the seed mix. The seeding shall be completed as soon as possible, but no later than November 15 of the year construction ends or as otherwise approved in writing by CDFW. A seed mixture shall be submitted to CDFW for approval prior to application.
- (c) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for bank stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW. Coordination may include the negotiation of additional Protective Measures for this activity.

## 4 **Reporting Measures**

Permittee shall meet each reporting requirement described below.

### 4.1 Obligations of Permittee.

- (a) Permittee shall have primary responsibility for monitoring compliance with all Protective Measures in this Agreement. Protective Measures shall be implemented within the time periods indicated in this Agreement and the reporting described below.
- (b) Permittee (or Permittee's designee) shall ensure the implementation of the Protective Measures of this Agreement, and shall monitor the effectiveness of the Protective Measures.



4.2 Reports. Permittee shall submit the following Reports to CDFW:

- Work schedule, submitted to CDFW prior to Project commencement (Administrative Measure 1.8).
- Training sign-in sheet, submitted to CDFW within one (1) week of the training (Administrative Measure 1.9).
- Results of the pre-activity surveys, submitted to CDFW at least one (1) week prior to commencement of Project activity (Avoidance and Minimization Measure 2.3(d)).
- Results of floristic surveys, if habitat for special status plants is present, submitted to CDFW at least one (1) week prior to commencement of Project activity (Avoidance and Minimization Measure 2.3(e)).
- Results of surveys for California red-legged frog at each site, submitted to CDFW at least one (1) week prior to commencement of Project activity (Avoidance and Minimization Measure 2.3(g)).
- Results of surveys for nesting birds if any Project activity is scheduled during the avian nesting season, submitted to CDFW at least one (1) week prior to commencing Project activities (Avoidance and Minimization Measure 2.4(b)).
- A Revegetation Report to be submitted within 30 days after the re-vegetation planting is completed. The report shall summarize the Project, including a summary of the implementation of all the Protective Measures of this Agreement. Before, during, and after photo documentation of the Project site shall be included (Compensatory Measure 3.1(a)).
- An Annual Monitoring Report to be submitted by January 31 of each calendar year for a minimum of five (5) years following plantings (Compensatory Measure 3.1(a)).

**CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other. Permittee shall submit all schedules, survey results, reports, and/or plans required by this Agreement in hard copy to the address below; Permittee may also submit those materials electronically by email to the CDFW contact identified below (or subsequent contact) **and** to [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov)

To Permittee:

Rob Livick  
City of Morro Bay  
955 Shasta Avenue  
Morro Bay, California 93442  
Phone: (805) 772-6262  
[rlivick@morro-bay.ca.us](mailto:rlivick@morro-bay.ca.us)

To CDFW:

California Department of Fish and Wildlife  
Region 4 – Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Attn: Lake and Streambed Alteration Program – Charles Walbridge  
Notification No. 1600-2015-0086-R4  
Phone: (559) 243-4014 ext. 352  
Fax: (559) 243-4020  
[charles.walbridge@wildlife.ca.gov](mailto:charles.walbridge@wildlife.ca.gov)

## LIABILITY

Permittee shall be solely liable for any violations of this Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that this Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety this Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with this Agreement.

Before CDFW suspends or revokes this Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes this Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in this Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking this Agreement.

Nothing in this Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other Federal, State, or local laws or regulations before beginning the Project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in this Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend this Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend this Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of this Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of this Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one (1) extension of this Agreement, provided the request is made prior to the expiration of this Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend this Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project this Agreement covers (FGC, § 1605, subd. (f)).

## **EFFECTIVE DATE**

This Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.wildlife.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall remain in effect through December 31, 2016, unless it is terminated or extended before then. All provisions in this Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after this Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

In approving this Agreement, CDFW is independently required to assess the applicability of CEQA. The features of this Agreement shall be considered as part of the overall Project description. If CDFW determines that CEQA review is required, as a CEQA Lead Agency CDFW shall be responsible for preparing and circulating the appropriate document (Negative Declaration/Environmental Impact Report) and will make findings and submit a Notice of Determination to the State Clearinghouse.

Alternately, CDFW may determine that the Project is Exempt from CEQA, in which case a Notice of Exemption will be filed.

## **EXHIBITS**

The document listed below is included as an exhibit to this Agreement and is incorporated herein by reference.

Figure 1. Project Location USGS Quad Map.

## **AUTHORITY**

If the person signing this Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

**AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project this Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

**CONCURRENCE**

The undersigned accepts and agrees to comply with all the provisions of this Agreement.

**FOR CITY OF MORRO BAY**

\_\_\_\_\_  
Rob Livick

\_\_\_\_\_  
Date

**FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

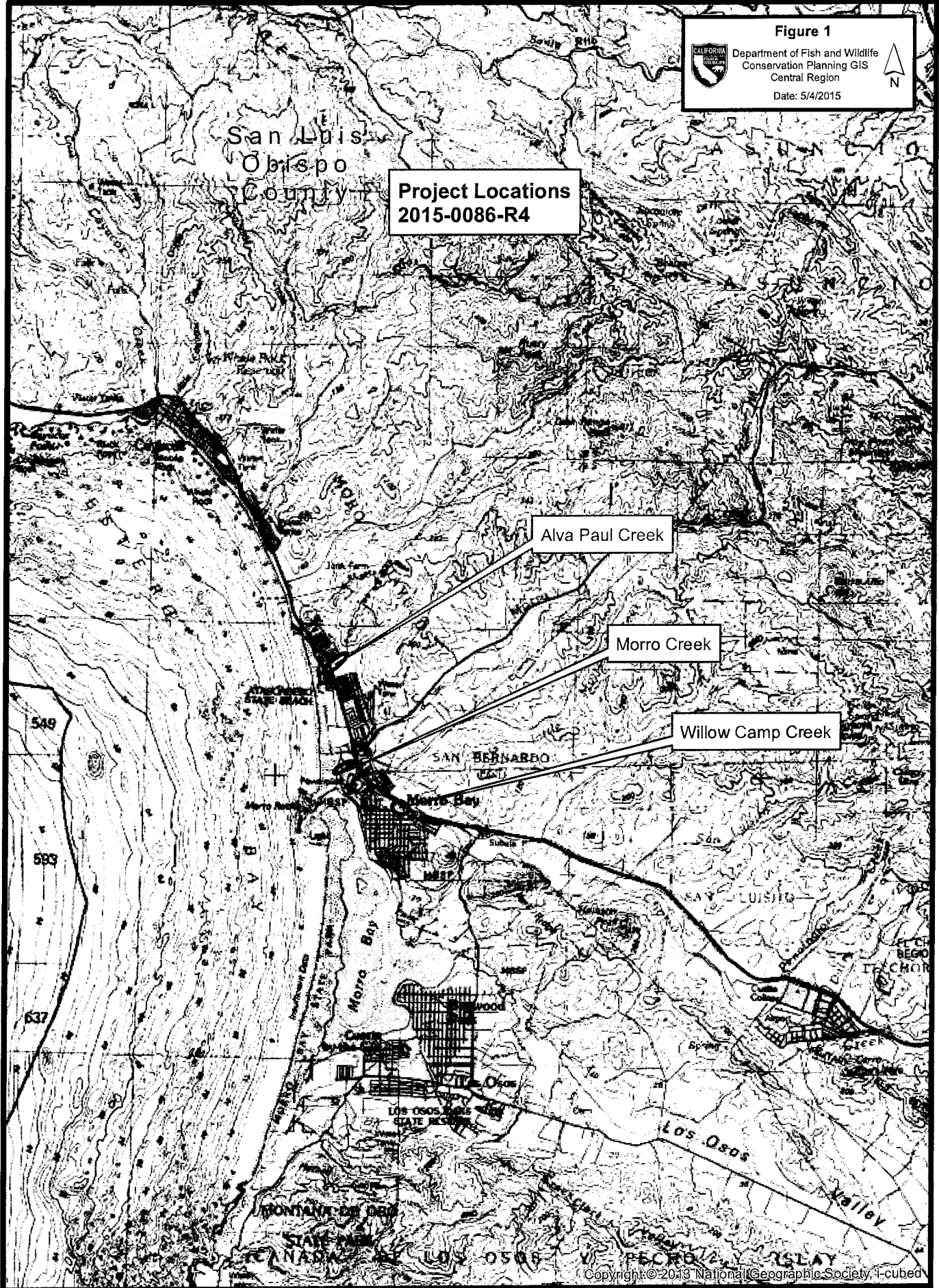
\_\_\_\_\_  
Dean Marston  
Acting Regional Manager – Central Region

\_\_\_\_\_  
Date

# Figure 1

Exhibit A

**Figure 1**  
Department of Fish and Wildlife  
Conservation Planning GIS  
Central Region  
Date: 5/4/2015



**Project Locations  
2015-0086-R4**

Alva Paul Creek

Morro Creek

Willow Camp Creek

0 1 2 Miles



Proposed Revisions by the Morro Bay City Attorney's Office to the draft Streambed Alteration Agreement between the California Department of Fish and Wildlife (CDFW) and the City of Morro Bay

**Change #1**

On page 1, add all of the following to the beginning of the "RECITALS" section:

WHEREAS, on October 17, 1988, Permittee obtained a Memorandum of Understanding (MOU) from CDFW for routine vegetation maintenance at several locations within Permittee's city limits.

WHEREAS, on May 6, 2005, Permittee submitted an application for a Lake and Streambed Alteration Agreement (LSAA) to CDFW but did not receive a response.

WHEREAS, on December 13, 2005, Permittee contacted CDFW requesting the LSAA application be expedited.

WHEREAS, on December 29, 2005, Mr. Rob Floerke, Regional Manager of CDFW's Central Coast Region acknowledged Permittee's LSAA application had been misplaced and authorized Permittee to continue conducting maintenance under the 1988 MOU until a new LSAA was completed.

WHEREAS, Permittee never received a new LSAA from CDFW.

WHEREAS, in 2014, Permittee staff removed vegetation along Alva Paul Creek, Morro Creek, and Willow Camp Creek, acting under authorization of the 1988 MOU.

WHEREAS, on March 18, 2015, CDFW issued a Notice of Violation (NOV) to Permittee pursuant to Fish and Game Code section 1602 and instructed Permittee to submit an application for a Streambed Alteration Agreement and plans to restore riparian habitat on-site using native species.

**Change #2**

On page 4, first paragraph under "PROJECT IMPACTS," remove the word "unauthorized."

**Change #3**

On page 13, first paragraph under "LIABILITY," change "liable" to "responsible." In that same paragraph after "behalf" add "and at the request."

**Change #4**

On page 13, under "LIABILITY," remove the second paragraph in its entirety.

**Change #5**

On page 13, second paragraph under “SUSPENSION AND REVOCATION,” the second sentence should include the following addition (marked with underline):

The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency within a reasonable amount of time before CDFW suspends or revokes this Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

**Change #6**

On page 14, first paragraph under “ENFORCEMENT,” the first paragraph should include the following addition (marked in underline):

Nothing in this Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking this Agreement if Permittee violates this Agreement.

**Changes #7 and #8**

On page 14, remove first paragraph under “AMENDMENT.” Revise first sentence in second paragraph (now first paragraph) under “AMENDMENT” to read as follows:

This Agreement may be amended at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee.



AGENDA NO: A-4

MEETING DATE: October 27, 2015

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 19, 2015

**FROM:** Richard P. Sauerwein, PE – Capital Projects Manager

**SUBJECT:** Resolution No. 68-15 Delegating Authority to the Public Works Director to Execute Documents for Caltrans and FHWA Grant Funded Project 05-5391R, State Route 1/State Route 41 Interchange Improvements

## RECOMMENDATION

Staff recommends Council adopt Resolution No. 68-15, authorizing the Public Works Director to execute the California Department of Transportation (Caltrans) certifications and agreements related to the subject State and Federal funded project.

## ALTERNATIVES

Staff does not recommend any alternatives.

## FISCAL IMPACT

Timely execution of documents is essential in applying for, procuring, and requesting allocation of grant funds. Delays could risk the loss of grant funding. The City is working with both Caltrans and the San Luis Obispo Council of Governments (SLOCOG) to identify construction funding in the 2016 Regional Transportation Improvement Program (RTIP). Given the current constraints on highway funding at both the State and Federal level, a significant commitment of matching local funds will be essential in moving this project forward in the future. The City has committed \$151,000 of existing development impact funds to complete the Intersection Control Evaluation (ICE) Step1&2 and no additional FY16 funding is needed to initiate the preliminary engineering phase. As much as \$82,570 of City funding may be needed during the next two years to prepare the project for construction bidding. So far SLOCOG has provided \$300,000 of CMAQ funding and another \$113,000 of RSTP-RSHA funds in the FY15 RTIP.

## SUMMARY

Caltrans requires a Council Resolution to execute certain documents pertaining to State and Federal Funded Projects. That resolution would supersede Resolution No. 26-14, which provided a “blanket” authorization for the City Engineer to execute the agreements for all Caltrans projects and replaces it with a “project specific” authorization requested by Caltrans.

01181.0001/271871.1

Prepared By:  RPS

Dept Review:  RL

City Manager Review:  DWB

City Attorney Review:  JWP

**BACKGROUND/DISCUSSION**

The City of Morro Bay is eligible to receive Federal and/or State grant funding for certain transportation projects through Caltrans. Such grants often require one or more documents to be executed before such funds can be claimed. Those documents include, but are not limited to, Master Agreements, Program Supplemental Agreements, Cooperative Agreements, Right-of-Way Certifications, Fund Exchange Agreements, Project Certifications and/or Fund Transfer Agreements.

The City’s consultant has completed both phases of the ICE for the State Route 1/ Main Street @ SR 41 which recommends two design alternatives, signalization or a roundabout, be considered during the environmental evaluation. Initial meetings with Morro Bay High School and San Luis Coastal Unified School District officials have indicated their strong support for the roundabout alternative. The City has received authorization from Caltrans to proceed to the next step of project development, which is the Preliminary Engineering phase which will prepare the project for construction bidding. Approval of the subject resolution will initiate staff action to prepare a Request for Proposal to obtain engineering and environmental support to complete the Preliminary Engineering phase of this project.

**CONCLUSION**

As the authorization of the Public Works Director to execute Caltrans documents will expedite processing of grant related forms, agreements, and certifications, staff recommends the City Council adopt Resolution No. 68-15 delegating that authority.

**RESOLUTION NO. 68-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING DELEGATION OF AUTHORITY  
FOR EXECUTING CALTRANS DOCUMENTS FOR PROJECT NO. 05-5391,  
STATE ROUTE 1/SR 41 INTERCHANGE IMPROVEMENTS**

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

**WHEREAS**, the City of Morro Bay is eligible to receive Federal and/or State funding for Project No. 05-5391, State Route 1/SR41 Interchange Improvements through the California Department of Transportation (“CalTrans”); and

**WHEREAS**, Master Agreements, Program Supplemental Agreements, Cooperative Agreements, Right-of-Way Certifications, Fund Exchange Agreements, Project Certifications and/or Fund Transfer Agreements need to be executed with the CalTrans before such funds can be claimed; and

**WHEREAS**, the City of Morro Bay wishes to delegate authorization to execute those agreements, certifications and any amendments thereto to the Public Works Director or his designee.

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

1. The Public Works Director or his designee is authorized to execute all Master Agreements, Program Supplemental Agreements, Cooperative Agreements, Right-of-Way Certifications, Fund Exchange Agreements, Project Certifications, Fund Transfer Agreements and any amendments thereto or other required documents for Project No. 05-5391, State Route 1/SR41 Interchange Improvements with the California Department of Transportation.

2. Public Works staff is further directed to issue a Request for Proposals to obtain additional engineering and environmental support to complete the Preliminary Engineering Phase of this project.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27<sup>th</sup> day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

---

JAMIE L. IRONS, Mayor

ATTEST:

---

DANA SWANSON, City Clerk



AGENDA NO: A-5

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 15, 2015

**FROM:** Scot Graham, Community Development Manager

**SUBJECT:** Resolution No. 69-15 Authorizing the Community Development Manager to Execute Documents for Caltrans Sustainable Transportation Planning Grant Application

### **RECOMMENDATION**

Adopt Resolution No. 69-15 authorizing staff to submit a grant application to the California Department of Transportation (Caltrans) for a Sustainable Communities grant (FY 16-17) in the amount of \$50,000 for the update of the City's 2012 Bicycle and Pedestrian Master Plan.

### **ALTERNATIVES**

- A) Direct staff to discontinue application for the Caltrans Planning Grant
- B) Increase or decrease amount of grant request.

### **FISCAL IMPACT**

It is anticipated that a cash match of approximately \$7,500 will be required. Staff anticipates utilizing Traffic Impacts fees to leverage the grant request.

### **BACKGROUND/DISCUSSION**

The Sustainable Transportation Planning Grant Program was created to support the California Department of Transportation's (Caltrans) current Mission: *Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.* Grant Program Overarching Objectives were also identified to ensure consideration of these major efforts in transportation planning, including: Sustainability, Preservation, Mobility, Safety, Innovation, Economy, Health, and Equity.

The Sustainable Communities grant funds transportation planning projects that identify and address mobility deficiencies in the multimodal transportation system, encourage stakeholder collaboration, involve active public engagement, integrate Smart Mobility 2010 concepts, ultimately result in programmed system improvements, and achieve the Caltrans Mission and overarching objectives.

Prepared By: SG

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

City Manager Review: DWB

City Attorney Review: JWP

**RESOLUTION NO. 69-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING THE COMMUNITY DEVELOPMENT MANAGER  
TO APPLY FOR GRANTS AND EXECUTE AGREEMENTS WITH  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR  
THE CITY OF MORRO BAY BICYCLE AND PEDESTRIAN PLAN UPDATE**

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

**WHEREAS**, the California Department of Transportation (“Caltrans”) provides an appropriation of \$8.3 million total (Federal Transit Administration Section 5304, and State Highway Account) for the Sustainable Transportation Planning Grant Program in FY 16-17 to local governments to support Sustainable Communities transportation planning; and

**WHEREAS**, Caltrans may provide financial assistance to support local sustainable transportation planning and has approved a competitive grant program to provide financial assistance for such planning; and

**WHEREAS**, local governments such as the City of Morro Bay are eligible to apply for the Caltrans Sustainable Communities Transportation Planning Grant Program; and

**WHEREAS**, the Sustainable Transportation Planning Grant Program was created to support the Caltrans’ current Mission: *Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability*; and

**WHEREAS**, the intent for implementation of these grants should ultimately lead to the adoption, initiation, and programming of transportation improvements; and

**WHEREAS**, the City of Morro Bay<sub>2</sub> desires to update and upgrade the Morro Bay Bicycle and Pedestrian Master Plan; and

**WHEREAS**, the City of Morro Bay commits to and agrees to fully support a planning effort intended to produce an updated Morro Bay Bicycle and Pedestrian Master Plan with full public participation and coordination with the Caltrans staff in undertaking the project, if approved, and

**WHEREAS**, the City of Morro Bay (the “City”) is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the California Department of Transportation; and

**WHEREAS**, a Restricted Grant Agreement is needed to be executed with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs; and

**WHEREAS**, the City of Morro Bay wishes to delegate authorization to execute these agreements and any amendments thereto.

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

1. Directs staff to submit the grant application package to Caltrans to provide financial and planning assistance, in the amount of \$50,000 to fund the project more particularly described in the grant application package.
2. Authorizes the Community Development Manager to execute all Restricted Grant Agreements and any amendments thereto with the California Department of Transportation.

**PASSED AND ADOPTED** by the Morro Bay City Council at a regular meeting held on this 27th day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JAMIE L. IRONS, Mayor

ATTEST:

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DANA SWANSON, City Clerk





AGENDA NO: C-1

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 19, 2015

**FROM:** Dana Swanson, City Clerk

**SUBJECT:** Discussion of Unwarranted Traffic Control Devices, Rescission of Resolution No. 38-15 Regarding Placement of Stop Sign at the Intersection of Pacific and Main Streets and Consideration of Alternative Traffic Calming Measures

### **BACKGROUND**

This item was continued from the October 13, 2015 City Council meeting. The previous staff report is attached for reference and discussion purposes.

Prepared By: DS

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

City Manager Review: DWB

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



AGENDA NO: C-2

MEETING DATE: October 13, 2015

## Staff Report

**TO:** Honorable Mayor and Council **DATE:** September 30, 2015

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

**SUBJECT:** Discussion of Unwarranted Traffic Control Devices, Rescission of Resolution No. 38-15 Regarding Placement of Stop Sign at the Intersection of Pacific and Main Streets and Consideration of Alternative Traffic Calming Measures

### RECOMMENDATION

1. Staff recommends the City Council review the previous decision regarding the installation of an unwarranted traffic control device, *i.e.*, an All-Way Stop at the intersection of Pacific and Main Streets and adopt Resolution No. 67-15 rescinding Resolution No. 38-15 ordering the installation of an all-way stop at Pacific and Main Streets.
2. Staff recommends the City Council establish a policy against the installation of unwarranted traffic control devices.
3. Provide direction to staff regarding alternatives to the installation of such devices, including traffic enforcement, and other traffic calming devices such as bulb-outs, mini round-a-bouts or other appropriate measures. Staff recommends the installation of corner bulb-outs or a combination of features such as a mural combined with the bulb-outs.

### PUBLIC WORKS ADVISORY BOARD (PWAB) RECOMMENDATION

The PWAB considered this item at its September 24, 2015 meeting and concurs with staff's recommendation regarding the rescission of Resolution No. 38-15. PWAB's recommendation for traffic calming was to use the lowest cost options. Those lower cost options include signage: "Cross Traffic Does not Stop" to the intersection mural.

### ALTERNATIVE

Balance the potential of financial risk by approving the design and installation of unwarranted traffic control devices at Pacific and Main with the benefits to the community of installing those devices and retain Resolution No. 38-15 as-is.

### FISCAL IMPACT

The installation of an unwarranted traffic control device can subject the City to financial liability if there is a collision at the intersection as a result of that device and the City is unable to convince a court the

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Prepared By: RL

Dept Review: RL

City Manager Review: DWB

City Attorney Review: JWP

affirmative defense of design immunity applies. Such installation could also encourage other concerned citizens to seek installation of unwarranted traffic control devices in other areas of the City, which if approved, would result in expenditures for that installation and potential similar liability issues.

The cost for the design and construction of traffic calming measures at this intersection range from about \$4,000 for intersection painting to about \$86,000 for other heavier construction traffic calming measures. Those costs do not include modifications to the drainage system should that prove to be necessary. The costs listed with each of the measures is exclusive of any necessary soft costs such as survey, design, and construction management, and could be as much as 50-percent of the construction costs.

The City budgeted \$25,000 of “one-time money” for traffic calming; staff preliminarily estimates the design and construction of bulb-outs at this intersection at \$23,000 that leaves a modest \$2,000 contingency.

### **BACKGROUND/DISCUSSION**

Staff received requests for the installation of an all-way stop at the intersection of Pacific and Main Streets. On February 14, 2014, staff completed an intersection analysis to determine whether the installation of additional stop signs met the guidance (warrants) specified in the California Manual of Uniform Traffic Control Devices (MUTCD). The results of the study show:

- All eight of the warrants are not met at the intersection of Main and Pacific Streets.
- The vehicular and pedestrian volumes in the area, while high for Morro Bay, are too low to meet the requirements given in the MUTCD for the first four warrants, regarding vehicular and pedestrian volumes.
- Low collision history and absence of local schools and traffic control signals, the warrants for those issues are not met.
- The warrant for roadway network coordination is not applicable either, due to low volumes.

Based on the Engineering analysis, the intersection failed to meet typical standards for the installation of additional stop signs on Main Street. Notwithstanding the results of the foregoing analysis used by professional engineers in assisting communities with the determination of whether to install traffic control devices, a member of the public continued to request an all-way stop and petitioned the members of the community and visitors as an attempt to show additional stop signs were needed.

The petition, along with the engineering analysis and an update to the accident history, was presented to the City Council at the regular meeting of April 28, 2015. Due to compelling public testimony and a petition with 160 unverified signatures, the City Council directed staff to return with a resolution directing the installation of additional stop signs on Main Street.

On June 9, 2015, staff presented the City Council with Resolution 38-15 “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AUTHORIZING AND DIRECTING THE INSTALLATION OF ALL WAY STOP SIGNS ON MAIN STREET AT PACIFIC STREET” on the consent agenda. The item was pulled for discussion (see <http://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2500> and [https://youtu.be/fLOvdeh\\_5-k?t=51m27s](https://youtu.be/fLOvdeh_5-k?t=51m27s)). Based on the petition, testimony from the public and discussion at the dais, the Resolution was passed 3-2 (Irons/Headding dissenting).

While staff was preparing for the installation of the additional stop signs as directed by Resolution 38-15, the City’s insurance provider and risk manager the California Joint Powers Insurance Authority (CJPIA) held their annual training for Public Works Officers at the Public Works Academy. The Academy was attended by several public works staff including the Director. Topics at the academy included: Risk

Management, Workers Compensation, Investigating Claims and Preserving Evidence, Risk Review and Transfer and **“The Little Mistakes that are Costing a Lot - Unwarranted Traffic Control Devices.”** That class was taught by Scott J. Grossberg, Esq. of Cihigoyenette, Grossberg and Clouse.

Mr. Grossberg’s section covered several topics including: Tort Liability Issues, Dangerous conditions on Public Property, Immunities available to Public Agencies, Traffic Control Objectives, Requirements; and Justifications, Adverse impacts to neighborhood Traffic, Increased exposure to lawsuits, risks associated with speed humps and arbitrary speed limits. Additionally, the class discussed the ineffectiveness of stop signs in controlling speeds along with the difficulties of convincing the public stop signs do not reduce overall speeds even though there are studies from the 1930’s to present day that show speed reduction is not a resultant of stop sign installation.

The major point Mr. Grossberg stressed was the use of “design immunity” in defense of City’s where a collision results in a significant claim. The California Government Code Section 830.6 states:

*Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor. Notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee, or with a plan or design in conformity with a standard previously approved by such legislative body or other body or employee. In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard. However, where a person fails to heed such warning or occupies public property despite such warning, such failure or occupation shall not in itself constitute an assumption of the risk of the danger indicated by the warning.*

The major factor for successfully using 830.6 as a defense is there is substantial evidence supporting the reasonableness of the plan or design. (*Cornette v Department of Transportation (2001) Alvarez v. State (1999) Dole Citrus v. State (1997)*). Paramount in that argument is, if a claim goes to court, a city needs to be able to show the design relied upon generally accepted standards and there is substantial reasonableness of the plan or design. With that evidence a judge would likely grant a summary judgment and find grounds for dismissal. If the immunity does not apply, then the alternative is to have a jury make a determination regarding the factual issues of a claim. The best way to show the reasonableness of design is reliance on accepted, professional standards, such as the MUCTD.

### Alternatives to Stop Signs to “Calm” Traffic

There are solutions to achieve the public desire to “calm,” *i.e.* slow down traffic, that are more effective than the installation of a stop sign. Studies show stop signs do not slow the overall speed of traffic and the MUTCD warns against using stop signs for the control of speeds, as being ineffective and causing other problems. The following traffic calming measures from the Institute of Transportation Engineers (ITE) tool box of traffic calming measures may be appropriate for the intersection of Pacific and Main Streets:

#### Neighborhood Traffic Circle

Description:

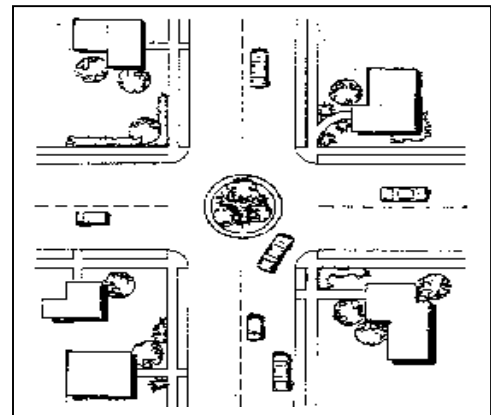
- raised islands, placed in intersections, around which traffic circulates
- motorists yield to motorists already in the intersection
- require drivers to slow to a speed that allows them to comfortably maneuver around them
- sometimes called intersection islands
- different from roundabouts

Applications:

- intersections of local or collector streets
- one lane each direction entering intersection
- not typically used at intersections with high volume of large trucks and buses turning left

Design/Installation Issues:

- typically circular in shape, though not always
- usually landscaped in their center islands, though not always
- often controlled by YIELD signs on all approaches, but many different signage approaches have been used
- key design features are the offset distance (distance between projection of street curb and center island), lane width for circling the circle, the circle diameter, and height of mountable outer ring for large vehicles such as school buses and trash trucks



Potential Impacts:

- no effect on access
- reduction in midblock speed of about 10 percent; area of influence tends to be a couple hundred feet upstream and downstream of intersection
- only minimal diversion of traffic
- intersection collisions have been reduced on average by 70 percent and overall collisions by 28 percent
- can result in bicycle/auto conflicts at intersections because of narrowed travel lane

Emergency Response Issues:

- emergency vehicles typically slow to approximately 13 mph; approximate delay of between 5 and 8 seconds per circle for fire trucks
- fire trucks can maneuver around traffic circles at slow speeds provided vehicles are not parked near the circle

Other/Special Considerations:

- large vehicles may need to turn left in front of the circle (which could be unsafe at higher volumes); legislation may be required to legally permit that movement
- quality of landscaping and its maintenance are key issues
- landscaping needs to be designed to allow adequate sight distance
- care must be taken to avoid routing vehicles through unmarked crosswalks on side-street approach

Typical Cost:

Average installation cost \$16,000 (2015 dollars)<sup>1</sup>

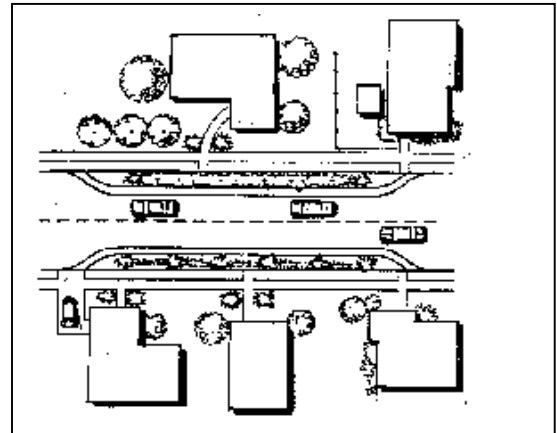
Choker/Bulbouts – Staff Recommendation

Description:

- curb extensions at midblock or intersection corners that narrow a street by extending the sidewalk or widening the planting strip
- can leave the cross section with two narrow lanes or with a single lane
- at midblock, sometimes called parallel chokers, angled chokers, twisted chokers, angle points, pinch points, or midblock narrowing
- at intersections, sometimes called neckdowns, bulbouts, knuckles, or corner bulges
- if marked as a crosswalk, they are also called safe crosses

Applications:

- local and collector streets
- pedestrian crossings
- main roads through small communities
- work well with speed humps, speed tables, raised intersections, textured crosswalks, curb radius reductions, and raised median islands

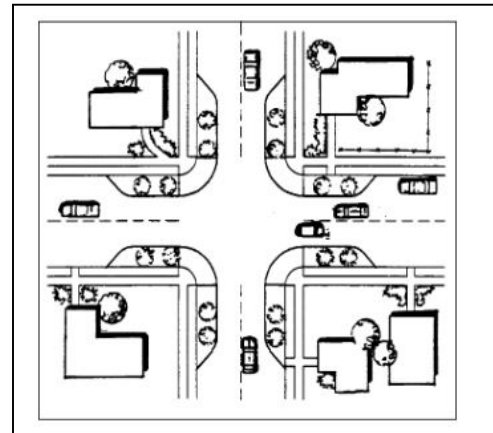


Design/Installation Issues:

- some applications use an island which allows drainage and bicyclists to continue between the choker and the original curb line
- typically designed to narrow road to 20 feet for two-way traffic; typically avoid the use of widths between 13 and 17 feet
- adequate drainage is a key consideration
- provides opportunity for landscaping

Potential Impacts:

- can impact parking and driveway access
- reduces pedestrian crossing width and increases visibility of pedestrian
- speeds have typically been reduced on average by 4 percent for two-lane chokers and 14 percent for one lane chokers
- minor decrease in traffic for two-lane and 20 percent



<sup>1</sup> Cost estimates are approximate and are typical national costs and are only meant for relative comparison and to get a sense of the typical installation. Costs do not include engineering, survey, storm drain modifications or site specific conditions.

- reduction for one-lane chokers
- collision data not available
- bicyclists prefer not to have the travelway narrowed into path of motor vehicles

Emergency Response Issues:

- preferred by many fire department/emergency response agencies to most other traffic calming measures

Typical Cost:

Average installation cost \$15,000 (2015 dollars)

Raised Intersection

Description:

- flat raised areas covering entire intersections, with ramps on all approaches and often with brick or other textured materials on the flat section and ramps
- sometimes called raised junctions, intersection humps, or plateaus

Applications:

- work well with curb extensions and textured crosswalks
- often part of an area wide traffic calming scheme involving both intersecting streets
- in densely developed urban areas where loss of parking would be unacceptable

Design/Installation Issues:

- typically rise to sidewalk level
- may require bollards to define edge of roadway
- Canadian installations typically have gentle 1:40 slopes on ramps
- storm drainage modifications are necessary

Potential Impacts:

- reduction in through movement speeds at intersection
- reduction in midblock speeds typically less than 10 percent
- no effect on access
- make entire intersections more pedestrian-friendly
- no data available on volume or safety impacts

Emergency Response Issues:

- slows emergency vehicles to approximately 15 miles per hour

Typical Cost:

Average installation cost \$57,000 (2015 dollars)

Intersection Mural

Though not included in the ITE tool box, but has seen some success calming traffic in many urban cities, is the intersection mural. The intersection mural is permanently painted on the pavement at an intersection. It is used as a community building tool. The murals are generally designed by the neighborhood, and represent local community. Experience from other cities shows intersection murals can



help calm traffic, and foster a sense of community identity. Such murals can be found in multiple cities, including Seattle, WA, Portland, OR and Ft. Lauderdale, FL.

Intersection murals have many benefits, including:

- Bringing neighbors together to create a sense of community
- Can be traffic-calming
- Place-making—murals can represent the communities that surround them
- Perhaps making streets more enjoyable

Typical Cost:

Average installation cost \$2,500 (2015 dollars)

## **CONCLUSION**

The installation of traffic control devices is an important decision for the community. Properly installed, they can add to the quality of life through the safe and consistent movement of traffic for commerce, recreation and the daily commute. At best, when improperly installed they can become an annoyance and, at worst, can cause an unsafe condition and result in increased liability to the City. Additionally, the installation or construction of anything within the public realm needs to be based on a reasonable design. Conformance to approved standards goes a long way to show reasonableness of design. In the immutable words of the CJPIA expert, Mr. Grossberg; “When should you install an unwarranted traffic control device? ... *Never!* Will it be the end of the world; no, but is the risk worth it?”

Since installing an unwarranted traffic control device is not a recommend option, what can be done to satisfy the request from the public to slow traffic down? We can borrow from the law enforcement field and use the concept of Crime Prevention through Environmental Design or CEP-TED. Using the concept of CEP-TED, staff recommends using a “traffic calming” measure to change the street geometry which should result in reduced vehicular speeds. Those traffic calming measures are not without their disadvantages, one being a reduction in emergency response speed through the traffic calming zone, the other being initial cost. That cost must be weighed against the low cost of the installation of an unwarranted traffic control device against the typically astronomical cost of defending a claim due to a collision where an unwarranted traffic control device has been installed.

To that end, staff is recommending the concept of intersection bulb-outs be pursued as a traffic calming and entrance feature to the downtown. Intersection bulb outs are very common in the area, most if not all of this County’s downtowns have incorporated bulb outs as a part of their down town fabric.



**RESOLUTION NO. 67-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
RESCINDING CITY COUNCIL RESOLUTION 38-15 THAT AUTHORIZED  
AND DIRECTED THE INSTALLATION OF ALL-WAY STOP SIGNS ON  
MAIN STREET AT PACIFIC STREET AND ADOPTING A POLICY OF ONLY INSTALLING  
WARRANTED TRAFFIC CONTROL DEVICES**

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

**WHEREAS**, Morro Bay Municipal Code Section 10.08.020 states the City traffic engineer shall determine the installation of traffic-control devices, signs and signals based on engineering and traffic investigations of traffic conditions; and

**WHEREAS**, the City traffic engineer did perform such investigation at the intersection of Main Street and Pacific Street; and

**WHEREAS**, the investigation per the guidelines contained in the latest California edition of the Manual of Uniform Traffic Control Devices (MUTCD) indicated the installation of an all way stop at that intersection was not warranted; and

**WHEREAS**, Morro Bay Municipal Code Section 10.08.080 states, the City Council shall also have the power to place and maintain or cause to be placed or maintained official traffic- control devices when and as required as it deems necessary to regulate traffic under this chapter or under the state law, or to guide or warn traffic; and

**WHEREAS**, on June 9, 2015, lacking a study that indicated an all-way stop was warranted, the City Council determined it is appropriate to place all-way stops signs at the intersection of Main Street and Pacific Street, based on a petition of concerned citizens and other public testimony; and

**WHEREAS**, the City Council adopted Resolution 38-15 “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AUTHORIZING AND DIRECTING THE INSTALLATION OF ALL WAY STOP SIGNS ON MAIN STREET AT PACIFIC STREET”.

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

1. Resolution 38-18 is hereby rescinded.
2. Within 180-days after adoption of this Resolution, the Public Works Director/City Engineer shall present to the Public Works Advisory Board and City Council the alternative design for “traffic calming” measures for the intersection of Main Street and Pacific Street for recommendations and consideration respectively.
3. No unwarranted traffic control devices shall be allowed within the rights-of-ways within the jurisdictional boundaries of the City, whether installed by the City forces or private parties.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

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JAMIE L. IRONS, Mayor

ATTEST:

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DANA SWANSON, City Clerk



AGENDA NO: C-2

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 19, 2015

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

**SUBJECT:** Adoption of Ordinance No. 597 Amending Subsection 5.08.220 C. of the Morro Bay Municipal Code relating to the \$4,000 Exception

### SUMMARY

Ordinance No. 597 was introduced at the regular City Council meeting held on October 13, 2015. This is the legally required second reading for non-urgency ordinances. After the second reading, by title only with further reading waived, it is recommended the Council adopt the ordinance, which will then become effective on the 31<sup>st</sup> day after its adoption.

Prepared By: SS

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

City Manager Review: DWB

City Attorney Review: JWP

**ORDINANCE NO. 597**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORRO BAY, CALIFORNIA AMENDING  
SUBSECTION 5.08.220 C. OF THE MORRO BAY MUNICIPAL CODE  
RELATING TO THE \$4,000 EXCEPTION**

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

**WHEREAS**, the City Council recently adopted Ordinance No. 595 that made various amendments to Title 5 of the Morro Bay Municipal Code (MBMC), which establishes the tax regulations for businesses operating within the City;

**WHEREAS**, in reviewing and implementing those changes, staff became aware of language in MBMC subsection 5.08.220 C. that limited the application of the Council's intent for providing an exemption from the City's business tax regulations for businesses whose gross receipts are less than \$4,000; and

**WHEREAS**, this Ordinance rectifies that situation.

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

**SECTION 1:** Subsections 5.08.220 C. of the MBMC shall be amended to read as follows:

C. Except as provided herein and pursuant to Section 5.04.060, each low revenue business shall obtain a current business tax certificate in accordance with this title and pay a processing fee in accordance with the Business Tax Rate Schedule; provided, that (i) the business tax certificate processing fee for each low revenue business shall not be greater than the amount necessary for the city to recover some or all of the costs incurred by the city in processing and issuing that business tax certificate, and (ii) if the aggregate annual gross receipts from all the low revenue businesses operated at one location or by the same operator are less than four thousand dollars, then a business tax certificate is not required for any of those businesses; provided, that this subsection shall not ~~apply to any business that would otherwise be required to pay a business tax only pursuant to Section 5.08.020 nor shall it~~ waive any other requirements of this code, including, but not limited to, a requirement for a home occupation permit.

**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 the of the City Council of Morro Bay, held on the 13th day of October, 2015 by motion of Mayor Irons, seconded by Councilmember Smukler.

**PASSED AND ADOPTED** on the \_\_\_\_ day of October, 2015.

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 13<sup>th</sup> day of October, 2015, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2015, 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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Clerk of the City of Morro Bay



AGENDA NO: C-3

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council **DATE:** October 19, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Discussion and Direction on Expiring Lease at Lease Site 62/62W (Krueger/ Kayak Horizons) located at 551 Embarcadero

### RECOMMENDATION

Staff recommends the City Council choose Alternative A to authorize an RFP process for the future of this lease site.

### ALTERNATIVES

- A. Direct staff to conduct a Request for Proposal (RFP) process for the site as soon as feasible, and identify any desired RFP components or elements for incorporation into the RFP.
- B. Conduct an RFP process at a later date; delaying until the lease's expiration draws closer (September 2018).
- C. Wait until such a time the current leaseholder may identify another purchaser. If this alternative is chosen, then staff recommends Council choose a date-certain by which date the lease site will be put out to RFP if such a purchaser isn't identified. Staff recommend this be no greater than ten months, as ten months would bring the lease to within two years of expiration.

### FISCAL IMPACT

There is no significant fiscal impact expected, at this time, as the existing lease is relatively new and contains modern terms and conditions. In addition, this lease site is very small with limited opportunities for new or expanded uses or revenue streams.

### BACKGROUND

Lease site 62/62W, located at 551 Embarcadero, is a 23-year City lease originally entered into in 1995, expiring in September 2018. This meeting will be the third time since 2013 the Council has considered the direction in which to take this lease site. For background, the staff report and attachments from the most recent Council meeting addressing this site, held on January 13, 2015, are included as Attachment 1 to this staff report.

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Prepared By: EE

Dept Review: EE

City Manager Review: DWB

City Attorney Review: JWP

At the January 13, 2015, Council meeting, the Council voted unanimously to allow the leaseholder to continue negotiations to sell the lease with the new owners of the adjacent lease site, Gray's Inn, who had submitted a written preliminary site development plan of a vision for the Kayak Horizons site (Alternative "C" in the staff report for that January meeting). The minutes from the January 13, 2015, Council meeting are included as Attachment 2 to this staff report.

Unfortunately, those lease sale negotiations failed and both parties notified staff they were not going to reach an agreement.

### **DISCUSSION**

The current lease holder has indicated on several occasions they do not intend to submit a proposal to redevelop this lease site and operate it into the future.

The options for the site at this point are to put it out to RFP now or in the future or wait until the current lease holder can identify another viable purchaser and consider at a later date what that potential purchaser may propose.

### **CONCLUSION**

With the current lease expiring in 2018, staff recommends the Council authorize staff to put the site out to RFP now, and provide staff any direction on desired elements of the RFP Council wishes to include. If this alternative is chosen, then staff will bring back to a future Council meeting a draft RFP for consideration and approval.

### **ATTACHMENTS**

1. January 13, 2015, Council staff report on this lease site item
2. January 13, 2015, approved Council minutes on this lease site item



AGENDA NO: C-2

MEETING DATE: January 13, 2015

## Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** December 29, 2014

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Discussion and Direction on Expiring Lease at Lease Site 62/62W  
(Krueger/Kayak Horizons)

### RECOMMENDATION

Staff recommends the Council consider the alternatives presented and provide staff direction.

### ALTERNATIVES

- A. Direct staff to conduct a Request for Proposal (RFP) process for the site as soon as feasible.
- B. Conduct an RFP process at a later date; delaying until the lease's expiration draws closer (September 2018).
- C. Allow the leaseholder continue their negotiations with a potential buyer for the site (Todd and Tamara Baston, new owners of Gray's Inn). Should the Council choose this alternative, staff will bring back the Assignment and Assumption for approval at a later date, including a more detailed proposal from the Baston's for consideration of Consent of Landowner approval.

### FISCAL IMPACT

There is no significant fiscal impact expected at this time as the existing lease is relatively new and contains modern terms and conditions.

### SUMMARY

In the summer of 2013, the Leaseholder of lease site 62/62W presented a preliminary redevelopment project proposal for their site. That proposal was considered and accepted by the City Council with direction to staff to work with the Leaseholder towards a more in-depth proposal. Subsequently the Leaseholder withdrew their proposal, but has recently negotiated an agreement with a new buyer. Council is now being asked to consider how to proceed with this lease site.

Prepared By: EE

Dept Review: EE

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

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



**BACKGROUND**

Lease site 62/62W, located at 551 Embarcadero, is a 23-year City lease originally entered into in 1995, expiring in September 2018. As the lease is within the last five years of its term, and pursuant to the Harbor Department's Lease Management Policy, the Leaseholder proposed a modest redevelopment project on the site that was taken to the City Council for consideration at their July 9, 2013 meeting. The proposal consisted of the following: removal of the existing one-story storage building in the southwest corner of the site, improving the view corridor; addition of a water-side walkway, eventually connecting to the neighboring lease site to the north; remodeling the existing dock to include the addition of a small storage shed; and, general updating and refurbishing of the site and main building. This site is one of the smallest lease sites on the waterfront.

The proposal was originally scheduled to be heard at the June 11<sup>th</sup> meeting; however, the Council moved to continue the item to a future meeting in order to hear it in conjunction with the Gray's Inn lease site proposal. The Gray's Inn lease also expires in 2018.

At the July 9, 2013, Council meeting both lease site proposals were presented for consideration with multiple alternatives provided by staff which included accepting both proposals and moving forward as two separate projects, directing staff to prepare and bring back separate RFP's for each site, or directing staff to prepare and bring back one RFP combining the sites under one leaseholder. Council consensus was to consider the lease sites separately; with regard to Lease Site 62/62W, the Council unanimously voted to approve Mr. Krueger's preliminary proposal and directed staff to work with Mr. Krueger for an in-depth proposal to be submitted for concept plan approval.

**DISCUSSION**

While staff began work with Mr. Krueger on expanding and vetting his proposal, on November 15, 2013 he notified the City that he was no longer interested in pursuing a new lease and associated lease site improvements.

There are now approximately 3 ½ years left on the lease. The decision in front of the Council is whether to direct staff to conduct an RFP process now; wait to conduct an RFP process, delaying until the lease expiration draws nearer; or wait until Mr. Krueger finalizes negotiating an agreement with Todd and Tamara Baston, who currently are the leaseholders of site 63-64/63W64W, Gray's Inn, for subsequent Assignment and Assignment of the lease and possible Consent of Landowner approval.

The Bastons have submitted an initial written Site Development Plan consisting primarily of:

- Enhanced view corridor by removal of the storage shed on the SW corner of the site.
- Renovation of the existing building to motel units, including ADA-accessibility (and parking) on the ground floor, with potential addition of units as space allows.
- Accommodation of the Kayak Horizons kayak rental use completely on an expanded dock.
- Full 8-foot street sidewalk including new access to new Harborwalk public walkway.
- New restroom facility for kayak rental patrons.
- Gangway, dock, piling and facility repairs and maintenance.

**CONCLUSION**

Mr. Krueger is a tenant in good standing, is considered to have a good history of lessee performance, and has operated and maintained his lease site well. The Bastons, while being relatively new tenants, achieved acceptance of their initial concept plan for the adjacent Gray's Inn lease site with Consent of Landowner approval of Council in April, 2014, and to date are also in good standing.

**ATTACHMENTS**

June 11, 2013 staff report and minutes

July 9, 2013 staff report and minutes

Mr. Krueger's withdrawal letter

Email correspondence between Mr. Krueger and the Bastons

Written Site Development Plan for the lease site

Aerial view of lease site



AGENDA NO: D-2

MEETING DATE: June 11, 2013

## Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** June 4, 2013

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Consideration of Redevelopment Project Proposed for Lease Site 62/62W  
(Kayak Horizons – Krueger).

### RECOMMENDATION

Staff recommends the Council considers the two alternatives and provide staff direction. Staff is recommending Alternative A.

### ALTERNATIVES

- A. Accept the Leaseholder's proposed project and direct the Leaseholder to file their Application with the Planning Division and authorize staff to begin lease negotiations with the Leaseholder for the proposed redevelopment.
- B. Direct staff to prepare and bring back Requests for Proposals (RFPs) for the site.

### FISCAL IMPACT

None expected. The existing lease is relatively modern and contains modern terms and conditions.

### SUMMARY

The Leaseholder on lease site 62/62W has proposed a redevelopment project on their site. As requested by the City, they have submitted a preliminary proposal for public comment and Council consideration. Council is being asked to consider the proposal and provide staff direction on the alternatives.

### BACKGROUND

Lease site 62/62W is a 23-year City lease originally entered into in 1995 that expires in September 2018. This site is within the last five years of its lease term, and pursuant to the Lease Management Policy the Leaseholders have submitted a written proposal for a modest redevelopment project on the site. This site is one of the smallest lease sites on the waterfront.

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

**DISCUSSION**

For Tidelands Trust Leases from Beach Street to Tidelands Park, the City's Lease Management Policy states:

“In this area, the City controls land and water areas. In this area tenants are encouraged to propose redevelopments of lease sites to improve public benefits on these sites, enhance the Embarcadero business environment, and renegotiate leases to modern terms. To help accomplish this, and to provide tenants motivation not to let long-term leases run to the very end of their terms with degraded building/improvements, and under market lease terms, the City will generally not renew leases with existing tenants in this area if they allow their leases to run to a term of less than five years remaining.”

In addition, the City's Lease Management Policy states that it will use the following standards for determining whether it should negotiate a new lease with a tenant:

- A. The tenant has a good history of performance and lease compliance and the improvements on the site are well maintained. Example standards for determining “good history” of lessee performance are:
1. The tenant's record with respect to the prompt and accurate payment of rent due the City;
  2. The tenant's record of compliance with existing lease conditions;
  3. The appropriateness of the proposed tenant business with respect to the total mix of uses and services available to the public and with respect to the long-term planning goals of the City;
  4. The tenant's financial and personal investment in tenant business and the leasehold improvements;
  5. The contribution to the surrounding business community made by the tenant's business;
  6. The quality of direct services to the public provided by the tenant and its business;
  7. The value received by the public in goods or services.
  8. The total financial return to City from the leasehold;
  9. Other pertinent considerations as may be appropriate as determined by the City Council.

Pursuant to the Lease Management Policy, the Leaseholder has submitted a redevelopment proposal. The proposal consists of removal of the existing one-story storage building in the southwest corner of the site to open up the views, addition of the water-side walkway to eventually connect to the neighboring lease site to the north, remodeling of the existing dock including addition of a small storage shed on the dock, and general updating and refurbishing of the site and main building. A copy of their proposal is included in this report.

Alternative A is would accept the Leaseholder's proposal and direct staff to begin negotiating preliminary terms and conditions of a new lease, while the Leaseholder would concurrently file an Application with the City Planning Division to begin the development process. In addition, staff would work with the Leaseholder on furthering the details of their proposed project. Staff is recommending Alternative A.

Alternative B would put the lease site out for RFPs. The existing Leaseholder could submit a proposal in this alternative. Should this alternative be chosen, staff will begin work on crafting an RFP for future Council approval.

### **CONCLUSION**

Based on the Leaseholder's modest redevelopment proposal on their small but successful lease site, staff recommends Alternative A as outlined. This Leaseholder is a tenant in good standing and is considered to have a "good history of lessee performance."

Embarcadero and APN 068-168-022, Vacant Lot next to 1320 Main Street; and, Conference with legal counsel due to anticipated litigation, Government Code Section 54956.9(b): Exposure to litigation exists based upon existing facts and the advice of legal counsel as to one matter - First American Title Company/First California Bank and City of Morro Bay; no reportable action under the Brown Act was taken.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
PUBLIC PRESENTATIONS

PUBLIC COMMENT

Meredith Bates, owner of Bates Care Management, presented the Morro Bay business report. Bates Care Management is a geriatric care management firm that covers the entire County. It is her goal that loved ones are able to stay safely in their own homes or transition into assisted living. Ms. Bates works carefully with the family. For those with loved ones outside of the County, you can locate a care manager by going to [caremanager.org](http://caremanager.org) and then put in your zip code. To contact Ms. Bates you can call 771-9124 or go to her website at [batescare.com](http://batescare.com). She urged people contact her with any questions they may have.

Stephanie Pipan, the City's K-9 Officer advertised the 3<sup>rd</sup> Annual K-9 Walk being held on Saturday, June 22, 2013. It is the annual fundraiser for Xello and the Canine Unit. The event is being held at City Park, there will be vendors, demo's, and will also feature a dog walk. The cost is a \$20 donation which will also get your dog a "goodie bag".

Police Commander Bryan Millard urged the community to support Officer Pipan in her fundraising goals; it takes between \$7,000-10,000 to maintain a police K9 in our community per year. He also advertised the upcoming Tip-a-Cop Dinner being held on Friday, June 28<sup>th</sup> benefitting Special Olympics. The event is being held at the Community Center and the cost is \$20/adult and \$5/child or \$150/table.

At this time, Mayor Irons requested the Council consider pulling Item D-2, Consideration of Redevelopment Project Proposed for Lease Site 62/62W (Kayak Horizons – Krueger) and continue it to a future meeting so that it could be heard in conjunction with the Gray's Inn item. Councilmembers Nancy Johnson and Leage both wanted to hear the item tonight as scheduled. Councilmembers Christine Johnson and Smukler both felt it was important to hear this item alongside the Gray's Inn item.

MOTION: Mayor Irons moved to continue Item D-2, Kayak Horizons, and to bring it back with Gray's Inn. The motion was seconded by Councilmember Smukler and carried 3-2 with Councilmembers Nancy Johnson and Leage voting no.

Brian Stacy stated that he was a victim of the largest conspiracy in human history. Tonight he wanted to talk about crime and Council's obligation to follow through on these allegations.

Craig Schmidt advertised upcoming Morro Bay events. On June 12<sup>th</sup>, there will be a Morro Bay/Los Osos Chamber mixer at Sea Pines Restaurant from 530-730pm; on June 20<sup>th</sup> there will



AGENDA NO: C-1

MEETING DATE: July 9, 2013

## Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** July 1, 2013

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Consideration of Redevelopment Projects Proposed for Lease Sites 62/62W  
(Kayak Horizons – Krueger) and 63-64/63W-64W (Gray's Inn - Gray)

### RECOMMENDATION

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

### ALTERNATIVES

- A. Accept the Leaseholders' proposals, direct Leaseholders to file their Applications with the Planning Division, and authorize staff to begin lease negotiations with the Leaseholders for their proposed redevelopments. In the case of 63-64/63W-64W, Assignment and Assumption of the lease would have to first be approved in the proposal being offered.
- B. Direct staff to prepare and bring back individual Requests for Proposals (RFPs) for the sites to be redeveloped and owned individually.
- C. Direct staff to prepare and bring back one RFP for combining the sites under single leaseholder redevelopment and ownership.

### FISCAL IMPACT

Nothing significant expected with 62/62W; the existing lease is relatively modern and contains modern terms and conditions. Increased revenue expected as the Pipkin lease on site 63-64/63W-64W is retired and replaced with a modern lease that would include percent of gross sales requirements in addition to property re-appraisal and new Base Rent adjustment every five years.

### SUMMARY

The Leaseholder on lease site 62/62W has proposed a redevelopment project on their site. As requested by the City, they have submitted a preliminary concept proposal for public comment and Council consideration.

Prepared By: _____	Dept Review: _____
City Manager Review: _____	
City Attorney Review: _____	

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

Council is being asked to consider the proposals and provide staff direction on the alternatives.

### **BACKGROUND**

Lease site 62/62W (Kayak Horizons) is a 23-year City lease originally entered into in 1995 that expires in September 2018. Lease Site 63-64/63W-64W (Gray's Inn) is a 50-year Pipkin lease originally entered into in 1968 that also expires in September 2018. Both sites are nearing the last five years of their terms.

Pursuant to the Lease Management Policy, the Leaseholders of Kayak Horizons have submitted a written proposal for a redevelopment project on the site in exchange for a new lease. A copy of that proposal is included with this report. This site is one of the smallest lease sites on the waterfront. Staff originally brought this proposal forward at the June 11, 2013 City Council meeting, however, Council deferred considering the proposal until it could be brought forward at the same time as Gray's Inn so that the aspect of possibly combining the sites could be considered.

The Leaseholder of Gray's Inn is currently in negotiations with potential buyers of the site, Todd and Tamara Gray-Baston. The Bastons have submitted a written proposal for acquiring the lease and implementing a redevelopment project on the site in exchange for a new lease. A copy of that proposal is included with this report.

### **DISCUSSION**

For Tidelands Trust Leases from Beach Street to Tidelands Park, the City's Lease Management Policy states:

“In this area, the City controls land and water areas. In this area tenants are encouraged to propose redevelopments of lease sites to improve public benefits on these sites, enhance the Embarcadero business environment, and renegotiate leases to modern terms. To help accomplish this, and to provide tenants motivation not to let long-term leases run to the very end of their terms with degraded building/improvements, and under market lease terms, the City will generally not renew leases with existing tenants in this area if they allow their leases to run to a term of less than five years remaining.”

In addition, the City's Lease Management Policy states that it will use the following standards for determining whether it should negotiate a new lease with a tenant:

A. The tenant has a good history of performance and lease compliance and the improvements on the site are well maintained. Example standards for determining “good history” of lessee performance are:



1. The tenant's record with respect to the prompt and accurate payment of rent due the City;
2. The tenant's record of compliance with existing lease conditions;
3. The appropriateness of the proposed tenant business with respect to the total mix of uses and services available to the public and with respect to the long-term planning goals of the City;
4. The tenant's financial and personal investment in tenant business and the leasehold improvements;
5. The contribution to the surrounding business community made by the tenant's business;
6. The quality of direct services to the public provided by the tenant and its business;
7. The value received by the public in goods or services.
8. The total financial return to City from the leasehold;
9. Other pertinent considerations as may be appropriate as determined by the City Council.

Pursuant to the Lease Management Policy, the Leaseholder of Kayak Horizons has submitted a concept redevelopment proposal. The proposal consists of removal of the existing one-story storage building in the southwest corner of the site to open up the views, addition of the waterside walkway to eventually connect to the neighboring lease site to the north (Gray's Inn), remodeling of the existing dock including addition of a small storage shed on the dock, and general updating and refurbishing of the site and main building.

While the Leaseholder of Gray's Inn has not submitted a redevelopment proposal because they wish to retire from running the Inn and Gallery, she is actively in negotiations to sell the site to a couple that has submitted their desire to acquire the site along with a concept redevelopment proposal. The proposal consists of providing an eight-foot street-side sidewalk, an eight to ten-foot lateral access boardwalk on the water side to connect with the adjoining lease sites north (Salt Building) and south (Kayak Horizons), enhancing the view corridor between the Inn and Kayak Horizons, maintenance of the existing slips, and additional ADA compliance on the site.

Alternative A is would accept the individual Leaseholders' proposals and direct staff to begin negotiating preliminary terms and conditions of new leases, while concurrently working with them on furthering the details of their proposed projects. While this is occurring, the Leaseholders would file Applications with the City Planning Division to begin their development processes. Since the proposal on Gray's Inn entails acquisition of the lease by a new party, the normal Assignment and Assumption approval process would have to occur prior to lease negotiations and submission of the redevelopment Application by the proposed new owners.

Alternative B would put the lease sites out for individual RFPs. The existing Leaseholders could submit proposals in this alternative. Should this alternative be chosen, staff will begin work on crafting RFPs for future Council approval.

Alternative C would put the lease sites out for one RFP that would combine them under a single leaseholder redevelopment project and ownership. Again, should this alternative be chosen the existing Leaseholders could submit proposals. However, neither party has proposed to take over the redevelopment and operation of the lease of their neighbor. Should this alternative be chosen, staff will begin work on crafting an RFP for future Council approval.

Staff is recommending Alternative A since neither proposing party has proposed to take over the neighboring site, both Leaseholders are tenants in good standing with a "good history of lessee performance," and the Leaseholder of Gray's Inn is actively pursuing sale of her site after a long tenure of good tenancy.

### **CONCLUSION**

The Leaseholder on the Kayak Horizons lease site has proposed a redevelopment project for a new long-term lease, while the Leaseholder on the Gray's Inn lease site has proposed an Assignment and Assumption of the lease to be followed by a redevelopment project by the new owners for a new long-term lease. Based on the Leaseholders' proposals on their successful and well-maintained lease sites, staff recommends Alternative A as outlined.

Public Services Director Rob Livick will work with the consultant to see if we/they can accommodate future improvements in the northern end without affecting any major changes in the price. He feels there may be ways to incorporate these improvements into the planning document.

MOTION: Councilmember Smukler moved to approve Item A-10, the consultant agreement with RRM Design Group for designing, permitting and associated environmental services for the Morro Creek Multi-use Trail and Bridge project. The motion was seconded by Mayor Irons and carried 5-0.

A-11 RESOLUTION NO. 41-13 ADOPTING 2013/14 MASTER FEE SCHEDULE;  
(ADMINISTRATIVE SERVICES)

Councilmember Christine Johnson pulled this item to have Administrative Services Director Susan Slayton discuss an edit needed on Footnote 6 on page 7 – Impact Fees.

Ms. Slayton stated that the note in question was carried over from the prior Master Fee Schedule and that note should have been red-lined out based on Resolution No. 14-13 and 16-13 which rescinded the reduced impact fees. In fact she will also be removing Note 10 as well.

Councilmember Christine Johnson also asked Harbor Director Eric Endersby to discuss 2 items in the Master Fee Schedule. The first was City Moorings Monthly and why they were lower than the market rate. Mr. Endersby responded that the rate increases are tied to the CPI whereas the market rates prices are based on demand. In this case, the City is bringing up the fees incrementally over the course of years in an effort to catch up to the market rate. The second fee in question is the Master Lease Approval Fee which is a new fee. Mr. Endersby explained that this \$810 Master Lease Approval Fee has been implemented in an attempt to recoup more of the staff costs associated with a lease coming to the end of its time. This new fee is being proposed as the new process is more time consuming and costs more to implement.

MOTION: Councilmember Christine Johnson moved to approve Resolution 41-13, adopting the 2013/14 Master Fee Schedule as amended. The motion was seconded by Mayor Irons and carried unanimously 5-0.

Councilmember Nancy Johnson stated that while discussions on items are very important, the Consent Agenda is not the place for them. When there are items that need to be discussed they should be placed under Unfinished Business or as Discussion Items, it is her understanding that Consent Items are things that we can more easily approve and not require extensive dialogue.

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS

C-1 CONSIDERATION OF REDEVELOPMENT PROJECTS PROPOSED FOR LEASE SITES 62/62W (KAYAK HORIZONS – KRUEGER) AND 63-64/63W-64W (GRAY'S INN - GRAY); (HARBOR)

Harbor Director Eric Endersby presented the staff report.

Dennis Krueger, lease site holder at Kayak Horizons, stated that he has been the leaseholder since 2004, he loves what he does and would like to continue to do it. After looking at the Waterfront Master Plan, he understands what the City is trying to accomplish with their waterfront plan with the setbacks, view corridors and walkways and is prepared to do that. He also realizes a big concern for the City is that there are lots of leaseholders located in a small area and there is a need for them to work together. He has met with the Gray's Inn proposed leaseholders and he has a good picture of what can be done on his property and will work with neighboring lease sites to make it happen. He realizes that ADA will have to be dealt with. He also realizes that everyone will have to work together which should be what everybody's goal should be. His end project will look very nice as well as give the properties the privacy they need.

Proposed Lease Site holder for Gray's Inn, Tamara Gray Baston made her presentation. She and her husband Todd are very interested in purchasing Gray's Inn and continuing the lease past its 5 years. They have met with Abba Imani and Dennis regarding the mandated improvements needed in the property. Their proposal is very general because they are a bit in the dark about the specifics the City needs but are willing to put those together as they progress.

Councilmember Smukler asked them to review some of the improvements that they have proposed. Ms. Baston spoke on their proposal which includes the waterfront pedestrian walkway on the waterfront side, connecting the walkway from Abba Imani's site to Kayak Horizons, enhancing the view corridor from the street to the waterfront walkway - the view is already there in the 2<sup>nd</sup> story, the boardwalk states it's been reduced to 5 feet, they will be maintaining the slips as well as improving the ADA compliance standards of the slips, they also plan on making some ADA adjustments in at least one of the room's restrooms. It is their intent to negotiate a long term lease, initially taking over Josie's last 5 years and then would like to see an extension of at least 15-20 years.

Councilmember Leage ensured that there was appropriate parking for the project to which Ms. Baston stated there were 3 parking spots on site as well as 3 City parking spaces.

Councilmember Christine Johnson spoke on the reduction on Item E – Boardwalk reduction to 5 feet. The architect for the proposal, Gene Doughty, stated that the 5 foot on the Boardwalk is on the site to the north by Abba's. They are proposing a minimum of 8 foot and probably 10 feet in the remaining area. He also stated that the structure is only 20 years old and doesn't feel there is any need to knock it down and reconstruct it.

Mayor Irons opened up public comment for Item C-1.

Keith Swanson, son-in-law of the current Gray's Inn owner thanked staff for their patience with this process and appreciates the fact that the City has worked with them getting this back in line. Gray's Inn has a great reputation in this community and is hopeful that that can continue. He feels confident with the new leaseholders that they have a dedication just like Bob and Josie did.

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

Mayor Irons established that the first course of business was to determine whether or not these sites should be looked at as separate sites or to combine them and go out for an RFP.

Councilmember Nancy Johnson feels that an RFP should be sent out with the option for combining the sites. We have a highly underutilized piece of property in the heart of the Embarcadero.

Councilmember Smukler is not in favor of combining sites. He feels they are both unique sites and we have current proposals for both and each proposal satisfies the City commitments such as the harborwalk. Both sites are in good condition. He is not interested in pursuing an RFP for combination.

Councilmember Leage wants to give the people the chance with each proposal. Both Kayak Horizons as well as Gray's Inn should each have the right to bring us a plan and he likes the potential of the small unique lease sites. Gray's Inn has a long history of people coming for years. He's definitely for keeping them separate.

Councilmember Christine Johnson agrees with keeping the lease sites separate. We have 2 unique sites and she is in favor of keeping them that way. She is impressed with the vision of the two applicants and the time they took to research what the City is hoping to do with the Waterfront Master Plan.

Mayor Irons agrees that it's important to keep the lease sites separate for many of the reasons already stated. We have 2 sound sites.

The majority of Council would like to see the lease sites looked at separately. The Council then began to discuss the Kayak Horizon site.

Councilmember Leage is very much against sending this out for RFP, he'd rather see a proposal brought forward and give the people a chance to do the things being proposed.

Councilmember Christine Johnson is in agreement and is also impressed with the thoughtful proposal. Mr. Krueger has been very proactive in meeting with neighbors, especially those under construction right now to get estimates on what things will be costing; he seems to be a very motivated lease holder.

Councilmember Nancy Johnson stated that of the 2 proposals, she feels that the Kayak Horizon proposal is better. She stated he needs to do something about the 2<sup>nd</sup> floor and ensure it is used for permitted visitor serving uses.

Councilmember Smukler agrees with all comments made so far. He has spoken with Mr. Krueger about the use of the 2<sup>nd</sup> floor and it is his expectation that the final proposal will have a visitor serving use. He too feels that a strong component is Mr. Krueger's proactive work with his neighbors.

Mayor Irons has concerns about being able to maximize the use of the property, especially the 2<sup>nd</sup> floor. He also stated there are 2 parking spaces that are not necessarily being utilized and

wondered if they could become some kind of public benefit. As the majority of Council is in favor of moving forward and not sending this out for RFP, he would like to send the message that through the negotiation process, we see something that maximizes this lease site's 2<sup>nd</sup> floor and /or parking spaces.

Councilmember Leage stated that the Embarcadero has always had a real problem with requiring visitor serving on the 2<sup>nd</sup> floor as not many have worked.

Both Councilmembers Smukler and Nancy Johnson feel we need to remain strong on keeping a visitor serving business on the 2<sup>nd</sup> floor.

MOTION: Councilmember Smukler moved to accept the preliminary lease holder proposal for lease site 62-62W, Kayak Horizons and direct staff and Mr. Krueger to work towards an in-depth proposal and bring back for concept plan approval at the Planning Commission level and then for City Council approval. The motion was seconded by Councilmember Leage and carried unanimously 5-0.

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Discussions regarding Gray's Inn began regarding negotiating with the proposal they have of going out for RFP.

Councilmember Nancy Johnson didn't feel that the proposal was acceptable as the amount of work being proposed didn't equate to an additional 15-20 years on a lease site.

Councilmember Smukler felt that the basic foundation of the proposal was good. They are looking to satisfy all the standards we have for improvements on the boardwalk side as well as the harborwalk side in addition to the viewshed. He doesn't feel the site would be compatible to a large expansion of rooms. He is willing to move forward with this proposal; if there was a failure in the details, it can be brought back and sent out for RFP if necessary.

Councilmember Leage agrees with Councilmember Smukler completely. He would like to move on with this and let these people come back with ideas they have. The lease site isn't that large, if they make improvements, they will be able to demand more in rents which will bring up the City's revenues.

Councilmember Christine Johnson echoed many of Councilmember Leage's sentiments. Gray's Inn is almost always full. She wants to recognize the Bastons are wading into new waters and that isn't a simple process. Considering that, if you look at the aspects of their proposal, it hits the bullets that we have required. She also believes that they will find more improvements that need to be done as they dig further. She is comfortable in moving forward as this is still the initial phase; we can still come back and issue an RFP at that point. She is very impressed with their proactive outreach to the neighbors.

Mayor Irons feels that this is a very general proposal. He instinctively wondered why we are considering a lease purchase when the current leaseholder doesn't want to continue on; we should probably go to RFP and see what else is out there. He feels it's the Council's duty to take care of the fiduciary responsibility of the lease site. He realizes where the Council majority lies; he is pleased with the overall proposal as it does address all the key points and he likes the

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November 15, 2013

To: Members of the Morro Bay City Council and the Morro Bay Harbor Office.

My wife and I are the leaseholders of Site 62, 62W. We took over the existing lease in 2004 and have been running Kayak Horizons from this location since.

The existing lease runs until September 30, 2018. We've had several meetings with Harbor staff to discuss what improvements would be necessary to the property in order to negotiate a new lease with the city. We've also gone before the City Council to express an interest in submitting a proposal with the improvements they'd require.

My wife and I have spent a lot of time discussing the merits of seeking a new lease and the expense involved. The main part of our discussions has focused on the fact that we'll both be in our mid/late sixties when the current lease expires and whether it's wise to be committing ourselves to the expense and hassle it would take to satisfy the city to get a new lease with longer terms.

What's been clouding my judgment is the fact that I truly love being down here on the Bay and dealing with the people I do through my business. It has been a blessing for me to be able to experience this. I think I'm in denial about getting older. But, the truth is I probably will be lucky to do, physically, what I'm doing now until the end of the current lease period.

We've decided to not pursue a new lease agreement with the city. We will continue to try to be the best leaseholders we can. We plan to run our business and keep the current improvements in good condition until the end of the current lease.

I'd like to apologize for the way this has progressed. I've probably been the most wishy-washy individual you've dealt with concerning the lease sites. It hasn't been my intention to waste anyone's time but I'm afraid I have. It's taken me a long time to come to this decision and will be very sorry when we reach the end of the lease.

I'd like to thank Lori and Eric at the Harbor Dept. for all the time they've spent on this. They've both been very helpful. I feel they have given straight answers to my questions, while keeping the best interests of the City in mind.

I'd also like to thank the members of the City Council. It's been very impressive to see how prepared you are for the meetings and how seriously you take your responsibilities as Council members.

Dennis and Deborah Krueger

Lease Site 62,62W  
551 Embarcadero  
Morro Bay, CA 93442  
805-772-6444

**Lori Stilts - Lease site 62,62w Dec. 29**

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**From:** Dennis Krueger <kayakhorizons@sbcglobal.net>  
**To:** "Lori Stilts (Harbor Office)" <lstilts@morro-bay.ca.us>  
**Date:** 12/29/2014 12:15 PM  
**Subject:** Lease site 62,62w Dec. 29

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Hello Lori,

It looks like we have worked out an agreement with Todd and Tamara Baston to purchase our lease position 62,62w. We still have a few details to work out but am confident we can get it done and have a transfer proposal ready for the next City Council meeting.

Thank you for your patience in this matter. I will do all I can to make sure we satisfy the Harbor and City.

Dennis Krueger  
Lease site 62,62w  
805-772-6444



January 5, 2015

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

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

Request consideration of lease purchase and renewal for Lease Site 62/62W based on purchase of remaining lease held by present lease holder, Dennis Krueger and Kayak Horizons, along with the redevelopment of the site according to city recommendations.

### Site Development Plan

#### Enhance viewing corridor

- Remove storage shed south end of site

#### Street side pedestrian walkway

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

#### Waterfront walkway

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

#### Facility Improvements

- Renovate existing building to provide:

- Additional motel units
  - Provide complete ADA access to street level unit
  - Add ADA parking to east side of site
  - Install restroom facility for Kayak Horizon patrons

- Continue the distinctive visual quality of the structure

- Maintain the historical and cultural identity of the Embarcadero
  - Preserve the character of a working fishing community

#### Kayak Horizons

- Relocate existing Kayak Horizons to the dock
- Extend existing dock to accommodate use

#### Improvements needed within 10 years

- Dock decking replacement

#### Improvements needed within 15 to 20 years

- Possible gangway replacement
- Possible piling repairs for dock

#### Maintenance program

- Provide a regular maintenance program retaining the city cleanliness standards
- Relocate trash containers out of public site
- Participate in the cleaning of facilities in the vicinity of the business



Lease Site  
62/62W

MOTION: Mayor Irons moved to approve Resolution 03-15 denying the appeal. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

Ayes: Irons, Heading, Johnson, Makowetski, Smukler

No's: None

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 WATER RECLAMATION FACILITY (WRF) PROJECT UPDATE; INCLUDING REVIEW OF PROPOSED NEXT STEPS; (PUBLIC SERVICES)

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

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

Roger Ewing spoke to lend his support to dissolve the JPA. He feels so much time and money has been wasted when there is no benefit to Morro Bay. He suggests Cayucos should be the customer. The cost may be high but that's the price we pay for our future.

Barry Branin stated the comments tonight had been excellent, he had one word and that is "water".

Bob Keller spoke reaffirming Roger's comments. Morro Bay should go our way.

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

Council discussed the importance of continuing to move the project forward and authorized staff to continue moving forward with fatal flaws studies. A decision regarding the relationship with Cayucos should be made as soon as possible.

No action was taken on this item.

C-2 DISCUSSION AND DIRECTION ON EXPIRING LEASE AT LEASE SITE 62/62W (KRUEGER/KAYAK HORIZONS); (HARBOR)

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

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

Todd and Tamara Baston spoke regarding their plans for Lease Site 62/62W, which will include adding two hotel rooms and an 8' water side walkway. Kayak Horizons will continue operating his business on the water site. They intend to keep the character of the two buildings.

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

Council discussed support of Alternative C presented in the staff report, eliminating the second floor office space, keeping Kayak Horizons and adding two rooms.

MOTION: Councilmember Johnson moved the City Council approve Alternative C as presented in the staff report. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

Ayes: Irons, Headding, Johnson, Makowetski, Smukler  
No's: None

C-3 REVIEW OF REQUIREMENTS FOR THE SALE AND ULTIMATE DEVELOPMENT OF CITY-OWNED VACANT LOT ON THE CORNER OF CORAL AVENUE AND SAN JACINTO STREET (CLOISTERS LOT); INCLUDING LOCAL COASTAL PLAN AMENDMENT, MODIFICATION OF THE COASTAL COMMISSION ISSUED COASTAL DEVELOPMENT PERMIT AND POTENTIAL REPROCESSING OF A SUBDIVISION MAP; (PUBLIC SERVICES)

Director Livick presented the staff report. City Manager Buckingham presented an alternative for Council consideration to dispose of the property, as is, at the best possible price.

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

Mayor Irons declared an ex parte communication with Frankie Ciano, the realtor previously selected through the RFP process to assist with the sale of the Cloisters lot. Mr. Ciano has shared the previous potential buyer is still interested in the property, as is. Since Frankie Ciano was previously selected through the RFP process, Council expressed a preference to use Mr. Ciano should the property be listed again.

MOTION: Councilmember Headding moved to divest the property in its current state, as profitable as possible. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

Ayes: Irons, Headding, Johnson, Makowetski, Smukler  
No's: None

C-4 ADOPTION OF ORDINANCE NO. 591 AMENDING SECTION 3.40.060 OF THE MORRO BAY MUNICIPAL CODE REGARDING THE CITY'S RECOVERY OF COSTS RELATING TO DRIVING, BOATING OR FLYING INCIDENTS WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL; (CITY ATTORNEY)

City Attorney Pannone presented the staff report and read Ordinance 591 by title only.

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

MOTION: Mayor Irons moved to adopt Ordinance No. 591 amending Section 3.40.060 of the Morro Bay Municipal Code after reading title only, waiving further reading.



AGENDA NO: D-1

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** David Buckingham, City Manager

**DATE:** October 21, 2015

**SUBJECT:** Status Update on the memorandum of Understanding for potential purchase of the Rancho Colina property as the City's preferred Water Reclamation Facility Site

### RECOMMENDATION

Receive and File.

### ALTERNATIVES

1. Provide staff specific direction on this subject.

### FISCAL IMPACT

There is no direct fiscal impact associated with receiving this update. Completing a Memorandum of Understanding (MOU) addressing the potential purchase of the Rancho Colina site is critical prior to commencing much of the significant projected spending in the planning phase (including facility master planning and environmental review) that is specific to the new Water Reclamation Facility (WRF) site.

### BACKGROUND

In January 2015 the City, with the Cayucos Sanitary District (CSD), identified the Rancho Colina property as the preferred site for the new WRF and the City began multiple efforts toward that end. Those efforts included working with CSD on an MOU and an acceptable governance structure, contracting for consultant work on four distinct "fatal flaws" analyses, preparing to bring on consultants for Program Management, Facility Master Planning, and Environmental Review. Pursuing an MOU with the owner of the Rancho Colina property was a supporting effort. Significant energy from January to April was devoted to reestablishing an appropriate relationship with the CSD in order to be able to jointly execute the multiple MOUs and contracts required to move forward, including an MOU with the property owner.

On April 30<sup>th</sup> CSD formally abandoned the project and efforts toward establishing a working framework with the City of Morro Bay at a common site.

On May 13, 2015 the Morro Bay City council passed a resolution stating that the City of Morro

Prepared By:   DWB  

Dept Review:   DWB  

City Manager Review:   DWB  

City Attorney Review:   JWF

Bay would build a WRF facility that:

- Is owned and operated by the City of Morro Bay
- Is master-planned to be phaseable and scalable, providing an opportunity for neighbors to “opt in” as future customers of a regional facility.

In addition, the Council’s resolution committed to a process that addressed the following issues:

- Rates will include all Morro Bay development costs from January 2013.
- Staff to release RFPs for Program Management and Environmental Review.
- WRFCAC sub-committee to make recommendations on FMP proposals.
- Commit to thorough review of all appropriate treatment technologies.
- Commit to decommission existing WWTP as soon as possible.

Since that time, the City (Council, Staff and WRFCAC) have made significant progress on the new WRF, as summarized below:

- The fatal flaws analyses on the original / preferred Rancho Colina site are essentially complete with no fatal flaws identified.
- The Program Management Consultant has been retained and is working on the project.
- The Facility Master Planning Consultant has been retained and is working on the project. Almost all FMP work to date has been site non-specific, essential technical analysis that will be needed for any Morro Bay WRF.
- The Environmental Consultant has been selected and a contract has been approved by council. The Environmental team is ready to begin work when that contract is executed by City staff. Staff does not intend to execute that contract until we have significantly increased confidence in site selection.
- Public Outreach is ongoing and essential to any site.

Throughout the spring and summer of 2015, staff has been working with the property owner to craft an MOU for the potential purchase of the needed portion of the Rancho Colina property that was acceptable to both the property owner and the City. At the encouragement of Council and on additional legal review, staff rewrote the MOU in August that, if executed, would provide for a firm commitment from the property owner to sell the necessary property to the City, while providing the City the ability to choose not to purchase the property should the environmental review process result in the City Council making the determination the Rancho Colina property is not an environmentally suitable site for construction of a new WRF.

The draft MOU was received by the property owner on October 14 and is being reviewed.

The draft MOU requires the addition of a site plan and legal description of the property. An appraisal is also required before the MOU can be executed.

## **DISCUSSION**

On October 13, 2015, the property owner identified a number of concerns regarding site planning for the WRF. Since then, City representatives have had three in-depth discussions with the property owner (and his family in two of those meetings). On Oct 21, 2015, the City Council held a closed session meeting to consider property negotiation for the preferred Rancho Colina WRF site.

Staff continues to work closely with the property owner to craft an MOU, and a specific-enough site plan for the Rancho Colina site, acceptable to all parties.

Staff is hopeful we will reach consensus that will result in an MOU containing a firm commitment to sell, should the the City Council determine that the Rancho Colina site is appropriate for a new WRF based on its review of the Environmental Impact Report (EIR) to be prepared for the project.

To date, almost all the work done by both the Program Management team and the Facility Master planning consultant have been non-site specific. That is, the work has been background work essential for a new Morro Bay WRF at any location, particularly within the Morro Valley.

We are, however, nearing the point that much of the effort must be focused on a single site. To ensure we are not wasting money on a site that may not be available, staff intends to slow down the Master Planning effort specific to the Rancho Colina site until we have increased confidence the City will have the ability to purchase sufficient and appropriate property at that site, should the City Council determine this is the appropriate site for the WRF after completing all legally required environmental reviews.

Staff also intends to begin preliminary planning for an optional site (or sites) as part of its due diligence related to analyzed alternative locations as part of the required CEQA analysis. This investigation has the secondary benefit of providing the City Council an optional location for the WRF in case we cannot reach consensus with the property owner of the preferred Rancho Colina site. This is simply a prudent step to keep options open as the project moves forward. As noted above, staff is hopeful we will reach consensus that will result in an MOU for the Rancho Colina site.

## **CONCLUSION**

Staff, with Council direction, is negotiating with the Rancho Colina property owner and hopes to reach a consensus that will result in a strong MOU that addresses City Council goals and is fair to both sides. However, until a strong MOU is executed, staff intends to proceed on two concurrent paths – continue evaluating and negotiating for the Rancho Colina site while conducting preliminary planning for an alternative site.



AGENDA NO: D-2

MEETING DATE: October 27, 2015

## Staff Report

**TO: Honorable Mayor and City Council**

**DATE: October 19, 2015**

**FROM: Scot Graham, Community Development Manager**

**SUBJECT: Consideration of a Fee Refund Request, in the amount of \$3,298.00, for a Residential Remodel/Addition located at 938 Anchor (Sherrod).**

### **RECOMMENDATION**

Staff recommends denial of the refund request.

### **ALTERNATIVES**

1. Grant the refund request in the amount of \$3,298.00.
2. Grant a refund in some other amount agreed to by Council.
3. Continue item with direction to staff.

### **FISCAL IMPACT**

None, if Staff's recommendation is followed. If the refund is granted, then the City will be refunding \$3,298.00.

### **BACKGROUND/DISCUSSION**

#### ***2014 Approvals***

On August 19, 2014, the Planning Commission adopted Resolution 18-14 approving a variance to allow a rear yard setback of 7.56-feet where 10 feet is otherwise required in the R-1 zone (see Attachment 2 for PC Resolution 18-14). The variance was requested to allow the second-floor addition to have the same rear setback as that of the existing lower floor. The house was built in 1961, prior to City incorporation, with a rear setback of 7.56 feet. In 1984, the City of Morro Bay changed the minimum rear-setback requirement in the Single-Family Residential (R-1) zone from 5 feet to 10% of the average lot depth with a 10-foot maximum and a 6-foot minimum. The project site is on a lot with a depth of 100 feet; therefore, the required rear setback is 10 feet.

Following the variance approval, the applicant submitted and received approval of Conditional Use Permit (CUP) UPO-388 on October 7, 2014, allowing for construction of a second-story addition of 614 square feet, plus a 130 square-foot second-story deck and a 271 square-foot roof deck. The project also added 62 square feet on the first floor to enable stairs to the second floor and roof deck. The CUP was

01181.0001/271958.1

Prepared By: SG

Dept Review: SG

City Manager Review: DWB

City Attorney Review: JWP



necessary because the existing front-yard setback of the home was nonconforming at 19.42-feet where 20-feet is required (see Attachment 3 for PC Resolution No. 23-14).

### ***2008 Approval***

The applicants received a ready-to-issue building permit notice in August 2008 for plans substantially similar to the ones currently submitted (previous plans did not include a roof deck). The plans were approved by the then Planning Manager. It is not clear from the record what the rationale was for the approval. From the record it appears the Planning Manager found the project to be in compliance with all applicable R-1 standards and as such no Conditional Use Permit, Variance or other planning permit was required. (In 2005, the same person, then an associate planner, wrote a staff report for a project at 918 Mesa Street with the same lot size and zoning as 938 Anchor Street and listed the required rear setback as 10 feet.)

The applicant ultimately did not choose to move forward with the 2008 project and subsequently allowed the building permit application to expire in September 2010. In January 2014, the applicants re-applied for a building permit resulting in staff analyzing the project and finding that it required both a Variance and Conditional Use Permit to address the request for a reduced rear setback for the second-floor addition and to address overall additions to a non-conforming structure.

### **Request for a Refund**

The applicant has provided an explanation letter outlining the reasons behind the refund request (see Attachment 1 for the letter). The following information is broken down based on each point raised in the letter followed by a staff response.

#### **Applicant Point 1. Project was originally found to be conforming**

*Julie and I respectfully request reimbursement of the \$3,298.00 in Variance and CUP fees we paid to permit our home addition project as a result of the City's inconsistent interpretation of its own R-1 setback standard. Specifically, in 2008 the City's Planning Director and his staff deemed our project to be in full conformance with the R-1 setback standard, and then in 2013, current City Planning staff deemed our project non-conforming when neither the project's footprint nor the R-1 setback standard language changed.*

*To gain a better understanding of our situation and reason for our reimbursement request, we present the following detailed sequence of events.*

*In 2008 we decided to add about 600sf of new living space to accommodate our growing family. We convened a pre-application meeting with the Planning Director to review the surveyed map of our existing house and lot, and our plans for adding on to our existing home. At the conclusion of that pre-application meeting, the Planning Director informed us we had a conforming project which would not require a variance or CUP. So, we went forward, the City approved our project and issued us Permit-Ready status in 2009.*

#### **Staff Response to Point 1.**

The applicant appears to be correct, in so far as the City did not require planning permits for the proposed addition in 2008. It is unclear why staff made the determination to allow the applicant to apply directly to the Building Division for permits. The Planning Manager at the time, had previously reviewed similar projects in the same zone and found the required rear setback was 10-feet. The earlier 2008 decision also appeared to ignore the nonconforming front setback of the home as well. Once again, the existing rear setback is 7.56-feet where 10-feet is required and the existing front setback is

19.42-feet where 20-feet is required. Any addition proposing to utilize the existing rear setback would require a variance. Also, the nonconforming front setback should have triggered a requirement for a Conditional Use Permit. Additions exceeding 25% of floor area to nonconforming structures trigger the CUP requirement, specifically because findings are necessary to allow for the addition. The required findings are as follows:

1. The enlargement, expansion, or alteration is in conformance with all applicable provisions of the Zoning Ordinance.
2. The project meets applicable Title 14 (Building and Construction Code) requirements for a conforming use.
3. The project is suitable for conforming uses and will not impair the character of the zone in which it exists.
4. The project is suitable for conforming uses and will not impair the character of the zone in which it exists.

### **Applicant Point 2. City changed their interpretation**

Timing for construction could not have been worse. 2009 heralded in the Great Recession and we had to put our project on hold. When we came back with the same project in 2013, current City Planning staff changed their interpretation of their own R-1 setback standard, stating we now own a set of non-conforming project plans. With no budget left to start over and redesign, the only option to not lose our investment at this late stage in the building permit process was to spend another \$3,298.00 and take a gamble on a variance and CUP approval from the Planning Commission.

#### **Staff Response to Point 2.**

Once again, the record is unclear as to why the previous decisions on the project were made. Earlier staff may have interpreted the rear setback differently or they may have simply made a mistake. Rear setbacks in other areas of Morro Bay can be 5-feet, so it is possible the rear setback for the subject area of the City was misinterpreted. Ultimately, it makes no difference, because when the current application was submitted, City staff applied the correct standards. Mistakes in the past, no matter what the cause, should never be utilized to justify making the same mistakes in the future.

A secondary issue associated with Point 2 is the fact the applicant had received approval of a building permit in 2008. They could have built the addition then, but chose not to. That decision had nothing to do with the City. By not moving forward with the original approvals and allowing those to expire, the applicant took the risk a future submittal might not be approved. Interpretations and policies do change over time. There was no guarantee the project would be approved a second time, simply because it was approved previously.

### **Applicant Point 3. The PC agrees with inconsistent interpretation**

Fortunately, at the August 5, 2014 Planning Commission meeting, the Commissioners agreed the City inconsistently interpreted its own R-1 setback standard to our detriment, and granted the variance and subsequent CUP (approved October 7, 2014). The Commissioners also directed the new Community Development Manager to issue a memo clarifying the R-1 setback language to eliminate the potential for staff to make alternate interpretations in the future.

### **Staff Response to Point 3.**

The record shows the Planning Commission did make an assumption the most likely reason for the previous 2008 approval was the fact the rear setback interpretation had changed. In reality, we simply don't know whether the interpretation changed or whether the earlier approval was just a mistake. That fact is bolstered by the point the Planning Manager had previously reviewed a project in 2005, on similarly zoned property, and required a 10-foot rear setback. In any case, the Planning Commission did approve the variance and they did direct staff to return with an interpretation memo for their approval related to establishing the rear-setback requirement in the R-1 Zone. The R-1 setback interpretation Resolution is provided in Attachment 5. The Minutes from the August 5, 2015 PC meeting are provided in Attachment 4.

### **Applicant Point 4. City Changing Interpretations**

We were unluckily caught in this awkward transition period when previous Planning staff interpreted the R-1 standard one way, and new Planning staff interpreted it another way. All along, our project and the R-1 setback language remained constant, with the only variable being the City's shifting interpretation of its own R-1 setback standard.

We know this situation is messy, however, the City's inability to consistently maintain its interpretation of its own standard cost our family a significant amount of money, and we would simply like the City to refund the fee we ultimately paid to cover the cost of the City's own error. Given the unique set of facts surrounding our case, we believe this is a fair and reasonable request.

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### **Staff Response to point 4. See staff response to point 2 above.**

Regardless of the reason, the City did recognize the earlier approval was carried out in error. The City corrected that error when the project was submitted a second time, as it should. Previous mistakes, or error in processing cannot and should not be used as substantiation for continuing to make those same mistakes. City staff recognized the earlier error and provided a path forward that allowed the project to be approved in a manner consistent with current codes. The path or process the project was required to follow when resubmitted did include fees for the Conditional Use Permit, Variance, and Noticing. Had the applicant not submitted applications for those permits, the project would not have been approved.

Both because of the earlier error in approval, and because of the complexity of the project nonconformities, the subsequent application required a significant amount of staff time, greatly exceeding the \$3,298.00 paid for the permit. The cost of staff time on this application, is more than double the fees paid.

### **CONCLUSION**

Staff does agree it is unfortunate that earlier error in approval occurred, but staff does not support the refund request.

The applicant did receive approval of a building permit for their project back in 2008. To no fault of the City, the applicant chose not to move forward with the project at that time.

The applicant subsequently resubmitted the project in 2014, and City staff recognized the earlier error in processing and identified a path forward for the applicant. The applicant had choices at that time to either revise the plans, or move forward with the plans as proposed. They chose to move the proposal

forward as is and those plans triggered the need for both a Variance and Conditional Use Permit. The applicant subsequently received approval of both the Variance and CUP, thereby receiving full value for the fees paid. Additionally, the complexity of the project in combination with the refund request has necessitated staff spending a significant amount of time processing the application, beyond what would normally be expected of a project of this type. The additional staff time spent on this project has resulted in overall project costs that easily double the fees paid for the application.

**Attachment(s)**

1. Applicant justification letter
2. PC Resolution 18-14 (Variance)
3. PC Resolution 23-14 (CUP)
4. PC August 5, 2014 Minutes
5. PC Resolution 20-14 (Rear Setback Interpretation)

September 3, 2015

ATTACHMENT 1

Scot Graham  
Community Development Manager  
City of Morro Bay  
955 Shasta Ave, Morro Bay, CA 93442

RE: 938 Anchor Street Variance (AD0-091) and Conditional Use Permit (UP0-388) Fee Reimbursement

Dear Scot,

Julie and I respectfully request reimbursement of the \$3,298.00 in Variance and CUP fees we paid to permit our home addition project as a result of the City's inconsistent interpretation of its own R-I setback standard. Specifically, in 2008 the City's Planning Director and his staff deemed our project to be in full conformance with the R-I setback standard, and then in 2013, current City Planning staff deemed our project non-conforming when neither the project's footprint nor the R-I setback standard language changed.

*To gain a better understanding of our situation and reason for our reimbursement request, we present the following detailed sequence of events.*

In 2008 we decided to add about 600sf of new living space to accommodate our growing family. We convened a pre-application meeting with the Planning Director to review the surveyed map of our existing house and lot, and our plans for adding on to our existing home. At the conclusion of that pre-application meeting, the Planning Director informed us we had a conforming project which would not require a variance or CUP. So, we went forward, the City approved our project and issued us Permit-Ready status in 2009.

Timing for construction could not have been worse. 2009 heralded in the Great Recession and we had to put our project on hold. When we came back with the same project in 2013, current City Planning staff changed their interpretation of their own R-I setback standard, stating we now own a set of non-conforming project plans. With no budget left to start over and redesign, the only option to not lose our investment at this late stage in the building permit process was to spend another \$3,298.00 and take a gamble on a variance and CUP approval from the Planning Commission.

Fortunately, at the August 5, 2014 Planning Commission meeting, the Commissioners agreed the City inconsistently interpreted its own R-I setback standard to our detriment, and granted the variance and subsequent CUP (approved October 7, 2014). The Commissioners also directed the new Community Development Manager to issue a memo clarifying the R-I setback language to eliminate the potential for staff to make alternate interpretations in the future.

We were unluckily caught in this awkward transition period when previous Planning staff interpreted the R-I standard one way, and new Planning staff interpreted it another way. All along, our project and the R-1 setback language remained constant, with the only variable being the City's shifting interpretation of its own R-I setback standard.

We know this situation is messy, however, the City's inability to consistently maintain its interpretation of its own standard cost our family a significant amount of money, and we would simply like the City to refund the fee we ultimately paid to cover the cost of the City's own error. Given the unique set of facts surrounding our case, we believe this is a fair and reasonable request.

Thank you for your consideration of this matter and please feel free to call us at 748-8572 if you would like to discuss any of the details ahead of the upcoming City Council meeting.

Respectfully,



Mike and Julie Sherrod

Cc: Jamie Irons, Mayor  
Christine Johnson, Council Member  
John Heading, Council Member  
Matt Makowetski, Council Member  
Noah Smukler, Council Member

## RESOLUTION NO. PC 18-14

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION TO APPROVE VARIANCE (AD0-091), FOR CONSTRUCTION OF A SECOND-STORY ADDITION WITH A REAR SETBACK OF 7.56 FEET WHERE 10 FEET IS REQUIRED AT 938 ANCHOR STREET.

**WHEREAS**, the Planning Commission of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on August 5, 2014, for the purpose of considering an application for a rear-yard setback variance from 10 feet to 7.56 feet for a second-story addition to an existing nonconforming structure ; and

**WHEREAS**, notices of said public hearing were made 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)**

- A. The variance has been found to be categorically exempt from CEQA pursuant to Section 15305, Class 5. Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to: minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel.

**Findings for Approval**

1. Granting of the variance to allow a 7.56-foot rear setback where the Zoning Ordinance would otherwise require a 10-foot rear setback will not be detrimental to the public safety, health and welfare. The project is subject to compliance with all applicable Building and Fire Code requirements.
2. Granting of the variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is situated because, in this specific case, a nearly identical project was approved by the City for building permit issuance in 2008.

3. Due to special conditions or exceptional characteristics of the property, or its location and surroundings, the strict application of this title would result in practical difficulties and unnecessary hardship because compliance with the full 10-foot rear setback will require extensive re-engineering and redesign of a project which is nearly identical to the project approved by the City for building permit issuance in 2008.
4. The variance request is consistent with the intent of the Coastal Land Use Plan and the General Plan because the resulting project would be consistent and compatible with the pattern of development in the surrounding neighborhood.
5. Approval of the variance allows the second-story addition to be located at the rear of the existing house and thereby reduce visual impacts to the neighborhood streetscape.

**Section 2: Action.** The Planning Commission does hereby approve Variance AD0-091 to specifically allow a rear setback of 7.56 feet for a 614 square-foot, second-story addition, a 130 square-foot second-story deck, and a 271 square-foot roof deck addition to the rear portion of an existing nonconforming structure at 938 Anchor Street in the R-1 zone, where a 10-foot setback would otherwise be required by Zoning Ordinance Section 17.24.040.

**Conditions of Approval:**

1. This variance (AD0-091) is granted for the land described in the staff report dated August 5, 2014, for the project at 938 Anchor Street depicted on plans dated January 16, 2014, on file with the Public Services Department, showing a 614 square-foot second-story addition with a balcony and roof deck over the rear of the existing house with a rear-yard setback of 7.56 feet where a 10-foot setback is otherwise required. Site development shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction 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.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined, by the Director, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Building Permit: Prior to construction, the applicant shall submit a complete Building Permit Application and obtain the required Permit.
5. Future Additions: Any future applications for second-story additions to the existing house at 938 Anchor Street shall require review and approval by the Planning Commission.

Planning Commission Resolution 18-14  
AD0-019  
938 Anchor Street  
Page 2

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 19th day of August, 2014 on the following vote:

AYES: Tefft, Luhr, Lucas, Sadowski  
NOES: none  
ABSENT: Fennacy  
ABSTAIN: none



Chairperson

ATTEST

  
Rob Livick, Planning Secretary

The foregoing resolution was passed and adopted this 19th day of August 2014.



## RESOLUTION NO. PC 23-14

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION  
 APPROVING CONDITIONAL USE PERMIT (UP0-388) TO ALLOW ADDITIONS  
 EXCEEDING 25% OF THE EXISITING FLOOR AREA TO A NONCONFORMING  
 RESIDENTIAL STRUCTURE AT 938 ANCHOR 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 October 7, 2014, for the purpose of considering Conditional Use Permit UPO-388 for a proposed addition to a single-family home with a nonconforming front setback of 19.42 feet where 20 feet is required at 938 Anchor 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; and

**WHEREAS**, the Planning Commission approved Variance AD0-091 on August 5, 2014, to allow a rear setback of 7.56 feet, where 10 feet would otherwise be required, for construction of a second-story addition at 938 Anchor Street.

**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 Planning Commission makes the following findings:

**California Environmental Quality Act (CEQA) Finding**

1. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15301, Class 1 for additions to an existing structure not exceeding 50% of the existing floor area.

**Conditional Use Permit Findings**

1. The project is consistent with the General Plan and Coastal Land Use Plan which establish five residential land use categories to provide for a wide range of densities and to ensure that residential land is developed to a density suitable to its location and physical characteristics.
2. The proposed additions are in conformance with all applicable provisions of the Morro Bay City Zoning Ordinance (the “Zoning Ordinance”), including building height, setbacks, and lot coverage.

3. The project meets applicable Title 14 (Building and Construction Code) requirements for a conforming use since the applicant is required to submit a complete building permit application and obtain the required building permit prior to construction.
4. The project is suitable for conforming uses and will not impair the character of the zone in which it exists because it proposes additions to a single-family dwelling, which is an allowed use in the R-1 zone and the surrounding neighborhood is developed with one- and two-story custom homes.
5. It is not feasible to make the structure conforming without major reconstruction of the existing structure. Major reconstruction would be necessary to meet required front setback. The front of the house will not be affected by the proposed addition to the rear of the structure. Furthermore, requiring reconstruction of the front of the home to increase the setback by less than one foot is not reasonable.

**Section 2. Action.** The Planning Commission does hereby approve Conditional Use Permit UPO-388 for property located at 938 Anchor Street subject to the following conditions:

### **STANDARD CONDITIONS**

1. Description of Project Approved: This permit is granted for the land described in the staff report dated October 7, 2014, for the project at 938 Anchor Street depicted on plans dated January 16, 2014, on file with the Public Services Department, showing a second-story addition of 614 square feet plus a 130 square-foot second-story deck and a 271 square-foot roof deck to the rear of an existing 1,898 square-foot single-family dwelling as modified by these conditions of approval. The project also includes an addition of 62 square feet on the first floor to enable stairs to the second floor and roof deck. 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 is commenced not later than two 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 additional year each. Any extension may be granted by the City's Public Services Director (the "Director"), 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 or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined, by the Director, 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 and a Certificate of Occupancy, as may be required. 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.

### **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 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 Public Services 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: Prior to issuance of a grading permit, a method of control to prevent dust and wind blown earth problems shall be submitted for review and approval by the Building Official.
4. Future Additions: Any future applications for second-story additions to the existing house at 938 Anchor Street shall require review and approval by the Planning Commission.
5. Wet Bar: MBMC section 17.48.325 prohibits wetbars unless a deed restriction is recorded to run with the property, restricting the wet bar from being converted into a sink for a residential unit. Plans submitted for a building permit shall be revised to delete the wet bar or a deed restriction shall be recorded prior to issuance of a Building Permit.
4. Conditions of Approval: 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.

#### **PUBLIC WORKS CONDITIONS**

1. Conduct a video inspection of the conditions of existing sewer lateral. Submit video to City collection system personnel. Construction Plans should reflect repair or replacement as required to prohibit inflow/infiltration.
2. Repair/replace the asphalt berm and driveway approach to meet the City's standards.

Add the following Notes to the Plans:

3. No work within nor any use of any public rights of way shall occur without an encroachment permit. Encroachment permits are available at the City's Public

Services Office located at 955 Shasta Ave. The Encroachment permit shall be issued concurrently with the building permit.

4. Any damage to any of the City's facilities (such as curb/berm, street, sewer line, water line, or any public improvements) resulting, directly or indirectly from construction operations related to this project shall be repaired at no cost to the City.

**BUILDING CONDITIONS**

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

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 7th day of OCTOBER, 2014 upon motion of Commissioner Luhr and seconded by Commissioner Lucas on the following vote:

AYES: R. Tefft, G. Luhr, M. Lucas, and R. Sadowski

NOES: None

ABSENT: None

ABSTAIN: None

  
Chairperson Robert Tefft

ATTEST

  
Rob Livick, Planning Secretary

The foregoing resolution was passed and adopted this 7th day of OCTOBER, 2014.



SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
 REGULAR MEETING –AUGUST 5, 2014  
 VETERAN’S MEMORIAL BUILDING – 6:00 PM

PRESENT:	Robert Tefft	Chairperson
	Gerald Luhr	Vice Chairperson
	John Fennacy	Commissioner
	Michael Lucas	Commissioner
	Richard Sadowski	Commissioner
STAFF:	Scot Graham	Planning Manager
	Cindy Jacinth	Associate Planner
	Whitney McIlvaine	Contract Planner

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

Chairperson Tefft introduced new Planning Manager Scot Graham.

Commissioner Lucas announced a workshop by SLO Green Build would be held on August 6 regarding the Title 24 changes.

PRESENTATIONS - None

PUBLIC COMMENT

Chairperson Tefft opened Public Comment period.

Robert Krause, Morro Bay resident, requested the Commission place a stay on issued citations regarding non-habitable accessory buildings until it can be reviewed and approves changes to setback regulations.

Chairperson Tefft closed Public Comment period.

CONSENT CALENDAR

- A-1 Approval of minutes from the Planning Commission meeting of June 17, 2014  
**Staff Recommendation:** Approve minutes as submitted.
- A-2 Approval of minutes from the Planning Commission meeting of July 1, 2014  
**Staff Recommendation:** Approve minutes as submitted.

**MOTION:** Commissioner Lucas moved to approve the consent calendar. Vice Chairperson Luhr Lucas seconded the motion and the motion passed unanimously. (5-0)

PUBLIC HEARINGS

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING –AUGUST 5, 2014**B-1 Case No.:** #AD0-091 Variance**Site Location:** 938 Anchor Street, Morro Bay, CA**Variance:** Request to allow a 7.56-foot rear setback in the R-1 zone where the Zoning Ordinance requires 10% of the lot depth which, in this case, is 10 feet.**CEQA Determination:** Categorically Exempt, Section 15301, Class 1**Staff Recommendation:** Deny the variance**Staff Contact:** Whitney McIlvaine, Contract Planner, (805) 772-6211

McIlvaine presented the staff report.

Commissioner Lucas and McIlvaine discussed prior approved non-conforming second floor additions in the area and if that set a precedent for a current request to approve a second story addition of a non-conforming structure.

Commissioner Lucas and McIlvaine discussed the difference between when a project for a second floor addition on an existing non-conforming footprint would need only a building permit and when a variance would be needed.

Vice Chairperson Luhr asked if it is staff's interpretation of the zoning requirements that the ready to issue permit from 2008 was issued in error. McIlvaine replied yes.

Chairperson Tefft asked if the staff interpretation in 2008 was that the house was conforming so a conditional use permit was not required. McIlvaine stated the record is unclear, noting there was no conditional use permit ready to issue, only a building permit.

Chairperson Tefft and McIlvaine discussed when a conditional use permit would be needed for non-conforming structures, with McIlvaine confirming that additions of more than 25% would require a conditional use permit.

Commissioner Sadowski noted that he visited the site and spoke with the owner.

Chairperson Tefft opened Public Comment period.

Mike Sherrod, Applicant, stated a canvassing of the homes in the super block area shows half are two stories with non-conforming rear yard setbacks. Sherrod presented a history of the project, letters of support for the project, and requested the Commission approve the variance.

Vice Chairperson Luhr noted that if the variance is granted, someone in the future could request a variance to add a second story at the front of the house and asked the Applicant if they would be willing to place a deed restriction on the property. Sherrod replied yes.

Nancy Aaron, Morro Bay Anchor Street resident, spoke in support of granting the variance.

Matt Makowetski, Morro Bay resident, spoke in support of granting the variance.

Michael Caylen, Morro Bay Anchor Street resident, spoke in support of granting the variance.

Robert Nava, Morro Bay Anchor Street resident, spoke in support of granting the variance.

Chairperson Tefft closed Public Comment period.

Commissioner Fennacy spoke in support of the project and granting the variance noting there are special circumstances.



SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING –AUGUST 5, 2014

Commissioner Lucas stated he likes the design but is very concerned with the precedent it sets to approve the variance, noting unless there is a condition to address this, he cannot support a variance.

Vice Chairperson Luhr stated he would like to grant the variance, but condition it such that it specifies a previous planning staff member determined this was a valid project to limit the precedent for future variance requests of this nature, and restrict the air space over the existing front portion to a single story so a variance request would be needed for a future project.

Commissioner Sadowski stated he supports granting the variance and the conditions Vice Chairperson Luhr suggested.

Chairperson Tefft stated he visited the site and spoke with the Applicant, noting there are two issues before the Commission: how the zoning ordinance should be interpreted and whether or not grant this variance, noting that he supports McIlvaine's interpretation of the zoning ordinance. Chairperson Tefft stated he supports granting the variance as the Applicant proceeded based on representations by the City that we now believe to be incorrect and the project is well designed and not detrimental to the neighborhood.

Chairperson Tefft and staff discussed the status of the structure if the variance is granted, noting the rear yard setback would still be non-conforming but that the front yard setback may be deemed conforming if consistent with a provision in zoning code for street yard averaging.

Chairperson Tefft stated he supports granting the variance with the suggested conditions from Vice Chairperson Luhr.

Commissioner Fennacy stated he believes there are special circumstances to granting the variance that are stand alone to this project and is concerned with placing a condition that would restrict future development of the site.

Vice Chairperson Luhr stated the condition would be a trigger to bring it back and a future Commission could change that condition at its discretion.

Vice Chairperson Luhr and Graham discussed how the courts have interpreted a variance and whether the Commission condition the variance based on the process rather than special circumstances of the lot.

Chairperson Tefft re-opened Public Comment period.

Sherrod asked if there was a decision being made tonight. Graham replied yes but the Commission does not have a resolution before them to adopt granting the variance.

Sherrod, Vice Chairperson Luhr and Graham discussed differences between a deed restriction and a condition to restrict development of the property in the future.

Chairperson Tefft closed Public Comment period.

**MOTION:** Vice Chairperson Luhr moved to continue this item to the August 19 meeting with direction to staff to return with a resolution for approval of variance AD0-091 with conditions as noted. Commissioner Lucas seconded the motion.

Commissioners and staff discussed a continuance of the item versus approval of a variance and returning with a resolution and conditions on the Consent Calendar.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION  
REGULAR MEETING –AUGUST 5, 2014

**AMENDED MOTION:** Vice Chairperson Luhr amended his motion and moved to approve variance AD0-091 with the conditions noted and direct staff to return at the August 19 meeting with a resolution approving variance AD0-091. Commissioner Lucas seconded the amended motion.

Commissioner Lucas and staff discussed bringing back an interpretation memo confirming that McIlvaine interpreted the code correctly. Graham stated that would be done for the next meeting.

The amended motion passed unanimously. (5-0)

UNFINISHED BUSINESS

C-1 Current and Advanced Planning Processing List  
Staff Recommendation: Receive and File

Jacynth reviewed the work program with the Commissioners.

NEW BUSINESS - None

E. DECLARATION OF FURTUE AGENDA ITEMS

- Staff to review setback regulations for accessory structures in relation Mr. Krause's code enforcement issue and return to the Commission as necessary.

F. ADJOURNMENT

The meeting adjourned at 7:34 p.m. to the next regularly scheduled Planning Commission meeting at the Veteran's Memorial Building, 209 Surf Street, on Tuesday, August 19, 2014 at 6:00 p.m.

\_\_\_\_\_  
Robert Tefft, Chairperson

ATTEST:

\_\_\_\_\_  
Rob Livick, Secretary

## RESOLUTION NO. PC 20-14

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION AFFIRMING THE  
COMMISSION'S INTERPRETATION REGARDING REAR YARD SETBACK  
REQUIREMENTS IN THE R-1 SINGLE FAMILY RESIDENTIAL DISTRICT

**WHEREAS**, the Planning Commission of the City of Morro Bay reviewed the rear yard setback requirements in the R-1 single-family residential district at their regularly scheduled meeting of August 5, 2014; and

**WHEREAS**, Planning Commission acknowledged that the rear yard setback policy language applicable to the R-1 Zone was somewhat vague, and to avoid confusion in the future, requested that staff return with a policy resolution clarifying exactly how the rear yard setback should be calculated; and

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

The R-1 zoning standards applicable to the rear yard setback are found in section (Table) 17.24.040 of the City of Morro Bay Zoning Ordinance and reads as follows:

**Minimum Rear Yard Setback.**

*10% of the Average depth of the lot with 10-foot maximum and 6-foot minimum.*

The above referenced rear setback requirement necessitates determination of the average lot depth and subsequent multiplication of the lot depth by 10% to establish the rear setback limitation. The maximum required rear setback is 10-feet and would be applicable to all lots 100-foot in depth and greater. The 6-foot minimum limitation would apply to all lots 60-foot in depth or less. For all lots between 60 and 100 feet in depth, simply multiply the lot depth by 10% to determine the setback, e.g. a 70-foot deep lot multiplied by 10% = 7-foot rear yard setback.

UPON MOTION OF Commissioner Luhr and seconded by Commissioner Lucas the foregoing Resolution is hereby approved and adopted by the Morro Bay Planning Commission on this 19th day of August, 2014 by the following vote:

AYES: Luhr, Lucas, Sadowski and Teft

NOES: None

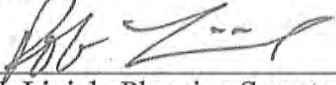
ABSENT: Fennacy

ABSTAIN: None



Robert Tefft, Chairperson

ATTEST



Rob Livick, Planning Secretary

The foregoing resolution was passed and adopted this 19th day of August 2014.



AGENDA NO: D-3

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 20, 2015

**FROM:** David Buckingham, City Manager

**SUBJECT:** Authorization to Consent to the Bankruptcy Estate in the Matter of Charlotte Ellen Salwasser or George Salwasser to Sell Property Located At 781 Market Avenue (Including the Parking Lot) to the City of Morro Bay and to Participate in the Bidding Process as Authorized by Council (APNs 066-321-027 and 066-112-007)

### RECOMMENDATION

Staff recommends the City Council authorize staff to consent to the Bankruptcy Estate of either George or Charlotte Salwasser moving forward with the motion to sell the 781 Market Avenue and adjacent parking lot to the City, and for staff to participate in the sale and bidding process as authorized by Council.

### ALTERNATIVES

Alternative 1. The City Council may direct staff to wait to see if another party can purchase the property through the bankruptcy proceedings and to then enforce the City's performance deed of trust to require an elevator be installed.

Alternative 2. The City Council may direct staff not to acquire the property at this time.

### FISCAL IMPACT

The City would acquire a 14,481 square foot lot with existing restaurant improvements, as well as a 14,256 square foot parking lot, appraised recently at approximately \$1.75 million, for approximately \$150,000 "out of pocket" along with a "credit bid" of the City's existing security in the property. The City's existing security is valued in excess of \$1.2 million, plus an obligation to install a lift station valued at approximately \$500,000.

- Current appraised value of both parcels is about \$1.75M
- City currently holds a note worth about \$1.2M
- City is likely able to acquire the property outright for an additional outlay of \$150K
- If purchased for \$150K, the City's total expenditure in the property would be about \$1.35M

01181.0003/272189.1

Prepared By: DWB

Dept Review: DWB

City Manager Review: DWB

City Attorney Review: JWP

Should the Council direct acquisition of the property, there are sufficient funds available in the FY15/16 General Fund budget for the purchase. Priority number #13 on the prioritized one-time investment list is up to \$120,000 for parking, specifically noting *parking lot acquisition* as one use for these funds. Priority #12, a fully-funded budget item, is \$150,000 for a possible high speed fiber project. Should the council direct staff to acquire this property, staff will ensure other appropriate one-time investment funds are not spent and then Council may reprioritize this spending during mid-year budget review in January 2016.

## **BACKGROUND**

The City of Morro Bay purchased Parcels 1, 2 and 3 in 2003 for approximately \$2.6 million. (See diagram, below.) In 2010, the City sold Parcel 2 (APN 066-321-027) and Parcel 3 (APN 066-112-007) (collectively the “Property”) to George and Charlotte Salwasser, including the parking lot and the building housing DiStasio’s on the Bay restaurant. The City financed the deal for approximately \$1.25 million and required the Salwassers to build and maintain an elevator on the Property for public access from an adjacent parking area to the restaurant. The first two years of the City’s loan were for interest only payments by the Salwassers, and the time for the property owner to initially construct the elevator has passed.

Mr. and Mrs. Salwasser subsequently filed separate bankruptcy proceedings earlier this year, which are currently proceeding. One of the tenants on the property obtained a Bankruptcy Court order authorizing him to purchase the Property through the bankruptcy proceeding. However, given the City’s equity interest in the Property, including the obligations and costs to install and maintain an elevator in perpetuity estimated to cost at least \$500,000, there was apparently insufficient equity in the property to allow for financing. As a result, the escrow was recently canceled. Currently, there is no buyer for the Property.

## **Location of Market Avenue Property (Parcel 2 and 3):**



## **DISCUSSION**

An annual payment of \$99,398.28 is due on the City's loans as of 12/31/15, with a final balloon payment of \$996,102.66 due on 12/31/20. Without a new property owner, there is significant uncertainty the Bankruptcy Estate would make payments to the City on its loans or install an elevator anticipated to cost \$500,000.00. Additionally, given the City's equity in the property, it is unlikely there will be another buyer for the Property unless property values significantly increase. If the City were to foreclose on the Property, it would be subject to the added expense and delay of doing so in the additional context of two pending bankruptcies.

In late August, by virtue of note and performance deed of trust the City holds on the Property, the City became a negotiating party in a planned purchase of the Property by a private citizen. Council has previously met in a noticed Closed Session to address the Bankruptcy involving the Property. The planned purchase of the Property by a private citizen has since been cancelled, and staff are returning for direction from the Council as to whether the sale to the City as proposed should go forward.

There are several potential benefits to acquiring the property – both from the legal / financial, and community development perspectives.

- On the legal / financial side, the City would have more immediate certainty regarding the property, and save the cost and expense of going through a foreclosure proceeding or the pending bankruptcy processes. Further, an existing business on the Property has discussed the idea of entering into a lease if the City acquires the Property. This could provide a potential revenue source to the City while simultaneously supporting local businesses by providing them with certainty and removing the Property from the bankruptcy proceeding.
- From a community development perspective, there are a number of near term and longer term opportunities.
  - First, the existing parking lot at the corner of Pacific and Market could quickly be transitioned into a public parking lot, providing approximately 40 spaces and partly answering the community's call for additional parking with a lot ideally situated conveniently between the downtown and Embarcadero.
  - Second, following both from business owner input in the LEAP process, and from Council Goals/Objectives for this year, the City is currently working with the community to develop a concept plan for linking the Downtown and Embarcadero at Centennial Parkway. Owning these parcels, particularly Parcel 2, will provide the City significant latitude in the potential design and construction of a "new" centennial parkway to link the Downtown and Embarcadero.
  - Finally, acquiring the property could potentially provide long-term investment and revitalization options that would not otherwise be available in the geographical center of Morro Bay's Downtown / Waterfront zone.

Recognizing there is essentially no equity in the Property given the City's deeds and potential to "credit bid," the Bankruptcy Estate and its major creditor have recently been in discussions with City staff regarding the City's purchase of the Property. Subject to Council approval authorizing the matter to move forward, the Estate will bring a sale motion at its own expense as follows:

1. The City to be credited for the value of its loans/deeds of trusts for the remaining amount of the property (i.e., at “credit bid”);
2. City to pay \$150,000 in cash to acquire the property;
3. The sale will be subject to the over bid process; and
4. The Court order will provide clear title.

If another party attempts to buy the Property during the sale motion through the over bid process, it will first have to provide the Bankruptcy Court a cashier’s check of \$150,000 to qualify to bid, and must pay at least \$1,900,000 in cash for the Property. Even if the City is outbid, it will still be paid for the value of its outstanding loans and deed of trust without either having to wait for the term of the loans to be complete or wait for payments to be otherwise addressed in the Bankruptcy or foreclosure.

Assuming Council authorizes staff to move forward, the Estate could file the motion within days, which would place the initial hearing before the Court occurring no earlier than late November/early December.

Should the Council authorize acquisition of the property, there are sufficient funds available in the FY15/16 General Fund budget. Priority number #13 on the prioritized one-time investment list included up to \$120,000 for parking – specifically noting parking lot acquisition as one use for these funds. Priority #12, a funded priority, is \$150,000 for a possible high speed fiber project. If Council provides direction to consent to the sale of this property to the City, staff will ensure the appropriate one-time investment funds are not spent so that Council may reprioritize this spending during mid-year budget review in January 2016.

### **CONCLUSION**

Moving forward with the sale motion will provide the City with a “win-win” scenario regardless if it ultimately succeeds. If the City acquires the Property it can potentially do so with as little as \$150,000 out of pocket – while simultaneously allowing it to potentially address parking and local business concerns. Even if the City is outbid, the City will get paid for its loans/deeds of trusts potentially five years before the last balloon payment of almost \$1 million would otherwise be due - without the added expense of going through a foreclosure proceeding for a property subject to two bankruptcies. As a the new owner, the City would have greater flexibility regarding lift options for the Property.

Based on the above analysis, staff recommends the City Council authorize staff to consent to the Bankruptcy Estate moving forward with the motion to sell the 781 Market Avenue and adjacent parking lot to the City, and for staff to participate in the bidding process as authorized by Council.

### **LINK DOCUMENTS:**

- A. Real Estate Agreement.
- B. Promissory Note Secured By Deed of Trust dated December 31, 2010, in the amount of \$830,000.00.
- C. Promissory Note Secured By Deed of Trust dated December 31, 2010, in the amount of \$425,000.00.



- D. Deed of Trust recorded on January 20, 2011, in San Luis Obispo County as document number 2011003179 (Parcel "2" - \$830,000).
- E. Deed of Trust recorded on January 20, 2011, in San Luis Obispo County as document number 2011003181 (Parcel "3" - \$425,000).
- F. Performance Deed of Trust recorded January 20, 2011, in San Luis Obispo County as document number 2011003180 (Parcel "2").

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5 Fresno, California 93721  
Telephone: (559) 445.1580  
6 Facsimile: (888) 519.9160

7 Attorneys for City of Morro Bay

8 **UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

10  
11 In re

12  
13 Charlotte Ellen Salwasser,

14  
15 Debtor.

Case No. 15-10705-B-11F

DC# THA-18

Chapter 11

Date: June 25, 2015

Time: 2:30 p.m.

Crtrm.: "B" Ct. Rm. 12

The Hon. W. Richard Lee

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17  
18 **EXHIBITS TO THE DECLARATION OF SUSAN SLAYTON IN SUPPORT OF**  
19 **CONDITIONAL NON-OPPOSITION AND SUPPORT OF MOTION FOR**  
20 **AUTHORITY TO SELL REAL PROPERTY OTHER THAN IN THE ORDINARY**  
21 **COURSE OF BUSINESS PER 11 U.S.C. §936(B)**

22 EXHIBIT

DESCRIPTION

23 "A": City of Morro Bay: Promissory Notes Secured by Deed of Trust, George and  
24 Charlotte Salwasser – Payments and Amounts Owng. 1 page.

25 "B": Real Estate Agreement. 4 pages.

26 "C": Promissory Note Secured By Deed of Trust dated December 31, 2010, in the  
27 amount of \$830,000.00. 3 pages.

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- “D”: Promissory Note Secured By Deed of Trust dated December 31, 2010, in the amount of \$425,000.00. 3 pages.
- “E”: Deed of Trust recorded on January 20, 2011, in San Luis Obispo County as document number 2011003179 (Parcel “A” - \$830,000). 9 pages.
- “F”: Deed of Trust recorded on January 20, 2011, in San Luis Obispo County as document number 2011003181 (Parcel “B” - \$425,000). 9 pages.
- “G”: Performance Deed of Trust recorded January 20, 2011, in San Luis Obispo County as document number 2011003180 (Parcel “A”). 9 pages.

DATED: June 18, 2015

By: Susan Slayton  
Susan Slayton



**Exhibit "A" (1 page)**

**CITY OF MORRO BAY**

**PROMISSORY NOTES SECURED BY DEED OF TRUST  
GEORGE AND CHARLOTTE SALWASSER**

Note Origination Date	Note Amounts	Payment info	Note payment "a"		Note payment "b"		Note payment "c"		Payoff: if paid on				
			Interest only at 3% per annum, due on 12/31/2011	Interest only at 4% per annum, due on 12/31/2012	Interest only at 5% per annum, due on 12/31/2013	Principal plus interest at 5% per annum, due on 12/31/2014	2/26/2015	6/30/2015	7/31/2015	8/31/2015	9/30/2015		
12/31/2010	Salwasser #1 425,000.00	Principal: Interest:  Total annual payment:  Date payment received:	12,750.00  12,750.00  2/3/2012	17,000.00  17,000.00  12/31/2012	13,345.60 20,312.12  33,657.72  12/31/2013	398,958.35 3,115.15  402,073.50  12/31/2013	398,958.35 9,973.96  408,932.31  2/11/2015*	398,958.35 11,636.29  410,594.64  2/11/2015*	398,958.35 13,298.61  412,256.96  2/11/2015*	398,958.35 14,960.94  413,919.29  2/11/2015*	398,958.35 13,298.61  412,256.96  2/11/2015*	398,958.35 14,960.94  413,919.29  2/11/2015*	398,958.35 14,960.94  413,919.29  2/11/2015*
12/31/2010	Salwasser #2 830,000.00	Principal: Interest:  Total annual payment:  Date payment received:	24,900.00  24,900.00  2/3/2012	33,200.00  33,200.00  12/31/2012	24,794.65 40,936.91  65,731.56  12/31/2013	779,142.16 6,083.71  785,225.87  12/31/2013	779,142.16 19,478.55  798,620.71  2/11/2015*	779,142.16 22,724.98  801,867.14  2/11/2015*	779,142.16 25,971.41  805,113.57  2/11/2015*	779,142.16 29,217.83  808,359.99  2/11/2015*	779,142.16 25,971.41  805,113.57  2/11/2015*	779,142.16 29,217.83  808,359.99  2/11/2015*	

\*Letter sent to George and Charlotte Salwasser, regarding missed payment

Preparation date: 6/16/2015

**Exhibit "B" (pages 1-4)**

## REAL ESTATE AGREEMENT

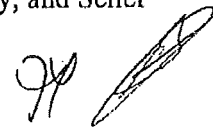
This Agreement, by and between Mr. George Salwasser (hereinafter "Buyer") and the City of Morro Bay (hereinafter "Seller"), a municipal corporation, whereby the Seller hereby agrees to sell and convey and Buyer hereby agrees to purchase that certain real property and all improvements located thereon situated at real property located at 781 Market and at the Corner of Pacific and Market in Morro Bay, California, (hereinafter, the "Premises") pursuant to the following terms and conditions.

1. The Total Purchase Price for the Premises shall be \$1,500,000.00
2. Buyer shall deposit, immediately upon the opening of escrow, the amount of \$20,000.00 Subject to Paragraphs 8 and 12, said deposit shall be released to the Seller sixty (60) days from the opening of escrow and shall be credited towards the purchase price set forth in Paragraph 1. The parties agree that the deposit amount, plus all accrued interest, if any, is a reasonable sum for liquidated damages should Buyer fail to complete this transaction, in that it would be impractical or extremely difficult to fix the actual damages and both parties agree that the foregoing deposit constitutes liquidated damages and not a forfeiture or penalty.
3. Buyer shall deposit into escrow, within sufficient time to close escrow, an additional amount of \$225,000, payable as a down payment to Seller. Said amount shall be credited towards the purchase price set forth in Paragraph 1.
4. The remaining balance of the Total Purchase Price, in the amount of \$1,255,000.00, shall be financed by the Seller. Buyer agrees to execute a note, secured by a first deed of trust in favor of the Seller, and said note and deed of trust shall not at any time be subordinate to any other deeds of trust encumbering the Premises, unless consented to by Seller.
5. The principal balance of the note, in the amount of \$1,255,000.00, shall be paid on or before a date that is ten (10) years after the date of the close of escrow. Annual payments shall be made under the note beginning one year from the date of the close of escrow as follows:
  - a. Buyer shall pay to Seller an interest only payment, computed at the rate of 3% per annum on the unpaid principal balance, in the amount of \$37,650.00, on a date that is one (1) year after the date of the close of escrow.
  - b. Buyer shall pay to Seller an interest only payment, computed at the rate of 4% per annum on the unpaid principal balance, in the amount of \$50,200.00, on a date that is two (2) years after the date of the close of escrow.
  - c. Buyer shall pay to Seller seven (7) annual principal and interest payments, with interest computed at the rate of 5% per annum amortized over 20 years, in the amount of \$99,389.28 each, on a date that is three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9) years after the date of the close of escrow.

d. Buyer shall pay to Seller the remaining balance of the note, in the amount of \$948,669.20, together with accrued but unpaid interest, on or before a date that is ten (10) years after the date of the close of escrow.

The purchase price of the property located at 781 Market Street shall be \$1,000,000.00 and the purchase price of the property located at the northeast corner of Pacific and Market, a vacant lot, shall be \$500,000.00.

6. Upon mutual execution of this Contract, the parties shall execute escrow instructions to the escrow holder in accordance with the terms and provisions hereof. The provisions hereof shall constitute joint instructions to the escrow holder; provided, however, that the parties shall execute such additional instructions as requested by the escrow holder not inconsistent with the provisions hereof. Said escrow shall provide for a closing date within 45 days of completion of the lot-line adjustment as set forth in Paragraph 22. Buyer and Seller shall immediately execute said instructions.
7. Buyer and Seller shall each pay one half of the escrow fee. All real estate transfer taxes, documentation costs, and title policy premiums shall be paid by the Seller.
8. As soon as reasonably possible following the opening of the escrow, Seller shall pay for and furnish to Buyer a Preliminary Title Report on the Premises, together with full copies of all Exceptions set forth therein, including, but not limited to covenants, conditions, restrictions, reservations, easements, rights and rights of way record, liens and other matters of record. Buyer shall have twenty (20) days after receipt of said Preliminary Title Report, together with full copies of said Exceptions, within which to notify the Seller and the escrow, in writing, of Buyer's disapproval of any Exceptions shown in said Preliminary Title Report. In the event of such disapproval, Seller shall have until the date for closing of escrow within which to attempt to eliminate any disapproved Exception(s) from the Policy of Title Insurance to be issued in favor of Buyer, and if not eliminated, then the escrow shall be canceled and the deposit set forth in Paragraph 2 shall be returned to Buyer, unless Buyer then elects to waive its prior disapproval. Failure of Buyer to disapprove any Exception(s) within the aforementioned time limit shall be deemed an approval of said Preliminary Title Report.
9. The manner of holding title to the Premises shall be determined in escrow.
10. Within thirty (30) calendar days from the date of the opening of escrow, Seller shall furnish Buyer with a structural pest control report. However, if any preventive or corrective work is recommended in such report, the same shall be done at Buyer's option at Buyer's expense, and Seller shall have no responsibility for the same.
11. Buyer is purchasing the Premises in an "as is" condition, without warranty, and Seller shall not be required to perform any corrective repairs to the Premises.





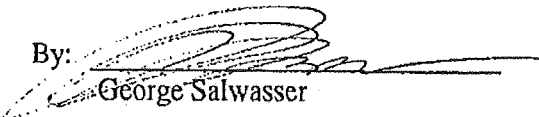
12. Buyer's obligation to purchase the Premises is conditioned upon Buyer's approval, in his sole discretion, of the condition of the Premises and all other matters concerning the Premises. Within sixty (60) calendar days after escrow opens, Buyer shall have the right, at Buyer's expense, to select a qualified professional(s) to make tests, surveys, or other studies ("acts") of the Premises, or any portion thereof. The acts shall be conducted at the sole cost and expense of the Buyer and Buyer shall indemnify and hold Seller harmless from any costs or liability resulting from the acts. All claimed defects concerning the condition of the Premises shall be in writing, supported by written reports, and delivered to Seller within thirty (30) calendar days after the acts. However, if any preventive or corrective work is recommended in such reports, the same shall be done at Buyer's option and at Buyer's expense, and Seller shall have no responsibility for the same. If, after completing the acts, or any other investigation of the Premises, Buyer, in his sole discretion, elects not to approve the condition of the Premises, or any other matters concerning the Premises, then Buyer may terminate the escrow by providing written notice thereof to Seller on or before the expiration of the sixty (60) day period, in which event the deposit set forth in Paragraph 2 shall be returned to Buyer
13. Buyer and Seller agree that the fixtures, fittings and personal property located on the Premises are part of the purchase price. Buyer and Seller shall agree to an Inventory List within sixty (60) days of opening escrow.
14. The taxes, assessments, and other like charges of Seller and the County, in which the Premises are situated, will be apportioned, in accord with local custom, as of the date of the closing of title. Should any tax, assessment, other charge, or rate be undetermined on the date of the closing of title, the last determined tax, assessment, or rate shall be used for the purpose of the apportionment.
15. Throughout the period between the date of this Offer and the date of the closing of escrow, the Seller shall maintain existing liability insurance on the Premises.
16. Possession shall be delivered to Buyer at close of escrow.
17. The Contract, resulting from Buyer's acceptance hereof, supersedes any and all Offers, except those referenced in this agreement. Neither Buyer nor Seller shall be bound by any understanding, offer, promise, representation, or stipulation, express or implied, not specified herein.
18. Any addendum attached hereto and either signed or initialed by the parties shall be deemed as a part hereof.
19. Upon close of Escrow, Seller agrees to pay compensation for services at two and one-half percent (2.5%) of purchase price to Bayshore Realty, Buyer's Broker.
20. There shall be no Appraisal Contingency.



21. Title Company shall be Fidelity National Title, Morro Bay.
22. Seller agrees to process a lot line adjustment so that the property line for the property located at 781 Market extends from the Northwest corner of the lot to Pacific Street parallel to Embarcadero Street and shall incorporate the entire bluff into the 781 Market Street real property. Buyer agrees to pay for legal surveys in order to process the lot line adjustment.
23. In consideration of the lot-line adjustment and the approximate additional 3,000 square footage that will added to the property at 781 Market Street described in Paragraph 22 above, the Buyer agrees to contract for and pay the costs to design, engineer, and install a Lift Station to provide access to the Embarcadero and Market Street. Buyer agrees to complete all design and permitting, subject to the approval of Seller, by December 31, 2011. The Lift Station, subject to the approval of Seller, shall be installed and operational by December 31, 2012. Seller shall grant Buyer, his approved assignee, or any subsequent owner of the Premises, an easement on any adjoining property necessary for the construction and/or operation of the Lift Station. The Lift Station design shall be approved by Seller and shall be located on the west or north side of the building. The Lift Station shall be open to the public to obtain access from and to the Embarcadero and Market Street during hours of operation to be mutually acceptable to Buyer and Seller, and be capable of carrying a minimum of at least 6 individuals, on such other terms and conditions as are determined by Buyer, his approved assignee, or any subsequent owner of the Premises, in their sole discretion. The operation and maintenance of the Lift Station shall be the responsibility of the Buyer, his approved assignee, or any subsequent owner of the Premises. All building and planning fees for the Lift Station and the remodeling of 781 Market Street shall be waived by Seller.
24. In order to ensure the performance of Paragraph 23, the Buyer agrees to post either a Performance Bond or a standby Letter of Credit, in form acceptable to Buyer and his bonding company or bank, as applicable, prior to the close of escrow in an amount pursuant to an estimate of costs to perform Paragraph 23 mutually acceptable to Seller and Buyer.

BUYER:  
Mr. George Salwasser  
Individual

SELLER:  
CITY OF MORRO BAY

By:   
George Salwasser

By:   
Janice Peters, Mayor

Date: 2-18-10

Date: 3/1/10

DMS: 803864\_1

**Exhibit "C" (pages 1-3)**

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ 830,000.00

December 31, 2010  
Morro Bay, California

FOR VALUE RECEIVED, the undersigned, ("Borrower"), promises to pay to or upon order of the CITY OF MORRO BAY, ("CITY"), at 595 Harbor Street, Morro Bay, California 93442, or at such other place as the holder of this promissory note ("Note") may designate in writing from time to time, the principal sum of \$830,000.00, together with interest on the unpaid principal balance of this Note from time to time outstanding until paid in full, at the rate provided for below.

The principal amount of this Note, together with all interest and other sums owed to the CITY pursuant to any other terms and conditions hereof, shall be paid in installments as follows:

- a. Borrower shall pay to CITY an interest only payment, computed at the rate of 3% per annum on the unpaid principal balance, in the amount of \$24,900.00, on December 31, 2011.
- b. Borrower shall pay to CITY an interest only payment, computed at the rate of 4% per annum on the unpaid principal balance, in the amount of \$33,200.00, on December 31, 2012.
- c. Borrower shall pay to CITY seven (7) annual principal and interest payments, with interest computed at the rate of 5% per annum amortized over 20 years, in the amount of \$65,731.56 on December 31, 2013, on December 31, 2014, on December 31, 2015, on December 31, 2016, on December 31, 2017, on December 31, 2018, and on December 31, 2019.
- d. Borrower shall pay to CITY the remaining balance of this Note, in the amount of \$658,777.02, together with accrued but unpaid interest, on December 31, 2020.

Borrower shall have the right to prepay all or any portion of the outstanding balance due under this Note without penalty or other charge at any time. All payments received shall be first credited to interest due and owing, and then to principal, and interest shall cease on the principal so credited.

Should default be made in payment of any installment of interest or of principal and interest when due, the whole sum of principal and interest shall become immediately due and payable at CITY's option. Failure by CITY to exercise this option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

This Note is secured by that certain Deed of Trust and assignment of Rents recorded on ~~December xxxxxx 2010~~ 1/20/2011 in the Official Records of San Luis Obispo County ("Deed of Trust") encumbering the property described in Exhibit A thereto and is given as part of the purchase price for the real property described in the Deed of Trust. Any default under this Note shall be a default under the Deed of Trust, and any default under the Deed of Trust shall be a default under this Note. The Deed of Trust contains the following "due-on-sale" provision:

If the Trustor sells, conveys or alienates all or any portion of the property described herein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, any indebtedness or obligation under the promissory note secured hereby shall immediately become due and payable.

If any of the events or circumstances described in the due-on-sale provision occur prior to the Maturity Date, the Maturity Date shall be automatically accelerated, and shall be the date any such event or circumstance occurs.

If Borrower fails to make any payment to CITY under this Note as and when due, or fails to timely perform any other obligation under this Note or the Deed of Trust, and any such failure is not fully cured within ten (10) days after Borrower's receipt of written notice of such failure, CITY shall have the right any time thereafter until the default is fully cured, exercisable in its sole discretion, to accelerate the Maturity Date upon written notice to Borrower and declare all principal, interest and other amounts owing under this Note immediately due and payable.

Time is of the essence in the performance of each and every obligation of Borrower set forth herein.

No failure by CITY to act with respect to the exercise of any of its rights or enforcement of any of the terms of this Note shall constitute a waiver of any breach, default or failure of condition under this Note. No single or partial exercise of any power hereunder shall preclude any other or further exercise thereof of the exercise of any other right or power. No delay or omission on the part of CITY in exercising any right or power that CITY may have in the event of any default by Borrower shall operate as a waiver of such right or power, or of any other right or power under this Note or the Deed of Trust, or that otherwise may be available to CITY at law or in equity.

In the event that CITY consults with an attorney in connection with Borrower's performance of any obligation under this Note or the Deed of Trust, or if suit is brought to collect all or any part of this Note or to enforce or protect any rights conferred upon CITY by this Note or the Deed of Trust, then Borrower promises and agrees to pay all reasonable costs, including reasonable attorneys' fees, incurred by CITY.

This Note shall be governed by California law. If this Note is subject to California Civil Code Section 2966, the CITY shall give written notice to the Borrower, of prescribed information at least 90 and not more than 150 days before any balloon payment is due.

All notices given under this Note shall be in writing, and shall be deemed received: (1) upon delivery if given in person; (2) upon receipt if given by generally recognized overnight courier

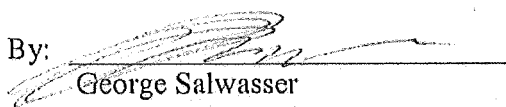
service; or (3) 48 hours after deposit with the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid.

BORROWER:

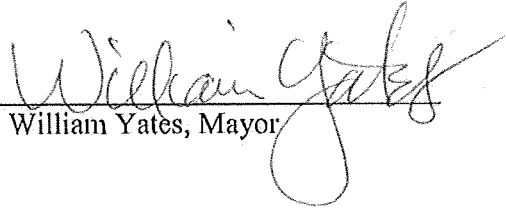
Mr. George Salwasser  
Mrs. Charlotte Salwasser  
Individuals

CITY OF MORRO BAY


By:

  
George Salwasser

By:

  
William Yates, Mayor

By:

  
Charlotte Salwasser

DMS: 903619\_1

**Exhibit "D" (pages 1-3)**

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ 425,000.00

December 31, 2010  
Morro Bay, California

FOR VALUE RECEIVED, the undersigned, ("Borrower"), promises to pay to or upon order of the CITY OF MORRO BAY, ("CITY"), at 595 Harbor Street, Morro Bay, California 93442, or at such other place as the holder of this promissory note ("Note") may designate in writing from time to time, the principal sum of \$425,000.00, together with interest on the unpaid principal balance of this Note from time to time outstanding until paid in full, at the rate provided for below.

The principal amount of this Note, together with all interest and other sums owed to the CITY pursuant to any other terms and conditions hereof, shall be paid in installments as follows:

- a. Borrower shall pay to CITY an interest only payment, computed at the rate of 3% per annum on the unpaid principal balance, in the amount of \$12,750.00, on December 31, 2011.
- b. Borrower shall pay to CITY an interest only payment, computed at the rate of 4% per annum on the unpaid principal balance, in the amount of \$17,000.00, on December 31, 2012.
- c. Borrower shall pay to CITY seven (7) annual principal and interest payments, with interest computed at the rate of 5% per annum amortized over 20 years, in the amount of \$33,657.72 each, on December 31, 2013, on December 31, 2014, on December 31, 2015, on December 31, 2016, on December 31, 2017, on December 31, 2018, and on December 31, 2019.
- d. Borrower shall pay to CITY the remaining balance of this Note, in the amount of \$337,325.64, together with accrued but unpaid interest, on December 31, 2020.

Borrower shall have the right to prepay all or any portion of the outstanding balance under this Note without penalty or other charge at any time. All payments received shall be first credited to interest due and owing, and then to principal, and interest shall cease on the principal so credited.

Should default be made in payment of any installment of interest or of principal and interest when due, the whole sum of principal and interest shall become immediately due and payable at CITY's option. Failure by CITY to exercise this option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.



This Note is secured by that certain Deed of Trust and Assignment of Rents recorded on 1/20/2011 ~~December 11, 2010~~ in the Official Records of San Luis Obispo County ("Deed of Trust") encumbering the property described in Exhibit A thereto and is given as part of the purchase price for the real property described in the Deed of Trust. Any default under this Note shall be a default under the Deed of Trust, and any default under the Deed of Trust shall be a default under this Note. The Deed of Trust contains the following "due-on-sale" provision:

If the Trustor sells, conveys or alienates all or any portion of the property described herein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, any indebtedness or obligation under the promissory note secured hereby shall immediately become due and payable.

If any of the events or circumstances described in the due-on-sale provision occur prior to the Maturity Date, the Maturity Date shall be automatically accelerated, and shall be the date any such event or circumstance occurs.

If Borrower fails to make any payment to CITY under this Note as and when due, or fails to timely perform any other obligation under this Note or the Deed of Trust, and any such failure is not fully cured within ten (10) days after Borrower's receipt of written notice of such failure, CITY shall have the right any time thereafter until the default is fully cured, exercisable in its sole discretion, to accelerate the Maturity Date upon written notice to Borrower and declare all principal, interest and other amounts owing under this Note immediately due and payable.

Time is of the essence in the performance of each and every obligation of Borrower set forth herein.

No failure by CITY to act with respect to the exercise of any of its rights or enforcement of any of the terms of this Note shall constitute a waiver of any breach, default or failure of condition under this Note. No single or partial exercise of any power hereunder shall preclude any other or further exercise thereof of the exercise of any other right or power. No delay or omission on the part of CITY in exercising any right or power that CITY may have in the event of any default by Borrower shall operate as a waiver of such right or power, or of any other right or power under this Note or the Deed of Trust, or that otherwise may be available to CITY at law or in equity.

In the event that CITY consults with an attorney in connection with Borrower's performance of any obligation under this Note or the Deed of Trust, or if suit is brought to collect all or any part of this Note or to enforce or protect any rights conferred upon CITY by this Note or the Deed of Trust, then Borrower promises and agrees to pay all reasonable costs, including reasonable attorneys' fees, incurred by CITY.

This Note shall be governed by California law. If this Note is subject to California Civil Code Section 2966, the CITY shall give written notice to the Borrower, of prescribed information at least 90 and not more than 150 days before any balloon payment is due.

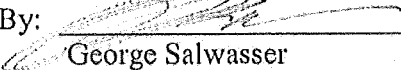
All notices given under this Note shall be in writing, and shall be deemed received: (1) upon delivery if given in person; (2) upon receipt if given by generally recognized overnight courier

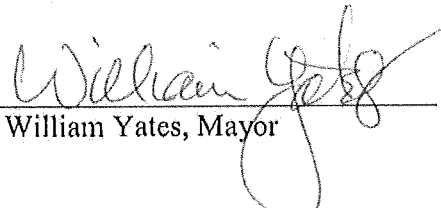
service; or (3) 48 hours after deposit with the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid. Notices shall be given to CITY and to Borrower and addressed:


**BORROWER:**

Mr. George Salwasser  
Mrs. Charlotte Salwasser  
Individuals

CITY OF MORRO BAY

By:   
George Salwasser

By:   
William Yates, Mayor

By:   
Charlotte Salwasser

DMS: 903634\_1

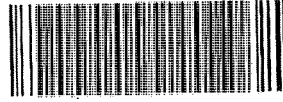
**Exhibit "E" (pages 1-9)**

Recorded at the request of  
**Fidelity Title Company**

**RECORDING REQUESTED BY:**  
Fidelity National Title Company  
Escrow No.: 10-400500996-LC  
Locate No.: CAFNT0940-0940-0005-0400500996  
Title No.: 10-400500996-RB

DOC#: **2011003179**

Titles: 2    Pages: **9**



Fees                    0.00  
Taxes                   0.00  
Others                   0.00  
PAID                    \$0.00

**When Recorded Mail Document To:**  
The City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

APN: 066-321-015 and 066-321-016 (a portion of)

Space above this line for Recorder's Use

**SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST** is made December 31, 2010, between **George Salwasser and Charlotte Salwasser**, husband and wife (the Trustor), whose address is 4087 N. Howard Avenue, Kerman, CA 93630, and **City of Morro Bay** (the Beneficiary), whose address is 595 Harbor Street, Morro Bay CA, 93442, and **Fidelity National Title Company**, a California corporation (the Trustee);

**TRUSTOR HEREBY** irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of Morro Bay, County of San Luis Obispo, State of California, described as:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF, (the Property)

**TOGETHER WITH** rents, issues, and profits of the Property, subject, however, to the right, power, and authority given to and conferred on Beneficiary to collect and apply these rents, issues, and profits.

**FOR THE PURPOSE OF SECURING:**

(1) Payment of the indebtedness evidenced by a promissory note executed by Trustor on December 31, 2010, in the principal sum of \$ 830,000, and any renewal, extension, or modification of the promissory note (the Note);

(2) Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured; and

(3) The performance of each agreement contained in this Deed of Trust.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

**Maintenance and Repair**

(1) To keep the Property in good condition and repair; not to remove or demolish any buildings on the Property, unless consented to in writing by the Beneficiary; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act on the Property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary.

**Fire Insurance**

(2) To provide, maintain, and deliver to Beneficiary fire insurance reasonably satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary on any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

**Defense of Security**

(3) To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

**Payment of Liens and Taxes**

(4) To pay, at least 5 days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust.

If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand on Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter on the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or

lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs in a reasonable sum, including attorneys fees in a reasonable sum.

#### **Reimbursement of Costs**

(5) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the rate of five percent (5.00%) per annum or, if less, the maximum rate of interest allowed by law in effect at the date of this Deed of Trust.

#### **B. THE PARTIES AGREE THAT:**

##### **Condemnation Award**

(1) Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or injury to the Property, is hereby assigned and shall be paid to Beneficiary as further security for all obligations secured by this Deed of Trust. On receipt of any such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

##### **Waiver of Late Payments**

(2) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

##### **Trustees Powers**

(3) On written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

##### **Full Reconveyance**

(4) On written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust, the Note, and any other notes secured by this Deed of Trust to the Trustee for cancellation and retention, and payment of Trustees fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as the person or persons legally

entitled thereto. Five years after issuance of the full reconveyance, Trustee may destroy the Note and this Deed, unless directed in the request to retain them.

#### **Assignment of Rents**

(5) As additional security, Trustor hereby gives to and confers on Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. On any such default, Beneficiary may pursue any of the enforcement mechanisms specified in California Civil Code Section 2938(c). The exercise of these enforcement rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

#### **Default in Foreclosure**

(6) On default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, and all documents evidencing any additional expenditures secured by this Deed of Trust.

After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale.

After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

#### **General Provisions**

(7) This Deed applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The

term Beneficiary shall mean the holder and owner, including pledgee, of the Note secured by this Deed of Trust, whether or not named as a beneficiary in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

#### **Acceptance by Trustee**

(8) Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

#### **Substitution of Trustees**

(9) Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall set forth the following: the date of recordation of this Deed of Trust; the name of the Trustor; the book and page where this Deed of Trust is recorded; and the name of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

#### **Cumulative Powers and Remedies**

(10) The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

#### **Conclusiveness of Recitals**

(11) The recitals contained in any reconveyance, trustees deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive on the Trustor, the Trustor's heirs, executors, administrators, successors, and assigns, and all other persons.

#### **Attorneys Fees**

(12) If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys fees; and these sums shall be secured by this Deed of Trust.

#### **Cotrustees**



(13) If two or more persons are designated as Trustee in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

**Purchase Money Encumbrance**

(14) The promissory note secured by this Deed of Trust is given as a part of the purchase price of the Property.

**Acknowledgment**


DATED: December 31, 2010

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,  
\_\_\_\_\_, Notary  
Public (here insert name and title of the officer),  
personally appeared

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

  
George Salwasser

  
Charlotte Salwasser

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

INITIALS: \_\_\_\_\_

## **EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 3 of Parcel Map MB AL 10-0069, in the City of Morro Bay, County of San Luis Obispo, State of California, according to that certain map recorded October 21, 2010, in Book 74 at Pages 44 through 45 of Parcel Maps, in the Office of the County Recorder of said County.

APN: A portion of 066-321-015 and 066-321-016

**Exhibit "F" (pages 1-9)**

**JULIE RODEWALD**  
San Luis Obispo County – Clerk/Recorder

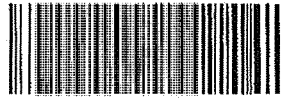
SN  
1/20/2011  
8:00 AM

**RECORDING REQUESTED BY:**  
Fidelity National Title Company  
Escrow No.: 10-400500996-LC  
Locate No.: CAFNT0940-0940-0005-0400500996  
Title No.: 10-400500996-RB

Recorded at the request of  
**Fidelity Title Company**

DOC#: **2011003181**

Titles: 2 Pages: **9**



Fees	0.00
Taxes	0.00
Others	0.00
PAID	<u>\$0.00</u>

**When Recorded Mail Document To:**  
The City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

APN: ~~066-321-015 and 066-321-016~~  
066-112-007

Space above this line for Recorder's Use

### SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

**THIS DEED OF TRUST** is made December 31, 2010, between **George Salwasser and Charlotte Salwasser**, husband and wife (the Trustor), whose address is 4087 N. Howard Avenue, Kerman, CA 93630, and **City of Morro Bay** (the Beneficiary), whose address is 595 Harbor Street, Morro Bay CA, 93442, and **Fidelity National Title Company**, a California corporation (the Trustee);

**TRUSTOR HEREBY** irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of Morro Bay, County of San Luis Obispo, State of California, described as:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF, (the Property)

**TOGETHER WITH** rents, issues, and profits of the Property, subject, however, to the right, power, and authority given to and conferred on Beneficiary to collect and apply these rents, issues, and profits.

**FOR THE PURPOSE OF SECURING:**

- (1) Payment of the indebtedness evidenced by a promissory note executed by Trustor on December 31, 2010, in the principal sum of \$ 425,000, and any renewal, extension, or modification of the promissory note (the Note);
- (2) Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured; and
- (3) The performance of each agreement contained in this Deed of Trust.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

**Maintenance and Repair**

(1) To keep the Property in good condition and repair; not to remove or demolish any buildings on the Property, unless consented to in writing by the Beneficiary; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act on the Property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary.

**Fire Insurance**

(2) To provide, maintain, and deliver to Beneficiary fire insurance reasonably satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary on any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

**Defense of Security**

(3) To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

**Payment of Liens and Taxes**

(4) To pay, at least 5 days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust.

If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand on Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter on the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ

counsel; and to pay necessary expenses and costs in a reasonable sum, including attorneys fees in a reasonable sum.

#### **Reimbursement of Costs**

(5) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the rate of five percent (5.00%) per annum or, if less, the maximum rate of interest allowed by law in effect at the date of this Deed of Trust.

#### **THE PARTIES AGREE THAT:**

##### **Condemnation Award**

(1) Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or injury to the Property, is hereby assigned and shall be paid to Beneficiary as further security for all obligations secured by this Deed of Trust. On receipt of any such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

##### **Waiver of Late Payments**

(2) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

##### **Trustees Powers**

(3) On written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

##### **Full Reconveyance**

(4) On written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust, the Note, and any other notes secured by this Deed of Trust to the Trustee for cancellation and retention, and payment of Trustees fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as the person or persons legally

entitled thereto. Five years after issuance of the full reconveyance, Trustee may destroy the Note and this Deed, unless directed in the request to retain them.

#### **Assignment of Rents**

(5) As additional security, Trustor hereby gives to and confers on Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. On any such default, Beneficiary may pursue any of the enforcement mechanisms specified in California Civil Code Section 2938(c). The exercise of these enforcement rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

#### **Default in Foreclosure**

(6) On default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, and all documents evidencing any additional expenditures secured by this Deed of Trust.

After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale.

After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

#### **General Provisions**

(7) This Deed applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The

term Beneficiary shall mean the holder and owner, including pledgee, of the Note secured by this Deed of Trust, whether or not named as a beneficiary in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

#### **Acceptance by Trustee**

(8) Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

#### **Substitution of Trustees**

(9) Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall set forth the following: the date of recordation of this Deed of Trust; the name of the Trustor; the book and page where this Deed of Trust is recorded; and the name of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

#### **Cumulative Powers and Remedies**

(10) The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

#### **Conclusiveness of Recitals**

(11) The recitals contained in any reconveyance, trustees deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive on the Trustor, the Trustors heirs, executors, administrators, successors, and assigns, and all other persons.

#### **Attorneys Fees**

(12) If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys fees; and these sums shall be secured by this Deed of Trust.



**Cotrustees**

(13) If two or more persons are designated as Trustee in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustors heirs and assigns.

**Purchase Money Encumbrance**

(14) The promissory note secured by this Deed of Trust is given as a part of the purchase price of the Property.

**Acknowledgment**

DATED: December 31, 2010

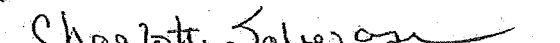
State of California )  
County of \_\_\_\_\_ )

DMS: 903663\_1

On \_\_\_\_\_ before me,  
\_\_\_\_\_, Notary  
Public (here insert name and title of the officer),  
personally appeared

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

  
George Salwasser

  
Charlotte Salwasser

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

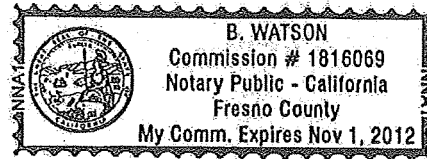
State of California )  
County of Fresno )

On January 13, 2011 before me,  
B. Watson, Notary Public (here insert name and title of the officer),  
personally appeared Charlotte Salwasser,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within  
instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that  
by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

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

WITNESS my hand and official seal.

Signature B. Watson (Seal)



## **EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 5 and 6 in Block 30 of The Town of Morro, in the City of Morro Bay, in the County of San Luis Obispo, State of California, according to the map thereof recorded April 22, 1887, in Book A, Page 35 of Maps, in the Office of the County Recorder of said County.

EXCEPTING THEREFROM the North 24 feet of said Lot 6.

APN: 066-112-007

**Exhibit "G" (pages 1-9)**

**JULIE RODEW**   
San Luis Obispo County – Clerk/Recorder

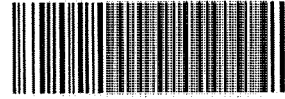
SN  
1/20/2011  
8:00 AM

Recorded at the request of  
**Fidelity Title Company**

**RECORDING REQUESTED BY:**  
Fidelity National Title Company  
Escrow No.: 10-400500996-LC  
Locate No.: CAFNT0940-0940-0005-0400500996  
Title No.: 10-400500996-RB

DOC#: 2011003180

Titles: 2 Pages: 9



Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

**When Recorded Mail Document To:**  
The City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

APN: 066-321-015 and 066-321-016 (a portion of)

Space above this line for Recorder's Use

### PERFORMANCE DEED OF TRUST

**THIS PERFORMANCE DEED OF TRUST** is entered into as of December 31, 2010, by **George Salwasser and Charlotte Salwasser**, husband and wife (the Trustor), whose address is 4087 N. Howard Avenue, Kerman, CA 93630, in favor of **Fidelity National Title Company**, a California corporation (the Trustee) for the benefit of the **City of Morro Bay** (the Beneficiary), whose address is 595 Harbor Street, Morro Bay CA, 93442.

### RECITALS

**WHEREAS**, Beneficiary and Trustor entered into a Real Estate Purchase Agreement dated , 2010, pursuant to which Trustor promised, among other things, to contract for and pay the costs to design, engineer, and install a Lift Station on that property in the City of Morro Bay, County of San Luis Obispo, State of California, described as:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF, (the Property)

**NOW, THEREFORE**, to secure the full and timely performance by Trustor of the Secured Obligation, Trustor agrees as follows:

#### Installation of Lift Station

(1) To contract for and pay the costs to design, engineer, and install a Lift Station on the Property to provide access to the Embarcadero and Market Street. Trustor agrees to complete all design and permitting, subject to the approval of Beneficiary, by December 31, 2011. The Lift Station, subject to the approval of Beneficiary, shall be installed and operational by December 31, 2012. Beneficiary shall grant Trustor, his approved assignee, or any subsequent owner of the Premises, an easement on any adjoining property necessary for the construction and/or operation of the Lift Station. The Lift Station design shall be approved by Beneficiary and shall be located on the west or north side of the building. The Lift Station shall be open to the public to obtain

access from and to the Embarcadero and Market Street during hours of operation to be mutually acceptable to Trustor and Beneficiary, and be capable of carrying a minimum of at least 6 individuals, on such other terms and conditions as are determined by Trustor, his approved assignee, or any subsequent owner of the Premises, in their sole discretion. The operation and maintenance of the Lift Station shall be the responsibility of the Trustor, his approved assignee, or any subsequent owner of the Premises. All building and planning fees for the Lift Station and the remodeling of 781 Market Street shall be waived by Beneficiary.

#### **Maintenance and Repair**

(2) To keep the Property in good condition and repair; not to remove or demolish any buildings on the Property unless consented to in writing by the Beneficiary; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act on the Property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary.

#### **Fire Insurance**

(2) To provide, maintain, and deliver to Beneficiary fire insurance reasonably satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary on any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

#### **Defense of Security**

(3) To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

#### **Payment of Liens and Taxes**

(4) To pay, at least 5 days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust.

If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the

security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand on Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter on the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs in a reasonable sum, including attorneys fees in a reasonable sum.

#### **Reimbursement of Costs**

(5) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the rate of five percent (5.00%) per annum or, if less, the maximum rate of interest allowed by law in effect at the date of this Deed of Trust.

#### **THE PARTIES AGREE THAT:**

#### **Condemnation Award**

(1) Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or injury to the Property, is hereby assigned and shall be paid to Beneficiary as further security for all obligations secured by this Deed of Trust. On receipt of any such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

#### **Waiver of Late Payments**

(2) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

#### **Trustees Powers**

(3) On written request of Beneficiary and presentation of this Deed of Trust for endorsement, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for performance of the obligations secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the performance of the obligations secured by this Deed of Trust.

#### **Full Reconveyance**

(4) On written request of Beneficiary stating that all obligations secured by this Deed of Trust have been performed, surrender of this Deed of Trust, to the Trustee for cancellation and retention, and payment of Trustees fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as the person or persons legally entitled thereto. Five years after issuance of the full reconveyance, Trustee may destroy this Deed, unless directed in the request to retain them.

#### **Assignment of Rents**

(5) As additional security, Trustor hereby gives to and confers on Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in the performance of any obligations secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. On any such default, Beneficiary may pursue any of the enforcement mechanisms specified in California Civil Code Section 2938(c). The exercise of these enforcement rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

#### **Default in Foreclosure**

(6) On default by Trustor in the performance of any obligations secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, and all documents evidencing any additional expenditures secured by this Deed of Trust.

After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale.

After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this



Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

#### **General Provisions**

(7) This Deed applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns.. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

#### **Acceptance by Trustee**

(8) Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

#### **Substitution of Trustees**

(9) Beneficiary, or any successor in interest, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall set forth the following: the date of recordation of this Deed of Trust; the name of the Trustor; the book and page where this Deed of Trust is recorded; and the name of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

#### **Cumulative Powers and Remedies**

(10) The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

#### **Conclusiveness of Recitals**

(11) The recitals contained in any reconveyance, trustees deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive on the Trustor, the Trustor's heirs, executors, administrators, successors, and assigns, and all other persons.

**Attorneys Fees**

(12) If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys fees; and these sums shall be secured by this Deed of Trust.

**Cotrustees**

(13) If two or more persons are designated as Trustee in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

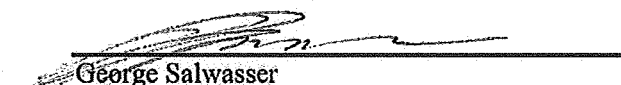
**Acknowledgment**


DATED: December 31, 2010

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,  
\_\_\_\_\_, Notary  
Public (here insert name and title of the officer),  
personally appeared

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

  
George Salwasser

  
Charlotte Salwasser

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

WITNESS my hand and official seal.  
DMS: 903682\_1

Signature \_\_\_\_\_ (Seal)

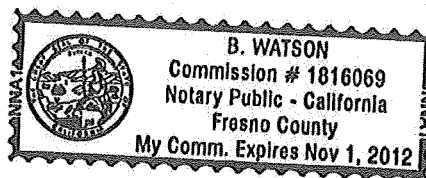
State of California )  
County of Fresno )

On January 10, 2011 before me,  
B. Watson, Notary Public (here insert name and title of the officer),  
personally appeared George Salwasser,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

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

WITNESS my hand and official seal.

Signature B. Watson (Seal)



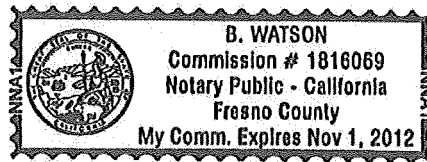
State of California )  
County of Fresno )

On January 13, 2011 before me,  
B. Watson, Notary Public (here insert name and title of the officer),  
personally appeared Charlotte Salwasser,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

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

WITNESS my hand and official seal.

Signature B. Watson (Seal)



## **EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 3 of Parcel Map MB AL 10-0069, in the City of Morro Bay, County of San Luis Obispo, State of California, according to that certain map recorded October 21, 2010, in Book 74 at Pages 44 through 45 of Parcel Maps, in the Office of the County Recorder of said County.

APN: A portion of 066-321-015 and 066-321-016



AGENDA NO: D-4

MEETING DATE: October 27, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 19, 2015

**FROM:** Dana Swanson, City Clerk

**SUBJECT:** Introduction and First Reading of Ordinance No. 596 adding Chapter 14.42 to the Morro Bay Municipal Code, Providing a Streamlined Permitting Process for Small Residential Rooftop Solar Systems and Finding the Ordinance Exempt from the California Environmental Quality Act

### **BACKGROUND**

This item was continued from the October 13, 2015 City Council meeting. The previous staff report is attached for reference and discussion purposes.

Prepared By: DS

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

City Manager Review: DWB

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



AGENDA NO: D-1

MEETING DATE: October 13, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** September 28, 2015

**FROM:** Scot Graham, Community Development Manager

**SUBJECT:** Introduction and First Reading of Ordinance No. 596 adding Chapter 14.42 to the Morro Bay Municipal Code, Providing a Streamlined Permitting Process for Small Residential Rooftop Solar Systems and finding the ordinance exempt from the California Environmental Quality Act

### RECOMMENDATION

Staff recommends the City Council introduce, by title only, and waive the full reading, an ordinance amending Title 14 of the Morro Bay Municipal Code by addition of Chapter 14.42 providing a streamlined permitting process for small residential rooftop solar systems and finding the project exempt from the California Environmental Quality Act (CEQA).

### FISCAL IMPACT

None, other than for staff time spent preparing the Ordinance for adoption (approximately 15 hours).

### BACKGROUND/DISCUSSION

In September 2014, the California State Legislature passed, and the Governor signed, Assembly Bill 2188 (AB 2188), which requires local agencies to implement an expedited permit process for small residential rooftop solar energy systems.

This legislative action revised two parts of the California Solar Rights Act, specifically Section 714 of the Civil Code and section 65850.5 of the California Government Code, related to solar energy.

Section 714 of the Civil Code was amended to alter the definition of what is a reasonable restriction on a solar energy system as it pertains to restrictions that would *significantly* increase the cost of the system or significantly decrease its efficiency or specified performance, or that would not allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. Specifically, “significant” means an amount not to exceed \$1,000.00 over the system cost as originally specified and proposed, or a decrease in the systems efficiency of an amount exceeding 10 percent.

Government Code Section 65850.5 mandates adoption of an ordinance by the City of Morro Bay, which

Prepared By: SG Dept Review: SG  
City Manager Review: DWB  
City Attorney Review: \_\_\_\_\_

outlines an expedited permit and inspection process for small residential rooftop solar energy systems on or before September 30, 2015. The proposed ordinance, found in Attachment 1, satisfies the content requirement of AB 2188 while falling somewhat short on the adoption deadline. While adoption of the ordinance did not take place prior to September 30, 2015, implementation of the streamlined review process, outlined in AB 2188, was implemented on or about August 17, 2015.

The City of Morro Bay Building Division currently meets the time-frame required by AB 2188 for same day, over the counter, issuance of small photovoltaic (solar power collector) permits, as well as the requirement for a single, timely inspection to finalize the permit.

### **ENVIRONMENTAL**

The ordinance is exempt from environmental review pursuant to CEQA guidelines Section 15061(b)(3). The activity is covered by the general rule which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. The project involves updates and revisions to existing regulation and the code amendments consistent with California State Law, specifically Government Code Section 65850.5 and Civil Code section 714.

### **CONCLUSION**

Staff suggests that the City Council introduce the ordinance as identified in the Recommendation section of the staff report.



**ORDINANCE NO. 596**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MORRY BAY, CALIFORNIA  
AMENDING TITLE 14 TO ADD CHAPTER 14.42 TO THE MORRO BAY MUNICIPAL  
CODE ESTABLISHING AN EXPEDITED PERMITTING PROCESS FOR SMALL  
RESIDENTIAL ROOFTOP SOLAR SYSTEMS**

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

**WHEREAS**, the City Council of the City of Morro Bay seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, the City Council wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

**WHEREAS**, the City Council seeks to meet the climate action goals set by the State; and

**WHEREAS**, solar energy creates local jobs and economic opportunity; and

**WHEREAS**, the City Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

**WHEREAS**, it is in the interest of the health, welfare and safety of the people of Morro Bay to provide an expedited permitting process to assure the effective deployment of solar technology.

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

SECTION 1: The City Council has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines Section 15061(b)(3), has determined with certainty that there is no possibility that this Ordinance may have a significant effect on the environment. The Ordinance involves updates to the City's regulations as required by the mandates of California law, specifically AB 2188 including Government Code Section 65850.5 and Civil Code Section 714. This is also consistent with CEQA's recognition that solar systems do not have a substantial impact on the environment, as set forth in Public Resources Code Section 21080.35, which provides that certain solar energy systems are statutorily exempt from environmental review under the California Environmental Quality Act, as well as the inherit recognition in CEQA Guidelines section 15301 (Existing Facilities). Additionally, the City Council has determined pursuant to CEQA Guidelines Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) the adoption of the Ordinance, which had been directed by the State, would assure the enhancement of the environment, including climate action goals, and would not allow environmental degradation. Further, none of the exceptions to the exemptions under CEQA Guidelines Section 15300.2 are applicable. Therefore, this project is not subject to CEQA.

SECTION 2: There is hereby added to the Morro Bay Municipal Code, a new Chapter 14.42 to Title 14 to read, in its entirety, as follows:

**Chapter 14.42**  
**RESIDENTIAL SOLAR**

**14.42.010 - Definitions.**

- A. A “Solar Energy System” means either of the following:
  - 1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
  - 2. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
  - 3. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.
- B. A “small residential rooftop solar energy system” means all of the following:
  - 1. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
  - 2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and City health and safety standards.
  - 3. A solar energy system that is installed on a single or duplex family dwelling.
  - 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.
- C. “Electronic submittal” means the utilization of one or more of the following:
  - 1. Email;
  - 2. The Internet;
  - 3. Facsimile.
- D. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.
- E. A “common interest development” means any of the following:
  - 1. A community apartment project.
  - 2. A condominium project.
  - 3. A planned development.
  - 4. A stock cooperative.
- F. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- G. “Reasonable restrictions” on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.
- H. “Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance” means:

1. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.
2. For Photovoltaic Systems: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

#### **14.42.020 – Purpose.**

The purpose of the Ordinance is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety.

#### **14.42.030 – Applicability.**

- A. This Ordinance applies to the permitting of all small residential rooftop solar energy systems in the City.
- B. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

#### **14.42.040 - Solar Energy System Requirements.**

- A. All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the City.
- B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.
- C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

#### **14.42.050 - Duties of Building Division and Building Official.**

- A. All documents required for the submission of an expedited solar energy system application shall be made available on the publicly accessible City Internet Website.
- B. Electronic submittals of the required permit application and documents by email and the Internet shall be made available to all small residential rooftop solar energy system permit applicants.

- C. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.
- D. The City's Building Division shall adopt a City standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.
- E. The small residential rooftop solar system permit process, City standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.
- F. All fees prescribed for the permitting of small residential rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

#### **14.42.060 - Permit Review and Inspection Requirements.**

- A. The Building Division shall adopt an administrative, nondiscretionary review process for the Department to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption on this Ordinance. The Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications or within three business days for electronic applications of receipt of a complete application and meets the requirements of the approved checklist and City standard plan. The building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the City Planning Commission per Section 17.60.130 of this Code, except references to "Director" shall instead refer to the "building official."
- B. Review of the application shall be limited to the Building Division's review of whether the application meets local, state, and federal health and safety requirements.
- C. If a use permit is required, the building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the City Planning Commission per Section 17.60.130 of this Code, except references to "Director" shall instead refer to the "building official."
- D. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- E. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

F. The City shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

G. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

H. Only one inspection shall be required and performed by the Building Division for small residential rooftop solar energy systems eligible for expedited review.

I. The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within one business day of a request, or within five business days if an inspection cannot occur on the next business day.

J. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Morro Bay hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its adoption following second reading.

SECTION 5: The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, section 36933.

**INTRODUCED** at a regular meeting of the City Council of Morro Bay, held on the 27<sup>th</sup> day of October, 2015, by motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_.

**PASSED AND ADOPTED** on the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
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 of the 27<sup>th</sup> day of October, 2015, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote, to wit:

AYES:

NOES:

ABATAIN:

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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Clerk of the City of Morro Bay