AGENDA NO: A-8

MEETING DATE: May 23, 2017

THE FOLLOWING PUBLIC CORRESPONDENCE WAS RECEIVED BY THE CITY COUNCIL FOLLOWING POSTING OF THE AGENDA

Dana Swanson

RECEIVED
City of Morro Bay
MAY 23 2017
City Clerk

From: Jamie Irons
Sent: Tuesday, May 23, 2017 5:40 AM
To: betty winholtz
Cc: Dana Swanson
Subject: Re: agenda item a-8

Thank you for your email and input. They will be included as agenda correspondence for the record.

Regards,
Jamie

From: betty winholtz [redacted]
Sent: Tuesday, May 23, 2017 12:41 AM
To: Jamie Irons; Matt Makowetski; John Headding; Robert Davis; Marlys McPherson
Cc: Dana Swanson
Subject: agenda item a-8

Dear City Council:

I assume you have noticed that items or projects don't come around once in this City, they tend to cycle. Due to this fact, I strong suggest that you extend the length of time you are keeping audio or visual recordings of official City meetings. Ten years is just not long enough. It need not be both audio and visual, but one or the other. Shortly after Mr Buckingham became city manager, City minutes became "action minutes." If you read them, there is not much insight as to the arguments that went into making a certain decision. I would not want that information lost as items and projects recycle.

Some may argue that YouTube is our back-up. With changing internet rules, I don't know the dependability of that statement. I think the City needs to protect itself and guarantee to the residents that our decision making history is preserved.

Unless you are going to change the nature of recording official minutes, I strongly recommend that at least 20 years be the length of time an audio or visual recording is kept, if not longer.

Sincerely,
Betty Winholtz

Virus-free. www.avast.com

AGENDA NO: B-2

MEETING DATE: May 23, 2017

THE FOLLOWING PUBLIC CORRESPONDENCE WAS RECEIVED BY THE CITY COUNCIL FOLLOWING POSTING OF THE AGENDA

Dana Swanson

From: Cindy Jacinth
Sent: Monday, May 22, 2017 4:59 PM
To: Dana Swanson
Cc: Craig Schmollinger
Subject: FW: Coastal Commission Letter to City Council re. 725 Rose's Landing
Attachments: May 22 2017 letter to City Council Re. 725 Embarcadero.pdf

We received the attached letter from the Coastal Commission re: Agenda Item B-2/ Rose's Landing requesting distribution to the City Council.

Thanks,
Cindy

From: Chaver, Yair@Coastal [mailto:Yair.Chaver@coastal.ca.gov]
Sent: Monday, May 22, 2017 4:51 PM
To: Cindy Jacinth <cjacinth@morrobayca.gov>
Cc: Steve Puglisi <spuglisi@puglisidesign.com>
Subject: Coastal Commission Letter to City Council re. 725 Rose's Landing

Hi Cindy,

Attached is a letter we'd like to have you provide to the City Council during its May 23 hearing relating to low-cost visitor accommodations, visual resources and public parking.

Please contact me with any questions.

Thank you,

Yair

==========
Yair Chaver, Coastal Program Analyst
Central Coast District Office
Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WWW.COASTAL.CA.GOV

May 22, 2017

Mayor Jamie L. Irons and City Council Members
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Subject: Rose's Landing Proposed Hotel Development, 725 Embarcadero (Item B-2, May 23, 2017 City Council Agenda)

Dear Mr. Irons:

Please accept the following Coastal Commission staff comments on item B-2 on the May 23, 2017 City Council agenda regarding Rose's Landing. The project includes a proposal to convert the existing upstairs restaurant to a ten-room boutique hotel, improve lateral public coastal access, and install new docks for boats and public access.

Lower Cost Visitor Accommodations.
As you know, the Coastal Act protects and encourages the provision of lower cost visitor facilities, including accommodations (Coastal Act Section 30213). The Morro Bay LCP includes policies that similarly protect and encourage such lower-cost visitor facilities, including by encouraging the provisions of a range of room prices in order to serve all income ranges (LCP Policies 2.01 and 2.07).

At the March 21, 2017 Planning Commission hearing, Morro Bay planning staff recommended Planning Condition 10, which stated: "twenty five percent of hotel rooms shall be set at no more than 80% of ADR [Average Daily Rate] for the preceding calendar year as determined by the City's Finance Department." It is our understanding that the Planning Commission directed staff to delete this condition due to issues with the methodology to be used to determine the 80% of ADR. We encourage the City to continue its efforts to determine the appropriate method for defining lower-cost accommodations in Morro Bay, and to apply that method to the proposed project to ensure consistency with both the Coastal Act and the Morro Bay LCP. For example, on May 10, 2017, the Coastal Commission approved a hotel development located at 1170 Front Street, finding that $100 at the low season to $139 at the peak season was low-cost in the Morro Bay/Cayucos area, and required (per the Applicant's proposal) to have 25% of the proposed rooms to be no more than these defined low-cost rates. Using this same metric for the Rose's Landing project, two and a half rooms (i.e., 25% of the proposed ten total rooms) would have

rates at no more than $100 at the low season and no more than $139 at the peak season.[1] This metric could be an appropriate way to address low-cost accommodations for this project.

Protection of Visual Resources
The proposed project would extend the seaward extent of the second floor by approximately 15.5 feet to provide balconies for three of the proposed hotel rooms. This project element raises concerns that public views to the bay and to Morro Rock from the second-floor public roof-top deck would be greatly reduced. A possible solution to any obstruction of views to the bay and Morro Rock would be to extend a portion (i.e. the portion at the top of the stairs) of the existing second-floor public viewing deck seaward (perhaps cantilevered) to provide viewing access to the bay and Morro Rock for up to four people at a time. The remainder of the existing second-floor deck could be used for hotel purposes.

Parking Access
The proposed project would not have any onsite parking but instead would rely on the use of nine City-owned parking spaces in the public City parking lot located across the street from Rose's Landing. In previous CDP approvals, the Coastal Commission has required mitigation, such as –in-lieu fees, for development that uses general public parking spaces to meet a project's parking requirements. Please consider requiring such mitigation for the proposed project.

We appreciate your time and attention on this matter. Please feel free to contact me by phone at (831) 427-4863 or by email at Yair.Chaver@coastal.ca.gov.

Sincerely,

Yair Chaver
Coastal Planner
Central Coast District Office

CC: Steve Puglisi

[1] See CDP 3-16-0287 which can be found at https://documents.coastal.ca.gov/reports/2017/5/w21b/W21b-5-2017-report.pdf

Dana Swanson

RECEIVED
City of Morro Bay
MAY 23 2017
City Clerk

From: Sean Green [redacted]
Sent: Monday, May 22, 2017 10:24 PM
To: Council
Cc: Ikani Taumoepeau; Dana Swanson
Subject: 5/23/17 Council Agenda Item B-2

Council and staff,

While I've already written to you extensively about the proposed project at Rose's Landing, I wanted to take a quick minute to acknowledge the great effort put forth by both the Planning Commission and the applicant in this complicated matter, and to quickly discuss two key issues:

1. Daily room rates - Though I very much respect the Coastal Commission's intentions, their statutory low-cost requirement does not feel appropriate in this instance. For a small seaside community to apply this requirement on a per hotel basis rather than on a City-wide basis seems like regulatory overkill, especially when proximity to the Bay already creates a healthy ADR spectrum that allows for growth in the number of high-end, seaside rooms in order to offset the existing surplus of more economical options further inland.

2. Parking allowance - Without getting too deep into case-specific details, there hasn't been a convincing argument presented to date that justifies the relinquishing of ANY public parking at ANY time of day for private use without compensation. Doing so would send the City down a dangerous path in which we'll have no choice but to approve similar requests from each of several developers coming down the pipeline in the coming months and years, thus eliminating the potential for any significant revenue drawn from paid parking along the waterfront--an important issue that simply MUST be addressed before we start handing out free spaces upon request. Moderate minds may suggest restricted hours or a "trial period" of hotel-specific spaces, but restricted hours create an enforcement liability, and trial periods in Morro Bay, unless the City's willing to legally defend age-old agreements, risk becoming permanent the instant the paint dries on the "HOTEL GUEST ONLY" curb. Please refrain from distributing ANY of our public, 10' x 20' revenue centers until the City has thoughtfully determined its long-term approach to parking management along the waterfront, or else put a price tag on each one that will make an honest difference to our bottom line.

Submitted respectfully for your consideration,

Sean Green
Morro Bay, CA

AGENDA NO: B-3

MEETING DATE: May 23, 2017

THE FOLLOWING PUBLIC CORRESPONDENCE WAS RECEIVED BY THE CITY COUNCIL FOLLOWING POSTING OF THE AGENDA

Dana Swanson

From: Joan Gargiulo
Sent: Monday, May 22, 2017 4:52 PM
To: Dana Swanson
Subject: FW: Co-Appellant Answer to Staff Report [UPO-486] and Correspondence for 5/23/17 Hearing
Attachments: Correspondence From Co-Appellant to Council [UPO-468].pdf

Hi Dana,
Please see the attached correspondence from Appellant Knight.
Thanks!

Joan E. Gargiulo, Assistant Planner
Community Development Department
City of Morro Bay
(805) 772-6270
jgargiulo@morrobayca.gov

From: Daniel Knight [mailto:dan.knight@danknightlaw.com]
Sent: Monday, May 22, 2017 12:01 PM
To: Jamie Irons <jirons@morrobayca.gov>; Marlys McPherson <mmcpherson@morrobayca.gov>; Matt Makowetski <mmakowetski@morrobayca.gov>; John Headding <jheadding@morrobayca.gov>; Robert Davis <rdavis@morrobayca.gov>
Cc: Joan Gargiulo <jgargiulo@morrobayca.gov>
Subject: Co-Appellant Answer to Staff Report [UPO-486] and Correspondence for 5/23/17 Hearing

Honorable Mayor and City Councilpersons,

Please find attached, my written response in preparation for the 5/23/17 appeal of the Conditional Use Permit at 340 Jamaica Street, Morro Bay.

If there is any additional information you require please know I am at your disposal.

Very truly yours,

Daniel J. Knight M.S.
Attorney at Law | Expert Witness
Real Estate Broker
General Engineering, Building, & Plumbing Contractor
Phone: 805-316-1180
CSLB Lic #882611 | BRE# 01993903 | CalBar #310207
Office Location/Service Address:
1103 Johnson Ave #H
San Luis Obispo CA 93401
Mailing Adress:
P.O. Box 3557
San Luis Obispo CA 93403

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To: Mayor, City Council and Staff

From: Daniel Knight, representing the interest of the C. Knight Trust [Co-Appellant]

RE: UPO-468 [Appeal of Conditional Use Permit]

Dear Mayor Irons, Councilperson McPherson, Councilperson Makowetski, Councilperson Headding, Councilperson Davis, and City Staff

In continuing opposition to the conditional use permit which has been granted for the parcel located at 340 Jamaica Street. I write today in rebuttal to the staff report, dated May 2, 2017, issued in response to our appeal, and to renew our request for the conditional use permit to be denied. I also write in support of the Applicant in his desire to provide the community with an automotive painting and coating shop.

My point by point responses to the staff report are organized as follows:

Bold letters are the issues I raised in my appeal

Italics and underline are staff's reply to the issue raised.

Regular text is my reply to staff's reply.

Issue 1: The Planning Commission relied on facts and assumptions that were not based on clear evidence.

Staff Response and Analysis:
Appellant fails to specify which facts and assumptions were not based on clear evidence and instead makes a vague allegation. However, in general, staff notes that the Planning Commission relied on compliance determinations from APCD and County Department of Health, which have jurisdiction over air quality, discharge, and disposal compliance. The Planning Commission also considered all relevant factors and evidence submitted when analyzing the permit application, including reliance on APCD and County Environmental Health compliance determination and adherence to the requirements set forth in the MBMC including but not limited to Section 17.56.100 "Continuation of Nonconforming Uses" and Section 17.52 "Performance Standards.

There is no factual statement here that is incorrect. Instead, it is what staff implies that is incorrect. What is implicit in their response is that we are challenging solely the effluent of the waste stack. Other potential non-airborne contaminants and pollutants which may be emitted are also a concern. It should be noted that while the Planning Commission and city staff recognizes the air-borne contaminants that are released, what does not appear to be adequately addressed is the

disposal method of heavy metals and other potentially toxic substances released through the use of rotary tools and other automotive repair tools. For example, it is common knowledge that older vehicles used lead as a filler product to rebuild automotive parts and that the inhalation or ingestion of lead is damaging to the health and welfare of humans, particularly children, slowing childhood development and causing intellectual disability. Because lead is a heavy metal it falls to the ground and other surfaces where children because of their height and likelihood of crawling have it introduced into the mouth. If further certification is needed, please also note that I, Daniel Knight, am a certified Lead Safe Renovator trained in the use of leads safe work practices at all relevant times that this appeal was filed. I certify that lead is a toxic substance that is deleterious to health and safety of human beings, my license number for the Federal Environmental Protection agency is NAT-123594-1. I am also trained in the proper clean up of lead. No mechanical methods should be used that will cause the dispersion of lead through a rotary device. As noted in the conditions of the 2017 CUP, all sanding shall be done indoors. This includes buffing of vehicles and other activates that COULD break the surface of the paint and make contact with the lead surface releasing the lead. A comparatively small amount of lead can pollute a large area, the example used in the EPA Training I took was that a packet of lead the size of a sugar packet is enough to contaminate an entire home.

I also ask why staff has chosen not to reference the conditions required by the Bureau of Automotive Repair when imposing their conditions as to contaminates. It is my understanding that City Government is responsible to protect the ***health, welfare, and morals of the community***. Turning a blind eye to what State and Federal governments have called extremely toxic substances being released (or for purposes of CEQA can be *reasonably possibly* released causing environmental harm) is not an option. I hope that it is understood that automotive tools release substances when sanding cars that a ventilation system will not capture and there are secondary means of contamination.

Staff, in their replies, assert that I failed to identify specific evidence. Staff omits that my appeal also addresses misuse of zoning law in an effort to smooth over a past error by granting a Conditional Use Permit that has lapsed. The reasons articulated by the Planning Commission, as understood at the time of the meeting and after seeing the responses from staff, is that because some of the factors needed in approval were met, consideration of the surrounding area should be ignored.

It is my contention (which has not been addressed by staff's report) that the zoning use of the Condition Use Permit is improper. It is specifically articulated by the Morro Bay zoning code the definitions of R-1 and C-2 zoning. For reference, please see the below definitions from the Morro Bay Municipal Code without alteration.

- *" §17.12.056 – Automobile repair, major.*
    - *" "Major auto repair" means general repair, rebuilding or reconditioning of engines including removal of same; motor vehicles, trucks or trailer collision service including body, frame or fender straightening or repair; overall painting or paint shop."*
- *§17.24.040 – Single-family residential (R-1) district*
    - *"A. Purpose.*

  1. The single family residential (R-1) district is intended to be applied to existing single-family residential areas of the city to provide for housing which is consistent and harmonious with existing development and to underdeveloped areas of the city in which topography, access, services, utilities and general conditions make the area suitable and desirable for single family home development.

  2. The purpose is to stabilize and maintain the residential character of the R-1 district and to ensure the maintenance of the maximum amenities for family living commensurate with the densities of population specified and to ensure that the districts will be free of excessive traffic and other uses causing congestion, noise, confusion, interference in the pattern of family living."
- *§17.24.100 – General commercial (C-2) district.*
    - *"Purpose. The purpose of the general commercial (C-2) district is to provide for the heavier types of commercial and semi-industrial uses which do not specialize in pedestrian traffic and are more appropriately located away from the central business district and where effective measures are taken to protect any adjacent residential zones from adverse impacts of commercial uses such as noise vibration and from uses which may be visually incompatible."*

Please also see the below excerpt from the Governor's Office on the topic of zoning:

> *"Variances*
>
> *A variance is a limited waiver of development standards allowed by the zoning ordinance. It may be granted, after a public hearing, in special cases where: (1) strict application of the zoning regulations would deprive property of the uses enjoyed by nearby lands in the same zone; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege.*
>
> *A variance does not permit a use that is not otherwise allowed in that zone (for example, a commercial use may not be approved in a residential zone by variance). Economic hardship alone is not sufficient justification for approval of a variance.*
>
> *Typically, variances are considered when the physical characteristics of the property make it difficult to use. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow a house to be built closer to the street than usually allowed.*
>
> *Conditional Use Permits (CUPs)*
>
> *Some types of land uses are only allowed upon approval of a conditional use permit (also called a CUP or special use permit) after a public hearing. These uses might include community facilities (i.e., hospitals or schools), public buildings or grounds (i.e., fire stations or parks), temporary or hard-to- classify uses (i.e., Christmas tree sales), or uses with potentially significant environmental impacts (i.e., hazardous chemical storage or surface mining). The local zoning ordinance specifies the uses for which a conditional use permit is required, the zones they may be allowed in, and the public hearing procedure.*
>
> *A CUP imposes special development requirements to insure that the use will not be detrimental to its surroundings. Requirements might include, for example, additional landscaping, soundproofing, limited hours of operation, additional parking, or road improvements. A CUP does not rezone the land."*

In addition, Morro Bay Municipal code when read within the context of, and taken in concert with the update sessions to the Land Use Element for the City of Morro Bay, shows that this Conditional Use Permit was meant to cure an immediate harm to an individual when the zoning regulations came into effect around the property. Since the first issuance of the Conditional Use permit, that investment of more than 30 years has to have been recaptured. In addition, by visiting the area of this Automobile Major Repair facility a reasonable person would be put on constructive notice that the automobile shop was out of place, at least prompting them to employ due diligence to find out the history of the facility and the state of the conditional use permit. The City has in effect waived the conditional use permit requirement and given a constructive variance which is not proper in this situation.

"17.56.100 - Continuation of nonconforming uses.

Nonconforming uses may be continued except as otherwise provided in this chapter:

A. Replaced with a Similar or Less Restricted Use.

1. Nonconforming use may be replaced with another nonconforming use in the same or in a more restricted classification as determined by the planning commission and subject to first obtaining a conditional use permit, provided that the planning commission finds that the new use is more conforming to the underlying zone than the previous nonconforming use.

2. If the nonconforming use is replaced by a use of a more restricted classification, the occupancy thereafter may not revert to a use in a less restrictive classification.

B.

Amortization Schedule. In granting a conditional use permit to allow a nonconforming use to be replaced with another nonconforming use in a more restrictive classification, the planning commission may establish an amortization schedule for the nonconforming use by setting a date after which the nonconforming uses must be discontinued or replaced with a conforming use."

The above language asserts that the Conditional Use Permit when assumed by a subsequent user can continue on. However, staff has chosen not to include the language for your consideration contained in §17.56.100 addressing that resumption of a discounted use:

"17.56.130 - Resumption or replacement of discontinued nonconforming uses.

No nonconforming use may be resumed, reestablished, reopened or replaced by any other nonconforming use after it has been abandoned or vacated for a period of six months."

Here it is my contention that the original Conditional Use Permit was abandoned within a reasonable time period after the non-renewal of the Conditional Use Permit as specially outlined by the original CUP. This states that is the responsibility of the user to renew the conditional use permit: (See below from the 1981 Conditional Use Permit allowing for the addition of the Spray Booth, condition 13).

"Approval of the use contemplated herein shall be for a term of five (5) years from the effective date of this acting thereafter, the use of the subject site shall return to general automotive repair, or uses in conformance with the Zoning in existence at that time."

As specifically stated by the Planning Commission, this permit was up for renewal every five years. Staff asserts that this business has been in continual use since its inception. Therefore the business has wrongfully and, against the terms of the very conditions it relies on for protection, been in operation after the abandonment of the original Conditional Use Permit. In Morro Bay Municipal Code §17.56.130, the code dictates that the permit is abandoned if the subject property is out of compliance for a period of six months. At a minimum the spray booth is no longer

allowed and by review of the zoning code NOT grandfathered in. At best the property at Jamaica Street has reverted to an Automotive Repair shop as specifically authorized in the original Conditional Use Permit. Since the permit has been abandoned by non-renewal as to the spray booth, and by operation of the conditions of the 1981 Conditional Use Permit, the property has reverted to an automotive repair shop which, as confirmed by the owner of the shop prior to the Applicant in oral testimony, was only used for Painting and Body work. The Conditional Use Permit from 1979 that the shop was grandfathered under has also been abandoned.

This shop has not been in continuous use legally, it has been operating outside of the conditions of the permit through a process of a lack of enforcement. This is very likely why the Applicant was not able to find record of the Conditional Use permit, because it has been waived.

Further, it should also be noted that in the 1981 Conditional Use Permit, staff spoke to the fact that the land use was not in conformance with the surrounding neighborhood and was not proper with then existing zoning. See Staff Report 1981 CC 05.23.17 Page 403

> *"Staff would be the first to observe that any type of repair shop would not be a desirable use for this site, but it is noted the property has a historic use for auto repair which predates the City Zoning. In this instance, it seems that the best opportunity (by means of the subject Use Permit) is to impose conditions which would make the business compatible with the surrounding neighborhood. Conditions could address the hours of business operation, the site appearance, and potentially the term of life of the Use Permit."*

As shown with this revisiting of the 1981 Conditional use permit, staff was in agreement that this use was not proper with the neighborhood. Staff made recommendations that there potentially be a timeframe set for the use to sunset or amortize using modern section *§17.56.100* (b) as cited by staff to set a reasonable period for recapture of investment in the property given its historic use. Surely 36 years is sufficient to recapture this investment.

Please also note that the above point is moot since both the permit granted with grandfather rights in 1979 and the permit modification in 1981 were both waived as a result of non-compliance with the very terms used for the present day protection as a going concern.

Operation in spite of non-compliance with the Conditional Use Permit does not negate the requirement that the permit must be renewed. By analogy I ask you to consider an example we all experience that is particularly fitting given the type of use in question.

If I Daniel Knight were granted a drivers license, a permit to drive on our roads in California, and I was required to renew this license as a condition of my continued use of the roads, and I failed to do so, would my reply to the Officer who pulls me over for having an expired license, that I hadn't received the renewal in the mail be sufficient to avoid citation? After I failed to renew my license for a certain length of time would I not be seen to have waived my driving privileges completely and be forced to apply for another drivers license and be issued a new permit under the terms of the then existing laws? My ignoring my responsibilities is not a defense to unlicensed activities.

Another example:

If I were to do business in the City of Morro Bay originally applying for a business license to do business in the City, would I have a valid defense for not paying subsequent fees by asserting I didn't know I needed to renew my business license? On the very document that gives the business owner the authority to do business in a non-conforming use it states the terms by which it is to continue business. A lack of notice about the Conditional Use Permit is NOT a defense.

Given the above discussion it is still our contention that the Planning Commission relied on facts that were not based on clear evidence. Conditions of the Conditional Use Permit were not compiled with, not for a mere 6 months but for a total of 31 years. We believe if the documents for the permit would have been fully analyzed it would have been known the permit was abandoned. This also brings up a point of paramount importance. The abandonment and wavier of the Conditional use permit, as outlined above under section MBMC §17.56.130, requires CEQA analysis and an Environmental Impact Report for the Planning Commission's newly granted Conditional Use Permit. As cited by staff, categorical exemption from the California Environmental Quality Act is available to those uses that are ongoing under the law. Illegal uses are not ongoing uses, they are illegal uses that have not been caught and stopped.

CEQA Section 15301 "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects, which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use."

Staff has also made the determination that the intent of CEQA, as listed at the end of §15301 under "Discussion", be left out and not included for discussion before categorical exemption of a use is found. Please all see an excerpt of CEQA 15300.2. (b) (c)

> *"CEAQ Section 15301 'Discussion": This section describes the class of projects wherein the proposed activity will involve negligible or no expansion of the use existing at the time the exemption is granted. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2. Accordingly, a project with significant cumulative impacts or which otherwise has a reasonable possibility of resulting in a significant effect does not quality for a Class 1 exemption."*
>
> CEQA Section 15300.2 Exceptions *"(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.*
>
> *(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

As outlined above, all that is required to remove from categorical exemption under CEQA is that there be a *REASONABLE POSSIBAILTY* that the activity will have a significant effect on the environment over time. In this regard we note that, as shown on the City of Morro Bay Map, there is a sensitive habitat located 1½ city blocks to the south of the facility in a creek bed that drains to another environmental sensitive habitat at the dunes. Both are classified habitats for the Western Snowy Plover that nests in the area. There is a reasonable possibility the watershed might be contaminated by inadvertent, unaddressed concerns of the proposed conditional use permit when viewed in cumulative effect.

To fully understand the gravity of the damage that can be reasonably possible without an environmental report and mitigation study, please view the website where [Too Numerous to include all relevant documents] I found the harm to threatened species on the ECOS Environmental Conservation Online Systems maintained by the U.S. Fish and Wildlife Service.

What staff erroneously assumes is that the responsibility falls on the citizens to provide documents and proof that the business is or is not in compliance. Again, not so. The responsibility is on the business owner to prove that there will be no adverse impacts and all that is required is that a citizen or the environment be harmed or there be a reasonable possibility of harm from the business or project, to instead show that it has not remained in compliance with all conditions of the initial Conditional Use Permit as specifically outlined in the 1981 Change to the 1979 conditional use permit.

Condition #3 1981 CUP: " All requirements of any law, ordnance or regulation of the State of California, City of Morro Bay, and any other government entity shall be complied with"

Here, again by the testimony given by the application and the previous owner this condition has not been complied with invalidating the 1979 and 1981 Conditional Use Permits.

It is further our contention that oral testimony delivered referring to the original Conditional Use Permit documents was assumed accurate, but was miss-stated in public comment at the March 7th 2017 meeting and, had the commissioners and staff read thoroughly the documents, they would have seen that what was being introduced at public comment was in direct contradiction to the document the public comment referred to.

We also believe that the Planning Commission was remiss when it accepted public testimony that clearly had no factual basis. One specific example was a young women who returned to the podium a second time to reply to a comment made by a person against the CUP re-issuance, that she had grown up in an automotive garage, then spun a full 360 degrees as if to show no obvious physical defect to her person. This is the type of testimony that was introduced at the Planning Commission meeting. This is completely inappropriate to take into account and should have no weight. I contend that without a thorough physical examination, test for cognition, and intellect, as well as a study of baseline aptitudes there is no way to know if growing up in an automotive shop has had an ill effect on the young women. She appeared to be fine, but that type of vague allegation without specific foundation is not appropriate, constructive, or any type of valid evidence.

Another example is when another member of the public stood to speak, he commended the Applicant for being a good person and good for the community, stating that his work was impeccable. Here, again, opinion evidence is wholly inappropriate for a land-use decision. There was no opportunity to disprove these assertions and the majority of the persons speaking in favor of the shop spoke to Jason's good character. Good character is irrelevant in land use decisions as the decision on the Conditional Use Permit survives the Applicant's good character and ownership. My initial opinion is that the Applicant is a decent business owner who is doing his best to navigate a web of regulation, that there was not help through the process in records

searching with the City. In fact, this is why I am specifically raising the point that he needs to be granted the proper permits in the proper zoning in the General Commercial District.

Staff contends that they relied on creditable facts in order to articulate the basis and standing for a re-granting of the Conditional Use Permit. However, staff cites to APCD and the County Environmental Health compliance. These are not appropriate basis to find compliance with land-use issues. Air Pollution Control District only oversees the health of the air basin and district, they do not oversee that the emitting source is a duly licensed facility regarding the land. Instead they renew applications for permits requiring only that at one time there was a CUP in this case. In addition, a finding of Sanitary by the County Environmental Health department, who again is geared to actives other than the compliance with Land Use within the city of Morro Bay, should not be relied upon. The County's role within the bounds of the City of Moro Bay is simply to assure hazardous materials are stored properly and other flammable or toxic substances are not being disposed of improperly. Again, here the authority that the staff contends to cite to is not charged with the duty it is cited to for authority; land-use. Applicant and Staff have failed to meet the bar of articulable facts to prove up the reasonability of their findings. As outlined above the responsibility is on the business owner to answer contentions with facts that are applicable to prove why an Automotive Repair major use should be allowed in a residential neighborhood. Introduction of facts alone is not sufficient; there must be introduction of relevant facts.

Based on the above deviations from the codes of the City of Morro Bay, State of California, and the Federal Government I ask again for you to deny this appeal in total.

Issue 2: The assumptions relied upon in making zoning declarations were not articulated in a manner that a reasonable person would be able to understand. The intended conditions and outcomes of those conditions are not clear.

Staff Response and Analysis:
The assumptions relied upon by staff and the Planning Commission were presented in a publicly available staff report and resolution and a presentation at a duly noticed public hearing and include information pertaining to the historic uninterrupted use of the site and the continued operation of the business, the City regulations associated with the continuation of nonconforming uses and performance standards, and the compliance determinations from APCD and County Environmental Health. The conditions of approval are clearly articulated in Planning Commission Resolution No. 06-17 (Exhibit G).

As outlined above in my response to staff's reply to Issue 1, the source of their articulation was relied on in error, as both of the authorities do not regulate the land-use within the City of Morro Bay there was no articulated basis memorialized and released before the time of appeal. The documents should be maintained per Morro Bay Municipal Code ("MBMC") §17.80 for review, which may now be complete. Based on this cited authority not being relevant there were no other sources of authority cited for the rationale for the improvement to the property and re-issuance of a waived Conditional Use Permit, other than vague reference to code sections, to which facts from non-authoritative sources were applied. The conditions placed on an invalid conditional use permit are not relevant to the conditional use permit. Instead staff is correct in that the conditions placed on the non-existent permit bring the non-confirming use into possible conformance with environmental standards. As outlined above however, this use is not exempt from CEQA categorically, instead at least an Environmental Impact Report is required to order to obtain a negative declaration, as *Reasonably Possible* negative cumulative factors (such as 30 plus years as Major Auto Repair as defined in the MBMC) are present and this use as referred to in CEQA was not in continuous use and was not in continuous use per City of Morro Bay Standards.

Because of this failure to cite adequate authority and rationale as basis for conditions, the conditions outlined by the planning commission were in fact unreasonable as they were presented and relied on authority not appropriate for a land use decision.

Issue 3: The conditions of the conditional use permit were not made public prior to the end of the appeal period, as requested of City staff, by the Appellant in a time that would give meaningful review before the expiration of the appeal window.

Staff Response and Analysis
The original conditions of approval were made available upon release of the staff report and associated resolution on Thursday March 2, 2017. The Planning Commission added six conditions of approval, that were expressly outlined by the Commission at the end of the March 7, 2017 meeting. The Resolution was not however finalized during the 10-day appeal period because of a lack of staffing during this timeframe. Mr. Knight was present at the Planning Commission meeting when the added conditions were articulated by the Commission.

Staff cites in this response that I was at the meeting and able to write down the conditions that were articulated at the Planning Commission meeting March 7th and know what was said. In all due respect, on the initial noticing of the first hearing, staff was unable to effectively 'notice' the matter to stay compliant with the notice requirements for the Condition Use Permit hearing and had to

reschedule the meeting a second time. At the Planning Commission meeting Dr. Tefft was provided with a zoning map that inaccurately shows 340 Jamaica as MCR Mixed Commercial/Residential rather than R-1, S.1 being a low density residential lot with a special building site and yard standard overlay which Dr. Tefft began to articulate conditions on until corrected by staff as to the error. As of 9:45pm May 20, 2017, to the best of my research, this Morro Bay Zoning Map is still erroneously advertised as the City's correct zoning map. The conditions that were crafted by the Planning Commission were articulated in an environment where the gallery was allowed to make inappropriate comments to speakers and laugh and jest at the expense of speakers, one fellow with no more qualification than he had taken a class at Cuesta Community College offered testimony as the environmental impact of water based paints. I was sitting next to a group of people in the gallery that referred to Mr. Dobson when he was speaking as "a [sic] f***ing a**hole", interrupting Mr. Dobson's time to speak, and later another in the group when Mr. Dobson said that his daughter was not willing to bring his grandchild to his home at 333 Island St., because of the fumes and Mr. Dobson had to pause because he became emotional, the group said loud enough that I believe that Mr. Dobson could hear, though I did not personally see a physical reaction, that Mr. Dobson "needed to stop being such a p**sy" while one of the fellows next to the commenter made a crying noise and the signal over his eyes to indicate crying. In addition, there are other instances not captured on the video recording or on the microphone that I do not remember as vividly during Mr. Dobson's speaking time, along with other outbursts while each of the other public commenters in opposition spoke, including when I held up a picture of the character of R-1 property to show the Planning Commission there was an outburst demanding I turned to show them the sign. In addition, before staff was to present the staff report there was an uncomfortably long delay locating documents and loading the presentation onto the projector as if it was a surprise that the item was called. Also, this meeting on May 23, 2017, was originally set for May 9, 2017, and again the noticing was not sent out timely and it had to be delayed again.

After viewing this level of organization at the meeting and seeing the notice delays I emailed staff requesting a copy of the conditions because I had to verify that the conditions were written down and not lost through non-procedure. In a sprit of collaboration and fair dealing I asked for a written copy of the conditions and a statement the City would be responsible to monitor the compliance with the conditions, and that it be before the appeal period closed. My experience with staff on this matter was not one that will build trust that all conditions would be written as stated in the Planning Commission meeting. I believe it was reasonable to ask for a copy of the conditions as they

were written to be provided in advance of the appeal cut off date, to make sure that they were written as directed by the Planning Commission and there was a means of enforcement as that is a major problem with why the Conditional Use Permit is so problematic.

I sent an email with letter attached to Ms. Joan Gargiulo [Exhibit A.1] on March 10, 2017 asking for Mr. Gargiulo to provide the conditions with the below message:

> "Ms. Gargiulo,
>
> Please see attached letter in reply to the Planning Commission's decision.
>
> We wish to discuss this matter as quickly as possible to avoid an appeal if possible.
>
> Please confirm receipt if you would be so kind as time is of the essence on this letter and matter.
>
> Very truly yours,"

Signature Block Omitted

As it turns out Ms. Gargliulo was ill at the time and was not in the office, which I only discovered after she returned to the office as there was no out of office message indicating she was on sick leave. Knowing that life happens and illness may have been the reason for the non-response, I again sent this letter to Mr. Scot Graham, Ms. Joan Gargulo, and Mr. Pannone (City Attorney) on March 13, 2017 with the below message.

> "Hello Ms. Gargiulo,
>
> I wanted to check in with you to assure you received our letter (Attached here again for your convenance [sic]). Please acknowledge if you did, or if there is any clarification needed, I am at your disposal.
>
> We wish to work with your office for a resolution.
>
> I am concerned that any further delay in beginning the conversation will cause an appeal that could otherwise be avoided.
>
> I hope this finds you well"

Signature block omitted here

Each of these emails was sent to the pertinent parties in the Community Development Department as well as to the City Attorney, I did not receive a reply. There was no way to obtain the conditions as staff proposed to draft them, and only released them after the period for redress had passed.

This mischaracterization makes it appear that I was somehow lazy or inattentive to the valuable time of City Staff and the Planning Commission, when in fact I was using best efforts to not be

forced to exercise the City Council with an appeal and asked for a document that was going to be directly affecting the affairs of a neighborhood and real property investment be released with enough time to make sure there was not a misunderstanding or typographical error rendering the conditions impotent. This was not unreasonable, as a former San Luis Obispo City Planning Commissioner I know that this procedure is equitable to the community and a fair request. I ask that this not be held against this appeal, as staff's assertion is not an accurate representation of events.

Issue 4: The zoning ordinances were ignored in regards to health, welfare, and safety of the abutting neighborhood.

Staff Response and Analysis
These issues were extensively discussed at the March 7, 2017 Planning Commission Meeting including compliance analysis with the MBMC including, but not limited to Sections 17.24 "Primary Districts", 17.48 "General Regulations, Conditions and Exceptions", 17.52 Performance Standards", 17.56 "Nonconforming Uses and Structures", and 17.60 "Use Permits, Procedures Notices, and Variances". Also, note the responses presented above.

Here, again I take issue with this series of statements. Specifically, as to MBMC §17.56, there was no talk about the lapsing of the Conditional Use Permit as referred to above, there was no proof offered in any demonstrable way that would show that there was going to be no expanded use or there was going to be a use less than what was already there. Staff asserts that in my appeal that I only raised vague allegations, however the only proof offered by staff was vague and ambiguous and was resulting from oral testimony of the Applicant, there was no production level set that could not be exceeded in future uses, and there was no evidence offered as to the level of production that would not be exceeded from the previous owner. What was stated is that the previous owner did very little in the shop, maybe a days worth of work per week. I ask you to consider a person taking over a shop and going through the expense of updating it, then only using it one day a week. Is this a reasonable assumption, or does common logic override this.

The self certifications offered by the Applicant attesting to the minimal use of the paint shop and the public comment, not under oath, by the former operator of the shop were all that were offered as proof that the use was not expanding. If this is the standard then the allegations I made hold just as much weight as the Applicants. Which way is it, may I or may I not make points that are backed with unverifiable hearsay "logic?.

In reply to MBMC §17.48.020 Interpretation of ambiguity, it points out the Director shall have the ability to evaluate consistency and of the uses and lists several factors, appealable to the Planning Commission. Here, since the Planning Commission makes the findings the appeal will be directly to the City Council. On this point we plainly argue that the interpretation that an Automobile Repair, Major activity is not appropriate in an R-1 Residential neighborhood. At the joint City Council and Planning Commission meeting on March 28, 2017, when Mayor Irons asked staff to allot time for a refresher on civility in City Meetings, Dr. Tefft offered that the conditional use permit was rightful finding that "Residential uses have a history in the City (of Morro Bay) of being supplanted to residential uses". He seemed to imply that because zoning was used as written, an exception should be made to aid economic interests. This is not an interpretation of the consistency with neighborhood health and ongoing land use as the code section dictates. This is stating that economics controlled the decision to grant the permit. In addition, please see below code section that shows another violation of the MBMC in regard to set backs of commercial buildings from residential buildings.

Morro Bay Civil Code §17.48.042 Building Separation

"A. ……

B. Exceptions.

1. Separation of Accessory Structures. The minimum distance between accessory buildings and other buildings on the same lot shall be as provided in Section 17.48.040.

2. Separation From Front of Residential and Commercial Buildings. The minimum distance between the front face of any residential or commercial building and any other building on the same site shall be twenty feet. This minimum distance can be reduced, subject to approval by the director for buildings which are separated by a covered courtyard or passageway."

This shows that in addition to not fitting the character of the neighborhood and the Conditional Use Permit being void, that the structure as used does not comply with Morro Bay City Setbacks. Though open to interpretation, when taken in context with the rest of the permit, appears to be trying to force a square peg in a round hole. Staff's assertion that staff and the Planning Commission thoroughly interpreted this permit under the MBMC §17.48, staff leaves out MBMC §17.08.

§17.08 is meant to be a control on actions taken by the Planning Commission. This code is cited in section §17.48.020 stating in relevant part

"...If any ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this title, or with respect to the matters of height, area requirements, zone boundaries or other standards or requirements contained herein, the planning commission shall ascertain all pertinent facts and, in a written report kept on file with the planning and building department, shall set forth its findings and interpretations pursuant to the procedures contained in Chapter 17.08. Any such interpretation by the planning commission as part of a conditional use permit approval or an appeal of the director's decision may be appealed by any interested party to the city council within ten days of the adoption of the subject interpretation."

MBMC §17.08 states

"Chapter 17.08 - INTERPRETATION
Sections:

17.08.010 - Effect on other regulations.

The provisions controlled by this title shall not be interpreted to repeal, abolish, annul or in any way affect the provision of any existing law or ordinance or regulation that is imposed or required for actions previously adopted. Previous actions include:

A. Permits issued relating to the erection, construction, moving, alteration or enlargement of buildings; and

B. Permits issued for the use of any building or structure.

(Ord. 445 § 3 (part), 1995)

17.08.020 - Land use determination criteria.

Whenever the planning commission of the city is called upon to determine whether or not the use of land or any structure in any district is similar in character to the particular uses allowed in a district, the planning commission shall consider the following factors as criteria for their determination:

A. Effect upon the public health, safety and general welfare of the neighborhood involved and the city at large;

B. Effect upon traffic conditions;

C. Effect upon the orderly development of the area in question and the city at large in regard to general planning of the whole community.

(Ord. 445 § 3 (part), 1995)"

Here, it is reiterated that the Planning Commission lacks the authority to issue direction that is in contradiction to the MBMC, and that its findings are not able to override the requirements of the original Conditional Use Permit conditions that it be renewed every five years and that condition was not complied with. In addition, a Conditional Use Permit or Special Used permit as used interchangeably in the MBMC, does not allow a Conditional Use Permit to be a device that

overrides or changes constituent developed zoning regulation adopted and codified by the City or Morro Bay when the use proposed by the Conditional Use Permit is not proper for a community.

In Section §17.24 we have answered this contention above. It is our opinion that in light of the facts and context as a whole that the interpretation that Automobile Repair, Major use is not appropriate in a R-1 Residential neighborhood especially in a S.1 overlay where there are reduced setbacks is not proper when there specifically zoned locations for these uses.

In response to MBMC §17.60 as admitted by the Planning Commission and staff the only possible way that a Conditional Use Permit could be issued on this property is if the property was in continued use. As stated above there is a logical sequence of events and a valid waiver of the permit through non-compliance with its terms over a period of 30 years. There were no records offered that each condition was complied with and that there was not negative impact on the community. Based on this point, section §17.60 supports the contention that this Conditional Use Permit is not proper and is not existence to be renewed. This requires denial of the new permit characterized as an existing Conditional Use Permit. If it is found that there is continuous use, then at an absolute minimum CEQA analysis and an Environmental Impact Report is required to determine the cumulative impacts over time as there is not categorical exemption.

Issue 5: The zoning ordinances were arbitrarily applied in order to appease a property owner's requests. Decisions were made on the testimony of several persons who work at the shop or were in direct financial relationship with the Applicant as admitted at the Planning Commission.

Staff Response and Analysis
Staff is unclear on what basis Appellant claims that the Planning Commission acted to simply "appease" a property owner. The Planning Commission based their decision on the regulations and requirements set forth in the Morro Bay Municipal Code, State law and the evidence presented. Appellant provides no specifics in regards to allegations the zoning ordinances were arbitrarily applied, in contrast to the over two-hour meeting held by the Planning Commission for review of this item, and the detailed staff report and documents which are part of the record. Furthermore, members of the public are encouraged to speak at public hearings, and it would be improper for the Planning Commission to prevent members of the public from commenting on a project proposal because of any alleged relationship with the Applicant.

Please see answers to questions 1-4 above. It is my contention that the Planning Commission and staff formed an opinion and conditions to resurrect a waived and thereby void Conditional Use

Permit based on the good character and testimony of many clients of the Applicant. My contention is that the Planning Commission, based on the testimony above, offered vague allegations itself, and wasn't able to articulate that this use was in the character of R-1 Residential. The Planning Commission was not advised that, in accordance with the Conditional Use Permit conditions from 1979 and 1981, the Spray both had lost its ability to be grandfathered in and the automotive repair shop permit had also been waived by non-renewal.

In addition, there was little question of the testimony as a test of veracity, conjecture and hyperbole as stated above was allowed to be entered as evidence, however when persons opposing the project, that are directly adjacent to the property and with the most to lose resulting from the operation offers evidence, it is characterized as vague allegation. Please see my answers above for analysis of the arbitrary basis of the zoning, which is directly contradicted with the included code sections cited, a failure to complete environmental review as cited with regards to CEQA and the failure to consider endangered species and protected watershed requires that this CUP be denied.

As full disclosure, I am also in a position to potentially benefit from the Trust I represent. My point about financial relationships is not that money exchanges hands, but rather the parties that are in favor of the project and the parties that are opposed to it and the composition. As stated above there were only two parties that lived in adjacent properties that I was able to find that spoke at the March 7, 2017 at the Planning Commission in favor of the project. The balance of the parties as staff rightfully and correctly were allowed to speak as constituents, were not directly impacted by the Automotive Repair, Major use. Several of the speakers were not Morro Bay residents or property owners as admitted when stating their addresses. At the meeting it appeared that the staff and the Planning Commission where stretching to the breaking point principles of the code in order to make a use that has not been in actual compliance fit into a residential neighborhood. This is the apparent appeasement I refer to, in addition the basis for this appeasement was economics, as stated in the MBMC and the Governor's office of Planning Document, this is not a ground to grant a variance or conditional use permit. To be clear, I completely agree that each person should have their time to speak and be encouraged to speak freely. While raising this point the Planning Commission is responsible to ensure that the public is free of harassment while speaking and has a moral and civil obligation to quite cantankerous gallery members and if they refuse to be respectful eject them; not joke and fraternize with them.

Issue 6: The Planning Commission with the exception of one commissioner allowed the public to disregard the decorum of an orderly Planning Commission meeting, Constructively preventing a meaningful opportunity to be heard. An example being, limiting a property owner's time to speak at 3 minutes while allowing those in support to speak for more than 3 minutes AND speak more than once without being requested to do so by the Planning Commission.

Staff Response and Analysis
Appellant fails to specify clear examples of the "decorum of an orderly Planning Commission meeting" being disregarded at the meeting, and thus staff cannot address specific examples. However, in general all members of the public were provided with an opportunity at the public meeting to be heard. All persons speaking at the podium were given three minutes for comment and all persons commenting were timed. No one expressing an interest in speaking at the public hearing was denied an opportunity to speak and be heard. Generally, the Commission tries to limit comments to approximately 3 minutes, only asking the public to wrap up if they surpass the 3-minute window by a significant amount of time. Reasonable flexibility in speaking time was provided to both proponents and opponents of the conditional use permit under discussion. For example, opponent Mr. Cinowalt was allowed to continue speaking over the three-minute window and only at 5 minutes and 50 seconds was Mr. Cinowalt reminded that his time had elapsed.

First I would like to express my thanks to staff for going through and tabularizing the times each person was able to speak and for showing the number of persons that spoke twice. My frame of reference is to point to San Luis Obispo County, San Luis Obispo City and other orderly meetings held for public hearing. Having cheering, clapping, rude and obnoxious comments made to those with another view, joking with the majority in the room and laughing at those opposed to the matter at hand, is expressed as not problematic in Morro Bay using the above response. I, however, specifically offer as a contention this: why is the Mayor of Morro Bay at the March 28, 2017 joint Planning Commission and City Council meeting needing to remind the Planning Commission about what civility is and the need for Planning Commission meetings to be run with order and good taste? I believe our executive civil leadership would not be made uncomfortable if the meeting was carried out as represented by staff. In addition, I would like to raise that point that during each of the opposition's public comment much time was spent waiting for the gallery to settle to a calm state, to be able to deliver input. Specifically, Roy Cinowalt spent much of his time asking if he could speak or if he would be allowed his full time at a Planning Commission meeting. In addition, Mr. Dobson as written above eventfully sat down out of discouragement from not being heard and being ridiculed. Mr. Evans did in fact speak longer than 3 minutes, in my opinion this was too long, I agree with you.

As for my behavior I did speak longer than the 3 minutes asked for. The time I spent at the podium was interrupted only for what I would estimate to be about 15-30 seconds of my time to speak. When I was speaking I saw that the meeting had spiraled out of order and made a conscious decision that I needed to speak over my time in order to get my points on the record as it was highly unlikely in my opinion that we were going to receive a fair hearing. For this I offer no challenge to staff's assertion. I did speak longer than allowed. I do offer this though, had each member of the public spoken for 3 minutes or very close to that before me (I spoke towards the end of the meeting) I would have not felt compelled to outline each issue. I believe it fair to not handicap myself in defending a matter of such importance to the ownership of 333 Island St. As you will see if you view past San Luis Obispo meetings on the website, I speak from podium respectfully and limit my comments to the time allowed. It is my contention in light of the circumstances of the meeting on March 7, 2017, that it was done in a fashion that is inappropriate and lacked the needed civility so vital for civil discourse. I also want to make very clear, that not once did Commissioner Lucas act unprofessionally in his conduct or demeanor towards the gallery. While I challenge some of his findings and assumptions, he did not act with disrespect at any point towards any party and I felt as to all persons in the room he showed more than the requisite curtsey of a public hearing.

Issue 7: The Planning Commission failed to protect the minority's opportunity to speak without being criticized and belittled, with the expectation [sic] of two commissioners, constructively disallowing their testimony. This is in violation of City Council Resolution No. 70-15 10th November 2015 and again in contrivance of City of Morro Bar [sic], Council Policies and Procedures 1.3.4 & 1.3.5.1.1 & 1.3.5.1.2 & 1.3.7.2.3. It can be assumed that an orderly hearing is the desire of the City Council and therefore these minimums should apply to the Planning Commission. We offer these codes as models, however this is not an exhaustive list. Our republican form of government guarantees that the minority be protected and heard, this was not meaningfully done.

Staff Response and Analysis
Appellant essentially claims that the "minority" (i.e., those opposing the renewal of the conditional use permit) did not have a meaningful opportunity to "be protected and heard" at the planning commission meeting held on March 7, 2017. However, appellant fails to identify any speakers who were not afforded an opportunity to be meaningfully heard and/or the circumstances of such allegations. Appellant alleges that the Planning Commission failed to protect "the minority's opportunity to speak without being criticized and belittled," yet fails to provide any specific examples and offers only vague allegations. This failure renders staff unable to respond to any specific claims. Appellant alleges that the Planning Commission at its meeting held on March 7, 2017 failed to adhere to principles articulated in both City Council Resolution No. 70-15 (10th November 2015) as well as City of Morro Bay Council Policies and Procedures 1.3.4;1.3.5.1.1; 1.3.5.1.2; and, 1.3.7.2.3, which are summarized as follows:
· City Council Resolution No. 70-15 (10th November 2015) pledges the City Council to follow best practices of civility and civil discourse in all of its meetings.
· City of Morro Bay Council Policies and Procedures 1.3.4 provides for

"Parliamentary Procedure." · City of Morro Bay Council Policies and Procedures 1.3.5.1.1 and 1.3.5.1.2 are concerned with protocol. They provide that, respectively, Council Members and staff shall work earnestly to preserve appropriate order and decorum during all meetings, and that side conversations, disruptions, interruptions or delaying efforts are discouraged. · City of Morro Bay Council Policies and Procedures 1.3.7.2.3 provides that each person addressing the City Council shall do so in an orderly manner and the Council respectfully requests that speakers refrain from making repetitious, slanderous or irrelevant remarks, or engaging in any other disorderly conduct which disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting. Any person who so disrupts the meeting may, at the discretion of the Presiding Officer or a majority of the City Council present, be subject to ejection from that meeting. Appellant provides no examples of the Planning Commission specifically violating at the March 7, 2017 meeting any of the above principles, policies or procedures. Thus, staff is rendered unable to address any specific examples.
Staff reaffirm that the Planning Commission at the March 7, 2017 meeting strove to adhere to the above principles, policies and procedures. Further, even if any of the above principle, policies or rules were not adhered to at the meeting held on March 7, 2017 (which is denied), or even if speakers were criticized or belittled (which is denied), appellant fails to specify whether such unsubstantiated allegations rise to the level of substantively impacting whether or not the legal requirements for a public hearing were met, the opportunity was present for all members of the public to speak and be heard by the Commissioners at the meeting, or how such alleged failure constitutes a lawful basis for reversal of the Planning Commission's decision.

As adopted in the sections offered in the appeal, public bodies have an obligation to preform their civic function with civility and order so that the constituents they are elected to represent get a fair opportunity to be heard in a meaningful way, free from attack and belittlement by their peers and the body they are addressing.

As written above and in previous responses that fact that a person was able to speak is not enough, they must be given a meaningful opportunity to speak. Following the steps to allow someone to technically speak when it is clear that the meeting is not being held in a manner that is conducive to listening is not sufficient. The intent of the proclamation by Council and staff is what is needed. City staff, City Council, and appointed government officials like Planning Commissioners are held to a higher level of care and civility given their power that is entrusted to them by virtue of their position. At the March 28, 2017, joint Planning Commission and City Council meeting Dr. Tefft said during the refresher on civility that he saw it as partially that public's responsibility to act according to the proclamations, and it was not his job alone to run an orderly meeting. I disagree.

After reading the above-cited proclamations, parliamentary procedure and planning commissioner guidance, it is absolutely the Chair's duty and obligation to run an orderly meeting and if the gallery

is not willing to be civil and orderly after warnings to the offending persons the Chair has the ability to call a peace officer and have that person ejected. In addition, parliamentary procedure is based for purposes of American and California State law to carry out the purposes of a representative republic, where there are elected persons to represent the interests of the masses without unduly harming the interests of the minority.

Having an orderly meeting that is civil, that is run by parliamentary procedure is a small price to pay to keep with the federal and state constitutions, and American values. I specifically raised this as the failure to run the Planning Commission meeting in line with the accepted procedure as outline in City of Morro Bay documents offered warrants this Conditional Use Permit being reviewed *De Novo* with no deference to the Planning Commission's decision.

Issue 8: Based on paragraphs 1-7 above, we appeal pursuant to Government Code Section 65009(b)(1) appealing all issues decided at the Planning Commission as arbitrary and capricious. [In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing.]

Staff Response and Analysis
Government Code section 65009(b)(1) provides in full (portions uncited by Appellant being underlined) that:
(b)(1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:
(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.
(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.
Staff is unclear as to why half of this government code was cited as a basis for appeal. The government code cited by Appellant, when read in its entirety, is concerned with the ability to introduce new issues after the public hearing on the basis of either "persons exercising reasonable diligence" could not raise them at the public hearing, or the planning commission prevented the issues "from being raised at the public hearing." Appellant fails to reference any issues that appellant was unable to raise at the public hearing held by the Planning Commission for this matter under appeal.
Appellant also alleges that "all issues decided at the Planning Commission" are being appealed as "arbitrary and capricious." The "arbitrary and capricious" standard of review seeks a determination as to whether there is a reasonable basis for a decision, or if the decision is "entirely lacking in evidentiary support." (Am. Coatings Assn., Inc. v. S. Coast Air Quality Dist. (2012) 54 Cal. 4th

446, 461.) As noted in responses above, there is a reasonable evidentiary basis for the Planning Commission's decision.

I would like to take a moment to thank staff for including the rest of the cited language. I apologize for leaving this out, it was by a typographical error. It is actually the basis of my argument on this point. It is my contention that the Planning Commission meeting was conducted in such a manner as to prevent a person from introducing issues free of harassment as cited in specific instances above, free from comments from persons in the gallery. This non-procedure by staff and the Planning Commission sent a message of futility constructively preventing a meaningful ability to introduce all issues. It is my contention that because of this behavior that anything introduced by the Appellants at appeal and through public correspond should not be seen as introduction of a new issue, but instead will be viewed rightfully as issue brought on a de novo review, and that Government code section 65009(b)(1) does not apply as this review. This review should not be a review requiring deference to the Planning Commission or exclusion of issues brought that may or may not have been brought at the Planning Commission Meeting.

Issue 9: We appeal 1-8 inclusive under Government Code Section 65009(A)&(B)[sic] [A:The issue could not have been raised at the public hearing by persons exercising reasonable diligence. B: The body conducting the public hearing prevented the issue frombeing raised at the public hearing.]

Staff Response and Analysis
Appellant appears to be referencing Government Code section 65009(b)(1)(A-B) based on the cited text. See response to Issue No. 8 above which addresses these government code subsections.

Please see my reply to Issue #8 above. I again ask that this appeal by heard De Novo as some issues and persons were constructively prevented from a fair hearing and their ability to proffer all relevant information was prevented.

Issue 10: We specifically appeal the contention substantially and wrongfully relied on by the Planning Commission that a non-renewal would be a taking within the context of the 5th amendment. Each of the below authorities cut counter to the statement made that this decision would be a taking I denied. [1: Governor's Office of Planning and Research, Planning Guide: An Introduction to Planning in California. Sacramento, California: Office of Planning and Research, 2005. Print. 2: Penn Central Transportation Co V. New York. U.S. 104.1978. Print. 3: Goldblatt v. Hempstead, 369 U.S. 590 4: Hadacheck v. Sebastian, 239 U.S. 394]

Staff Response and Analysis
The proposition that a non-renewal would be a taking within the context of the 5th

amendment (while not an unreasonable proposition) was not one substantially relied upon the Planning Commission as a basis for its decision to approve the conditional use permit.The idea that denying this permit request could constitute a taking was brought up by one Commissioner (Ingraffia) during the discussion portion of the hearing. At that moment (approximately 1:55:30 in the meeting minutes) he was describing how because of the existing and extended use of the site, an approval would not set precedent because in his opinion this is an exceptional and unique case and could constitute a taking based on the facts of this particular case. The idea of a taking was not broached again and was not substantially relied upon by the Commission in their decision making.

On this issue I am glad staff and I have found common ground. I agree with staff that the analysis of whether there is a 5th amendment taking as a result of denial of the permit is a valid one, however it should proceed no further than a brief analysis that a Conditional Use Permit, being a permit and not an investment backed interest is not eligible for just compensation as a result of non-renewal or in this case non re-issuance. In addition, being that the original Conditional Use Permit was waived and the property has been in continued non-compliance for more than thirty years, not in compliance with the original terms of the permit. What should be considered is the taking of property value the City of Morro Bay is potentially forcing on the neighboring properties with a re-issuance of this CUP. In the cases I offered in support of my argument, a mere diminution in value is not sufficient to classify the zoning regulation as a taking. As to 340 Jamaica, the property is still highly valuable as an R-1 Residential use with denial of the Condition Use Permit. Diminution of surrounding property value by virtue of continued operation of the Automotive Repair Major is not enough to warrant a taking as to the neighbors as having the shop function is a mere loss in value to the neighbors.

What would qualify as a taking is if the City of Morro bay did not follow CEQA by requiring an environmental report to assure a commercial use that has not been in a true continuous use, and could reasonably possibly produce a cumulative effect to the detriment of health, welfare, and morals of the citizenry and to the environment, and sensitive habitat and watershed. If it were found the property and neighboring properties were contaminated the City would be asked to answer why it did not require a study of the impacts of the property as proposed, thereby robbing the neighborhood properties of almost all value.

I also take issue with the comment stating the issue was only mentioned once, that the mention of the 5th amendment if only once then moving on has no detrimental effect on the proceedings. I went to a total of 6 years of college in business topics and accounting, and 3 years plus of law school to learn what the Planning commissioner said and understand his meaning. I knew as soon as he was

speaking the words that there was an inadvertent misapplication of the principle. However, there were many in the room, that I would assume had training or apprenticeships in topics other than constitutional law and nuance, that would take his words at face value as being considered until retracted. Planning Commissioners are trusted servants of the community, bringing up a topic with such weight and importance as a property taking, analyzing it, then not sharing that it is not the proper principle in this case based on the facts as stated by staff, and not reciting that it is not being relied on can induce members to view the proceedings as improper. During deliberations, it is important for commissioners to articulate whether they relied on topics stated in accordance with MBMC 17.80 and 17.48.020 requiring that the specific reasons used to articulate conditions are memorialized and kept on file with the planning and building department.

I agree with staff that the 5th amendment while reasonable to bring up and consider is not appropriate basis to use to make the determination on this conditional use permit. I do argue that by not stating the 5th amendment was not an appropriate basis to decide the conditional use permit was improper, as it was or could have reasonably been, inadvertently relied on by other commissioners.

Issue 11: We appeal on the grounds that a conditional use permit is not a taking as it is a permit to obtain a variance from existing laws prohibiting a wrongful use and therefore can not be reasonably viewed as an investment-back expectation requiring application of zoning regulation unless clear and convincing evidence exists as to why the use should be granted; not present here. [Robert CONSAUL et al., v. City of San Diego, 6 Cal.App.4th 1781]

Staff Response and Analysis
Staff is unclear as to the substance of this issue. Appellant appears to be confusing the difference between a conditional use permit and a variance. A conditional use permit is not a variance. A conditional use permit allows the City to consider land uses which are not allowed as a matter of course and is required for certain land uses which may need special conditions to ensure compatibility with and mitigate any nuisance issues that could impact the surrounding land uses.
Additionally (see response to Issue No. 10 above), the issue of whether or not a nonrenewal would be a taking was not a substantial basis for the planning commission's decision, nor do the findings in the Resolution identify takings as a reason necessitating approval of the project.

Please see my reasoning on the above responses to staff's comments. It is my contention that the Conditional Use Permit was waived decades ago and a business classified as Automobile Repair, Major has been allowed to operate in an R-1 Residential zoning wrongfully and has constructively given a variance to the automotive shop wrongfully. As stated in the MBMC and throughout, a variance cannot be given through waiver, only though express action. Because of this, the

conditional use permit should not be reissued and instead efforts should be made to fast-track permits and planning to allow the applicant to construct a building or alter one to provide the service he contends the community needs in a General Commercial Zone (C-2).

Issue 12: That the rationale used by the Planning Commission was arbitrary and Capricious and not within the purview of the Planning Commission and therefore was an abuse of discretion and requires a De Novo review and hearing by the City Council.

Staff Response and Analysis
The Planning Commission considered all relevant factors when analyzing the permit application, including reliance on APCD and County Environmental Health compliance determination and adherence to the requirements set forth in the Zoning Ordinance including but not limited to Section 17.56.100 "Continuation of Nonconforming Uses" and Section 17.52 "Performance Standards." Appellant is unclear as to what is "the rationale" alleged to be "arbitrary and capricious." Appellant is also unclear as to what is meant by "not within the purview of the Planning Commission," as there are no specifics which allege that the Planning Commission exceeded its authority when it rendered its decision. Regardless, the Planning Commission decision was not "arbitrary and capricious" as discussed above in response to Issue No. 8. The City Council will review the appeal as presented.

My contention as to Issue #12 is that the Planning Commission relied on facts that were not controlling such as the use is compliant with air-quality control and therefore it was found to be in compliance with land-use, which is the underlying decision attached to a conditional use permit decision. As another example that can be implied is that because a use has been wrongfully operating that the City is obligated to re-create a waived Conditional Use Permit because the former owner and/or user did not renew it, and this basis is rationale for changing the rules to allow special privilege for this user of the property.

Another reason articulated for granting the re-issuance of the conditional use permit is that it is too hard for the Applicant to obtain permits to build or paint cars in the appropriate district. Using a conditional use permit as a device to circumvent zoning is arbitrary and capricious and meant to work around the intent of the zoning code. It is not fair to hold the rest of the business and industry community to a standard higher than another single business owner. We are an egalitarian society by which no one is granted exemption to the law, especially with land use.

Our contention is that the evidence relied on was arbitrary and capricious in its being used as the factual basis of the conditions and the re-issuance of the waived conditional use permit. If the facts relied on were inappropriate, then the conditions and re-issuance (while still in our opinion improper) would be arbitrary and capriciously applied. We argue that the facts were arbitrarily

relied on and as a result all of the findings are tainted and cannot be relied on.

CONCLUSION
The Appellants are requesting that Council overturn Planning Commission approval of Conditional Use Permit No. UP0-468 and deny/discontinue the operation of an auto-body repair and paint shop at 340 Jamaica Street. Staff recommendation based on review and analysis of the appeals and policies within the City's General Plan, Local Coastal Plan, and Zoning Ordinance is to deny the appeals and uphold Planning Commission approval of Conditional Use Permit No. UP0-468 as specified in City Council Resolution No. 24-17.

Based on the forgoing summarily decided responses issued by staff and the reasons above cited from the March 7, 2017, Planning Commission meeting and the March 28, 2017, Joint Planning Commission and City Council meeting and the land use regulation of the MBMC, State Law, Federal Law, I ask that you uphold the appeal and deny the re-issuance of the conditional use permit at 340 Jamaica Street and return it to properor R-1 use.

In addition I pray that you make a resolution to fast-track Mr. Pall's future application for building permits and planning requirements in order that he be able to obtain a space where he can service the community need to paint vehicles and make major automotive repairs. City Council can solve this problem of land use satisfying all stakeholders that spoke or presented by granting these requests.

Truly yours,

Daniel J. Knight 5/22/2017

Daniel Knight

Appellant of UPO-468

[Exhibit A.1]

To: Ms. Gargiulo

RE: 340 Jamaica [Conditional Use Permit, Decided 3/7/2017]

Madam,

I am writing you to inquire about the above-mentioned conditional use permit.

I spoke with those I represent and have been given instruction to appeal. However, I suggested that I speak with you to see if an agreement may be made that is satisfactory to all parties involved.

Our proposal is as follows:

1) We be provided with a list of the conditions of the permit as developed, including the guidance provided by the esteemed Planning Commission for this permit.
2) Part of the conditions of the CUP is that all building improvments and condidtions be complied with and are completed within sixty [60] days unless impracticable in which case a mutually agreeable term is set.
3) If the agreed timeline is not complied with, the guarantee that all operations as a body shop or business will cease until the improvements are made.
4) Assurances that verification of the improvements are made by one of your departments when at all applicable.
   a) For example, and as a non exhaustive list:
      i) The Building Department verifies the sound construction of the extended exhaust stack and installation of the exhaust fume filters.
      ii) Air Quality Control verifies the proper function of the above.
      iii) Installation of the sound deadening fitments, to adhere to the 70 decible criterion.
      iv) Some means of verification by city staff that the sanding is done within the building and not out in the open air thus mitigating completly the fiberglass, lead, and paint particulate matter leaving the property.
      v) Other conditions where required and appropriate, including the conditions set forth by the Planning Commision.
5) Assurances in writing per Planning Commission guidance from the meeting, that evidence of non-compliance with ANY of the conditions brought to the Planning Commission by the City OR a citizen for redress will immediately be reviewed by the Planning Commission at the next regular meeting.
6) The City's commitment to adhere to the promise made to the community to review the Conditional Use Permit every five years by operation of time, and a review of the non-conforming use for appropriateness and compliance with then existing zoning regulation, code, and/or ordinance.
7) All regulation of the Air Resource Board be complied with utilizing the "standard of the industry" technology then in use.

I have asked those I represent to allow me to get the conditions of the permit in writing, certified by you and your department, with assurances that they are the final language for the permit. We must receive this no later than three days before the end of the ten-day appeal period. This would allow us to make an informed decision, avoid an appeal process, and further action on the matter up to and including looking beyond a city council appeal if unsuccessful at that level.

We bring this offer in good faith, as our opinion of the applicant has been softened by his message, though we are very disappointed by the allowance of the snide comments, and fraternization with the gallery during the proceedings. We have also found valid case law to counter those points relied on by some of the commission for their findings.

I hope this finds you well and we are able to work collaboratively to find acceptable solutions to this matter.

Very Truly yours,

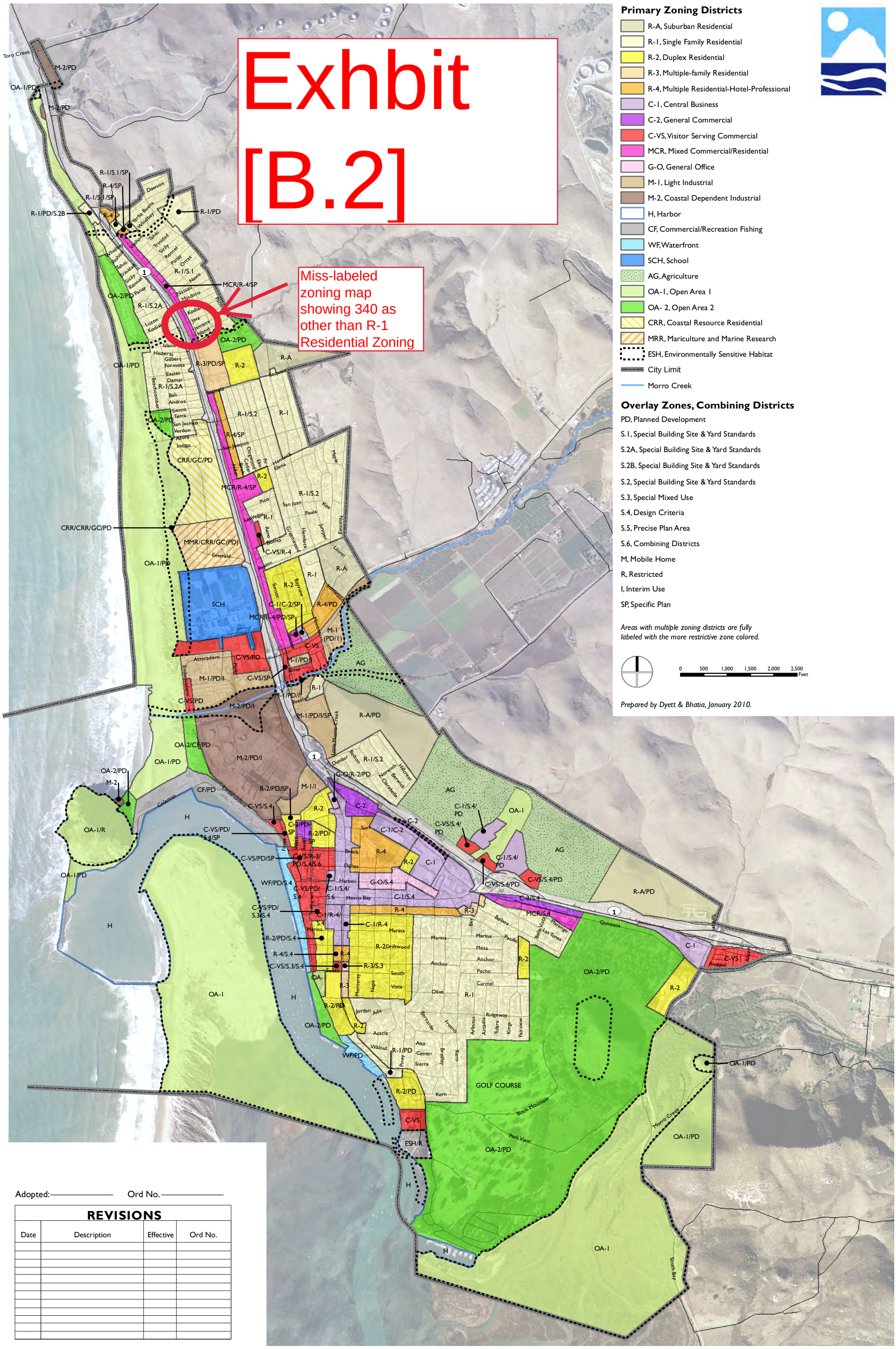
Daniel J. Knight 3rd March 2017, 10:30am

Daniel J. Knight

Attorney for the C. Knight Trust
333 Island St. Morro Bay.
SBN #310207.

Office: 1103 Johnson Ave. #H
San Luis Obsipo CA 93401
(805)316-1180
Dan.Knight@DanKnightLaw.com

CITY OF MORRO BAY ZONING



Adopted:_____ Ord No._____

REVISIONS			
Date	Description	Effective	Ord No.

Dana Swanson

From: Daniel Knight [redacted]
Sent: Monday, May 22, 2017 9:23 PM
To: Jamie Irons; Marlys McPherson; Matt Makowetski; John Headding; Robert Davis
Cc: Council; Joan Gargiulo; Brittany Stockdale
Subject: Public Correspondence UPO-468 from Owner of [redacted]
Attachments: UPO-468 [redacted] Property Owner Correspondence].pdf

RECEIVED
City of Morro Bay
MAY 23 2017
City Clerk

Honorable Mayor and Councilpersons,

Please see attached correspondence for UPO-468 in preparation for tomorrow's appeal. Sent on behalf of the property owner directly behind the offending shop.

Truly yours,

Daniel J. Knight M.S.
Attorney at Law | Expert Witness
Real Estate Broker
General Engineering, Building, & Plumbing Contractor
Phone: 805-316-1180
CSLB Lic #882611 | BRE# 01993903 | CalBar #310207
Office Location/Service Address:
1103 Johnson Ave #H
San Luis Obispo CA 93401
Mailing Adress:
P.O. Box 3557
San Luis Obispo CA 93403

Nothing in this message shall be construed to form an attorney client relationship or is intended as such. **This message contains confidential information and is intended only for the individual(s) named. If you are not a named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. Dan Knight, P.O. Box 3557 San Luis Obispo CA 93403**

Mayor: Jamie L. Irons,
Council Member: Marlys McPherson
Council Member: Matt Makowetski
Council Member: John Headding
Council Member: Robert Davis

22 May, 2017

Dear City Council,

I write today about a decision the City Planning Commission made several months back regarding a Conditional Use Permit. Others and I are currently under appeal. This appeal is scheduled to be heard Tuesday evening, 23 May, 2017.
Case Number: Appeal(s) of UPO-468 Site Location 340 Jamaica, Morro Bay CA

The matter is of such concern that I have retained council to assist in this matter. Largely because of my travel schedule I am not able to participate in the progression so Mr. Daniel Knight will advocate for me. My directive to Mr. Knight is to employ such care as to preserve my statutory path though primarily appeal to the wisdom and discretion I believe exist with City government.

The fulcrum of this letter, but not the limits of my petition, is a simple fact. The Auto Body Shop, clearly a commercial enterprise, is operating in a residential neighborhood. It has been stated the shop has been in operation since 1981 and therefore should be permitted to continue. I wish to raise a few points for your consideration as you make a decision on Tuesday night, a decision that will have implicit ramifications on the nature and habitability of our neighborhood. I'll be as brief as I can but I hope such brevity will not be construed as marginal concern.

When the City first allowed the auto body shop in the neighborhood in 1981 the owner committed to review such permission on a five-year cycle per zoning procedure. To the best of my knowledge this was not done. As I understand your City policy, and as I experience in my vocational life with other jurisdictions, a Conditional Use Permit, hereafter referred to as CUP, is to allow a temporary displacement of current zoning regulations. CUP's are not issued for all perpetuity but rather for an interim period. They recognize the nature of neighborhoods change and the needs of the residents and environmental laws evolve. Had the owner and City followed through with this commitment to the neighborhood I suggest we would not be having this conversation now fore this would have sunsetted long ago.

When I first came to the neighborhood there was a simple operation with a single man doing a minimal amount of work in this shop. I took inventory of his activity in the first few years of my presence in the neighborhood and reasoned as follows.

- He is getting up there in years and this situation will sunset as he does.
- To raise a voice at that time would upset a kind fellow wishing to finish his years out.
- The City will never approve another business license for a shop or issue a new CUP here. The zoning simply does not allow for it.

Indeed the nice old fellow retires but rather than this situation quieting another moved in and augmented the volume of this commercial enterprise.

When the your Planning Commission heard our complaints, at the hearing for the application by the new shop owner, it appeared the Commission was not willing to take into consideration too very much. Though I was not there, I was able to watch the video and observed the manner of the meeting. I wonder if you too have had a chance to review? This was not a forum for civil discourse. This was not in accordance with either State mandates or your own City Charter, and frankly below the dignity of the Commission's station. People who live in the neighborhood and breathe the fumes and aspirate the particulate matter were told to sit down though a measurable portion of their time at the podium was consumed by the heckling from the audience? People from other towns, those that bring their cars to this space and then leave are given credential over the residents?
I'll not give dignity to that meeting by listing the infractions and general bad form presuming you have the capacity to draw your own conclusions. Frankly I think any disinterested third party would label this a sophomoric event.

I would like to address presumptions made by some of those who spoke at the meeting on 7 March, 2017. These comments, now on the record, suggest we residents are "anti business". Some suggest "in opposition to auto body shops". I can tell you this is not true for me. I have worked as an independent contractor for 35 years. I am responsible for my own sustenance. I have worked in our City of Morro Bay as well as many other jurisdictions in California as an Engineering Contractor. I maintain my license and permits with Cal-OSHA and the Environmental Protection Agency. I am a small businessman myself and fully appreciate the difficulty in keeping an operation profitable. I also understand the purpose of some level of regulation. I do environmental clean up work amongst my several disciplines and as a result have more than passing knowledge of the difficulties with operational compliance. Suffice it to say it is darned tough to conduct business in California. But we are here in California and the State Statues are those, which binds us all. Men with their hotrods basking in the glory of days of little regulation and impugning the character of residents scrambling to preserve the quality of their neighborhood have missed the point.
I can also say I have worked in locales where the regulations are not in place or simply not enforced. They create a toxic environment, drive conscientious people away and degraded neighborhoods in ways none of us wish for Morro Bay. I moved to Morro Bay precisely because of the governmental structure in place. I moved towards this regulatory arena because as I age, as I travel and can not look after my own property everyday I wish to have the backing of a chartered city to advocate on my behalf with its own agencies of oversight and enforcement that we all comply with.
I would also like to say I have an old car affinity. I love my two classics, drive them and seek service and repair for the same. I worked for a couple of years in an auto body shop and fully appreciate the complexity and brut labor required producing this fine work; the kind of work Auto Body Builders is known to provide. My objection is not to the body shop but rather the proximity to our homes, and the out of zoning problem. You see while in the body shop time of my life I came to know just what is required to

produce this work. It s a dirty business, necessarily. I believe the City realizes the in-congruencies given your zoning ordinance has clearly defined commercially zoned locations for this kind of a business in contrast to residential zoning, which is where people are entitled to live.

I beg of you to consider mine and other neighbor's pleading to enforce your own zoning regulations. Something as simple as a day care usage of a home up the street from me required a neighborhood posting allowing the neighborhood to voice an opinion before you granted them a permit, for a daycare center? And yet a production auto body shop with it's increased volume is being foisted on us under erroneous pretenses.

The City has the authority to say no thus taking seriously a responsibility to uphold the advancing environmental mandates if the zoning in-congruencies are not a sufficient argument. For there to be credential in the argument that this business has always been there and therefore it must be allowed to remain would suggest that because we used to dump motor oil along the fence line to keep the weeds down we should be allowed to continue. That any of the grievous activities of our society's history should remain permissible.

Societies advance and changes are made for bettering our neighborhoods. Such decisiveness now can be the harbinger for a more cohesive community.

During this process a compliant was filed against my property because of a shed roof attached to the fence. Yes, remarkably that was intolerable to your code enforcement officer, he was very pleasant about it but insistent regardless. I understand now the reason for his requirement and the shed roof has been removed.

I wish to be a good steward in our community, participant in its success and tranquility. I don't mean to be argumentative or petulant but I must speak up. The direction this CUP has gone thus far is alarming. In no thinly veiled way your Planning Commissioners are more than familiar with the applicant and have a predisposition to him. To have you now, with fresh eyes, with the voice of your constituents before you and as my counsel will present, case law and code to reference I look forward to a more equitable consideration.

In all fairness to your Planning Commissioners I can see how at first glance this seemed so straightforward. I don't know if I would have done things much differently in the early stages if I were a Commissioner other than to facilitate a free exchange of ideas and dialogue. Had there been a posting in the neighborhood as with the daycare applicant indicating there was a new and increased wave of commercial activity being proposed you would most assuredly hear from the many. We are not only taken-a-back but have been blindsided.

That this went on so long without oversight by the City likely does not indicate misfeasance but rather that a mechanism at City Hall could use some review. Our culture thankfully has advanced to a point were a person should not be held hostage to an oversight. We are here now and appreciate your review.

In gratitude,

Clay Knight

Clay Knight

Dana Swanson

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MAY 23 2017
City Clerk

From: Jamie Irons
Sent: Tuesday, May 23, 2017 10:07 AM
To: Christopher Parker
Cc: Dana Swanson
Subject: Re: Uphold Planning Commission Approval of Cond. Use Permit UPO-468

Thank you for your email and input. They will be included as agenda correspondence for the record.

Regards,
Jamie

From: Christopher Parker [redacted]
Sent: Tuesday, May 23, 2017 7:35 AM
To: Jamie Irons; Marlys McPherson; Matt Makowetski; John Headding; Robert Davis
Cc: [redacted]
Subject: Uphold Planning Commission Approval of Cond. Use Permit UPO-468

RE: Appeal of Planning Commission Approval for Conditional Use Permit UPO-468

Dear Mayor and Council,

In regards to the Auto-Body Repair and Paint Shop located on Jamaica Street in North Morro Bay, I hope you will find with the Planning Commission and uphold the approved Conditional Use Permit to allow it's continued operation. Jason and Rochelle Pall are the recent owners of this facility, but they continue to also operate a restoration facility in the central part of Morro Bay. The purchase of the Auto-Body shop in North Morro Bay allows a basic city need to continue, giving the citizens of Morro Bay a location to leave their vehicle for repairs that will not require a trip into another city, and will keep those funds local. This Auto-body shop has been in operation since the 1980's, with the city dropping the ball of enforcement, but yet accepting business license fees associated with the shop. With over 30 years in this location, this shop was created before many of the neighboring businesses and residences.

Jason and Rochelle Pall performed their due diligence in researching this parcel prior to purchase and were informed by city staff that the facility was properly established. You can imagine the hassle the Pall's have went through since their purchase, and not to mention the excess expense they have had to put forth. This looks very bad for the City of Morro Bay and it's hopes to entice future business to this City. For the past 5 years there have been multiple conversations about "What can the city do to help encourage businesses to move to the city?" This is exactly the type of thing that will keep them away, and I don't blame them. Why would a business want to even think about dealing with this? I also agree with Dr. Tefft's suggestion at the Planning Commission hearing that the fees charged to the Pall's should be reduced to those amounts in place in the 1980's.

Jason and Rochelle has chosen Morro Bay to be the spot for their businesses. They are bringing these services to citizens and are respected greatly by their customers. They also have been giving back to the city for many years. The Pall's have been a long time sponsor of the Cruisin' Morro Bay Car Show, each year volunteering to help and provide sponsorship funds for the show to exist, thus helping the show to raise funds to be given back to community organizations, and filling the city with hotel guests. It takes business owners like the Pall's to help a city exist. I do hope the council realizes this and directs staff to work with local businesses to prevent this sort of action from occurring in the future.

Best Regards,
Chris Parker

C.P. PARKER, ARCHITECT
Mailing Address:
630 Quintana Rd. #330
Morro Bay, CA 93442-1962
(805) 772-5700
www.cpparkerarchitect.com

Cruisin' Morro Bay Car Show, Inc.
President

AGENDA NO: C-1

MEETING DATE: May 23, 2017

THE FOLLOWING PUBLIC CORRESPONDENCE WAS RECEIVED BY THE CITY COUNCIL FOLLOWING POSTING OF THE AGENDA

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 8:46 PM
To: Abe Perlstein
Cc: Dana Swanson
Subject: Re: acquiring and preserving Cerrito Peak

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City of Morro Bay
MAY 22 2017
City Clerk

Abe,

Thank you for you input. This will be included as agenda correspondence.

regards,
Jamie

Jamie Irons
Mayor
City of Morro Bay

From: Abe Perlstein [redacted]
Sent: Friday, May 19, 2017 1:47 PM
To: Marlys McPherson
Cc: Jamie Irons; Matt Makowetski; John Headding; Robert Davis
Subject: re: acquiring and preserving Cerrito Peak

jirons@morrobayca.gov - Jamie Irons - Mayor
mmcpherson@morrobayca.gov - Marlys McPherson - council member
mmakowetski@morrobayca.gov - Matt Makowetski - council member
jheadding@morrobayca.gov - John Headding - council member
rdavis@morrobayca.gov - Red Davis - council member.

Dear Mayor Irons and City Council Members, McPherson, Makowetski, Headding, and Davis,

As a 17-year repeat visitor to Cerrito Peak who never tires of marveling at this incredible volcanic plug formation, overwintering monarch butterfly populations, views of the harbor and estuary framed by a healthy tree canopy supporting countless bird species, plus abundant fresh air, and peaceful retreat-like surroundings, and numbers of ancient Chumash grinding holes, the thought of this property turning into someone's trophy home makes me physically ill.

I wholeheartedly support the conservation of Cerrito Peak and I sincerely hope Morro Bay will vote to acquire this magnificent property for all residents and wildlife to enjoy and prosper.

Yours Truly,
Abe Perlstein
Los Osos resident since 2000

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 8:48 PM
To: Dana Swanson
Subject: Fw: Misuse of GF Emergency Account

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City of Morro Bay
MAY 22 2017
City Clerk

Dana,

Please include as agenda correspondence. I forgot to include you when I sent it out earlier.

Thank you - Jamie

From: Jamie Irons
Sent: Sunday, May 21, 2017 8:42 PM
To: [redacted]
Subject: Re: Misuse of GF Emergency Account

Jeff,

In response to you email titled "misuse of GF Emergency Account" there is probably more history to Cerrito Peak than you may be familiar with.

City Council has the discretion to determine what is emergency as it relates to spending General Fund Emergency Reserve Funds GFERF. It also has the discretion to borrow from that fund and repay it at a later date. An example of this took place in 2012 by City Council (previous council) borrowed $50k to fund a visitors center. That wasn't an emergency it was a choice.

Since that time the GFERF policy has changed along with other budget policies. I am including a link to the FY 16/17 budget for your review. Page 117 is the GFERF page and copy of resolution 33-15. This resolution is the result of good planning. Building up our reserve for an anticipated recession. There is in excess of $350k above the Emergency Reserve Level available. Not unusual for a city that has funds in excess of their reserve policy level to allocate those funds for one time spending during the budget process or during the year as needed. Next year if there is a fund balance in excess of the required reserve level we will have the discussion again what to do with the excess.

http://www.morro-bay.ca.us/documentcenter/view/9568

As far as pulling the item from the agenda, I don't know what you mean.

The Cerrito Peak item is a business item not a consent item. Usually the request is to pull an item from consent for discussion. Maybe thats what you mean.

Jamie

From: Jeffery Heller
Sent: Friday, May 19, 2017 11:27 AM
To: Jamie Irons
Cc: Matt Makowetski
Subject: Misuse of GF Emergency Account

Jamie

Maybe I am missing something here----but can you explain why buying "Cerrito Peak" for $350K is an "emergency" for the City? If not---this item needs to be pulled from the agenda.

Regards

Jeff Heller

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 8:58 PM
To: Lynda Merrill
Cc: Dana Swanson
Subject: Re: C-1 Please approve this purchase

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City of Morro Bay
MAY 22 2017
City Clerk

Thanks for your input and comments regarding the potential purchase of Cerrito Peak. Your email will be included as agenda correspondence.

Thank you - Jamie

From: Lynda Merrill <[redacted]
Sent: Saturday, May 20, 2017 4:15 PM
To: Jamie Irons; Robert Davis; John Headding; Matt Makowetski; Marlys McPherson
Subject: C-1 Please approve this purchase

Dear Mayor and Councilmembers,

Please approve C-1 so that our City will own this very special Cerrito Peak property. People have treasured this park like setting for many years. We need to preserve what we see as adding to our 'unique quality of life' here in Morro Bay. People before us saw the value of keeping open space available to all citizens. As we look around us we see so much beauty because of clever, brave people like you who saw the value in making open space part of our lives.
Sincerely, Lynda and Frank Merrill
(if I can't attend the meeting please know I will be watching at home)

C-1 APPROVAL OF PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY IDENTIFIED AS 1 JORDAN TERRACE (CERRITO PEAK); APN: 066-221-001; (COMMUNITY DEVELOPMENT)

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 9:01 PM
To: Kenneth Green
Cc: Dana Swanson
Subject: Re: Cerrito Peak

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City of Morro Bay
MAY 22 2017
City Clerk

Thanks for your input and comments regarding the potential purchase of Cerrito Peak. Your email will be included as agenda correspondence.

Thank you - Jamie

From: Kenneth Green [redacted]
Sent: Sunday, May 21, 2017 2:37 PM
To: Jamie Irons
Subject: Cerrito Peak

Dear Jamie,

I am writing in support of the City's purchase of Cerrito Peak. I am sending a similar email to the City Council members.

Laura and I were thrilled to see the agenda for this coming Tuesday where Item C-1 stated that the City wants to purchase Cerrito Peak! We consider this a wonderful acquisition for the community. It will keep Cerrito Peak undeveloped and in its natural state for the public to enjoy. The terms of the purchase are a good deal for the City: not only is the purchase price reasonable but the return to the City of money owed will reduce the cost significantly. We understand that the City will seek to sell the land to a conservancy in the near future, an outcome that is ideal in our minds. We will be happy to work towards that end.

In short, we whole-heartedly support the purchase of Cerrito Peak by the City. Thank you and the Council members for taking this step. And thank you personally for attending the meeting at our place yesterday.

Best regards,
Ken Green
[redacted]
Morro Bay

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 9:02 PM
To: Laura Green
Cc: Dana Swanson
Subject: Re: Cerrito Peak Purchase

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City Clerk

Thanks for your input and comments regarding the potential purchase of Cerrito Peak. Your email will be included as agenda correspondence.

Thank you - Jamie

From: Laura Green [redacted]
Sent: Sunday, May 21, 2017 2:41 PM
To: Jamie Irons
Subject: Cerrito Peak Purchase

Dear Jamie,

Regarding Morro Bay's purchase of Cerrito Peak I'd like it known I'm in favor of the purchase.

1) The city has the opportunity to preserve the property as open space for the public. The property is a treasure of of small wildlife, birds and the monarch butterfly.

2) The property is unique within the city and enjoyed not only by locals but tourists.

3) The sale price is reasonable and the sale would benefit the city to satisfy an outstanding debt of approximately $75,000.00

4) The acquisition of Cerrito Peak allows the city to own an open space without infringing on future development for the city.

5) I believe there is enough citizen support to move in a favorable direction of purchase.

I encourage the council to move to purchase Cerrito Peak in Morro Bay.

Thank you for your service to our wonderful city,
Laura Green
Morro Bay, CA

Dana Swanson

From: Jamie Irons
Sent: Sunday, May 21, 2017 9:05 PM
To: Tom Harrington
Cc: Dana Swanson
Subject: Re: Cerrito Peak Property purchase

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City Clerk

Tom

Thanks for your input and comments regarding the potential purchase of Cerrito Peak. Your email will be included as agenda correspondence.

Thank you - Jamie

From: Tom Harrington[redacted]
Sent: Sunday, May 21, 2017 6:02 PM
To: Jamie Irons; Marlys McPherson; Matt Makowetski; John Headding; Robert Davis
Subject: Cerrito Peak Property purchase

Mayor and Council,

The opportunity for the City of Morro Bay to purchase Cerrito Peak property is a financially sound investment with virtually no risk. It is an excellent use of City Emergency Funds to enhance the city's environmental and aesthetic character. - TomHarrington

Tom Harrington
[redacted]
Morro Bay, CA, 93442
[redacted]

Dana Swanson

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MAY 22 2017
City Clerk

From: Carole Truesdale [redacted]
Sent: Monday, May 22, 2017 8:39 AM
To: Dana Swanson
Cc: Carole Truesdale
Subject: Fwd: General Fund Emergency Reserve--C-1

Dana,
As my note states, I am attending a memorial for my deceased brother-in-law.
For the record:

Sent from my iPhone

Begin forwarded message:

> **From:** Carole Truesdale [redacted]
> **Date:** May 21, 2017 at 8:49:17 AM
> **Subject: Re: General Fund Emergency Reserve--C-1**
>
> I am out of town attending the memorial for my brother-in-law who passed away 4/26...I will not be at the Council Meeting to speak my heart and get it on record.
> I have concerns as to the financial management of our City funds with reference to Cerritos Peak; especially using emergency funds from our General Plan to purchase a very controversial property.
> The City has already informed us citizens that there is a 25% shortfall in proving us services...$650K shortfall over the next 3 years and another $650K the next 3 years.
> Whatever or whomever is driving this purchase is not looking at or for the benefit of this community.
> There have been many issues surrounding this property and my heart is heavy for the 70-year old widow who has to take less than what this property is worth and pay the City legal fees of approximately $85K using tax payer funds, like you and me.
> If the City is looking at making a deal with some level of conservation or non-profit, I could not support this project based on the history as I know it. A couple's dream home in our beautiful community pulled out from under.
> Owning property comes with numerous legal responsibilities, like insurance, maintenance, taxes; the list goes on! Again, who's picking up the tab on this one?
> How much interest are we losing from using the funds from our emergency fund?
> I am a numbers gal, it just does not add up again!
> Kind regards,
> Carole T

Dana Swanson

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MAY 22 2017
City Clerk

From: Peggy Mandeville <[redacted]
Sent: Monday, May 22, 2017 9:25 AM
To: Council
Subject: May 23, Item C-1

Please take advantage of this window of opportunity to purchase the Cerrito Peak property Tuesday night. Acquiring this property as an interim step would put the City in control of determining the property's future. Given its limited resources, the City could appoint a small group of volunteers to seek out preservation and development options providing the Council with regularly scheduled updates of their progress. Thank you for your consideration.

Peggy Mandeville
Morro Bay resident and Cerrito Peak neighbor

Sent from my iPhone

Dana Swanson

From: Karen Beckman [redacted]
Sent: Monday, May 22, 2017 9:44 AM
To: Council
Subject: Cerrito Peak

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City Clerk

Dear Mayor and Council Members,

Regarding item C1 on tomorrow's agenda: We support the Council's plan to purchase Cerrito Peak for $350,000.

Thank you for your consideration,
Karen And Bart Beckman

Sent from my iPad

Dana Swanson

From: Jamie Irons
Sent: Monday, May 22, 2017 1:45 PM
To: Barry Branin
Cc: Dana Swanson
Subject: Re: Cerritos Peak purchase.

Barry,

I sent you a response that I made to Jeff Heller to respond to this email please check it out.

This email is being submitted for agenda correspondence.

Thanks - Jamie

From: Barry Branin [redacted]
Sent: Monday, May 22, 2017 12:36 PM
To: Jamie Irons; Jamie Irons
Subject: Cerritos Peak purchase.

Mayor Irons,
I know the history of the Cerritos peak permit issue.
A previous Council over rode our Planning commission and issued a permit.

This set off a chain of events that brings us to where we are today.

Please don't compound that poor decision by a previous Council and vote to approve using emergency funds to purchase this property.

This is an NOT an emergency.

The property owner has had almost two years to comeback with studies to prove that they should build there. When those studies were to be completed then the Council may have approved reinstatement of the entitlements.
I believe that the applicant considered that the cost was not worth the fact that the Council may have not reinstated the entitlements and now wants to salvage what they can.
With out the entitlements the property has very little value.

Please do not vote to use the Emergency funds in this manner.

Thank you for reading this.

Barry Branin

Sent from my iPad

Dana Swanson

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City Clerk

From: john thompson [redacted]
Sent: Monday, May 22, 2017 4:37 PM
To: Council
Subject: Support for Cerrito Peak Purchase by Morro Bay

May 22, 2017

Dr. John Thompson

[redacted]

Morro Bay, CA 93442

Mayor Irons and members of the Morro Bay City Council,

This letter is in regard to Business Item C-1 on the May 23 City Council Regular Meeting Agenda: "Approval of purchase and sale agreement for real property identified as 1 Jordan Terrace (Cerrito Peak); APN: 066-221-001; (Community Development)".

I am writing to express my strongest support for the recommendation that the Council authorize (i) the purchase of the property and (ii) the expenditure of $350,000 from the City's General Fund Emergency Reserve.

The City of Morro Bay's acquisition of the property would represent a positive outcome for all the parties concerned:

- the citizens of Morro Bay have the opportunity to help preserve this significant natural and cultural treasure for future generations;

- the city government would avoid further conflict and litigation connected with any current or future entitlements/development, as long as the plan to see the land preserved in its current state is carried out;

- the owner would be able to recover at least some of her investment in the property while at the same time personally contributing to the preservation of open space in Morro Bay.

Justification for the City to use money from the General Fund Emergency Reserve lies in the fact that this opportunity must be seized while the property is still available and the owner is positively disposed to selling to the City at this price which is well below its advertised value.

Preservation of Cerrito Peak is of utmost importance to Morro Bay because the land is a significant documented overwintering site for monarch butterflies, as data from the Xerces Society's Western Monarch Thanksgiving Count shows:

the numbers for all of the counts for all of the years from 1997-2016 are at
http://www.westernmonarchcount.org/wp-content/uploads/2014/10/WMTC-Data-1997-2016_updated-1.30.2017.pdf

The Cerrito Peak site is on page 2, under the SLO County sites, and is listed as "Eagle Rock". If the above link does not work, please go to this link and click on Western Monarch Thanksgiving Count Data 1997-2016:
http://www.westernmonarchcount.org/data/

Finally, Cerrito Peak, geologically and culturally one of the Morros, has historically been and is still considered sacred by Native American groups (the site is listed on the Native American Heritage Commission's Sacred Lands Inventory). This fact is highlighted by the very conditions and mitigations laid out in the City of Morro Bay's documentation regarding continued access to the site by those native groups in the context of past proposed development.

For all these reasons, I ask the Council to approve this purchase as laid out in the May 23 agenda, using the emergency funds designated therein.

Yours truly,

John Thompson, Ph.D.

Dana Swanson

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City of Morro Bay
MAY 22 2017
City Clerk

From: Jamie Irons
Sent: Monday, May 22, 2017 2:26 PM
To: [redacted]
Cc: Dana Swanson
Subject: Re: POSSIBLE PURCHASE OF CERRITO PEAK

Jeff,

A couple things.

First please be advised that you should use your personal email address for non city business. I am getting email from your personal email and you city email. This does not constitute city advisory board business. Please proceed accordingly.

Second, the very items that you request are what we can discuss and set as a future agenda items tomorrow. It would be inappropriate to give direction and take action to rezone a property in closed session along with your other suggestions. We will have the discussion including your suggestions at the council meeting.

Dana, please include in agenda correspondence.

Thanks - Jamie

From: Jeffery Heller
Sent: Monday, May 22, 2017 12:11 PM
To: Jamie Irons
Subject: POSSIBLE PURCHASE OF CERRITO PEAK

Hi Jamie

Many residents have a problem with Business Item C-1 on the agenda for MBCC meeting 5/23/17.

Even though many of us want the property preserved as open space, we object to the use of the General Fund's Emergency Fund for this purpose. Item C-1 is barely described in the agenda or the supporting Staff Report. Why is this an "emergency" for the City? What is the motivation, purpose for the purchase? What is the benefit to MB's residents? What are the risks to the City if it is purchased? Since none of this is addressed in writing or expressed at a meeting----it seems like a "back room deal"! This is why so many people don't trust the council or staff to do the right thing for us. Almost a complete lack of transparency from out POV.

Here is a possible solution:

Revise the item to include some language to address **benefits** (e.g. resolve long standing litigation between owner and City, great price for property, iconic views--conservancy interests, possible re-sale at higher price, etc.)

Also address **cost/risk issues** (e.g. City assumes risk of maintaining property, accidents by rock climbers, possible fires from cigarettes, falling trees, etc. If not sold to a conservancy group in a timely matter, and/or if the development restrictions are not modified to make the site more buildable [and the R.E. Market takes a big downturn in the next few years], the city may not be able to sell for $350K).

Bottom Line: We think it's not an appropriate use of the General Fund considering all of our pressing near term needs. However---if the City wants to deem this as an "emergency" opportunity---then we want some protection for the $350K.

SUGGESTIONS:

1. Buy property for $350K
2. Modify parcel requirements so parcel is more buildable (allow SFR near road)
3. Give Conservation Groups 1 year to buy the property for $350K.
4. If not sold in one year---then the City should market the property.
5. The City needs to commit **now** to additional future "corrective actions" if the property is not saleable at $350K (net to the City) when put on the market in the future.

Please do what you can to modify this Business Item so our EF money is protected!

Thanks

Jeff Heller

Citizens for Affordable Living

Dana Swanson

From: [redacted]
Sent: Monday, May 22, 2017 5:04 PM
To: Council
Subject: Formal comments to Agenda Item C-1

Shamas (Greetings), Honorable Mayor and City Council. I would like to comment on Agenda item C-1. I am a certified and well documented descendant of the Playano Salinan people. My ancestors were the ones that paddled out on the bay to met Juan Cabrillo's Ship in 1542. To say the least my people have a long history here in Morro Bay. Besides Morro Rock (Le sa mo) and some other sites in Morro Bay, Cerrito Peak (Eagle Rock) is a recorded SALINAN Sacred site with the California Heritage Commission. We are the protectors and caretakers of these sites. For the last few decades we have been involved in protecting the peak from modern developed. Like most of the land on this beautiful Central Coast the peak was taken from us. Luckily over the years we have been able to ascend the peak and preform our traditional ceremonies with special permission by the landowners. I believe this peak to have great power. As they say "with great power, Comes great responsibility". I have just one question. Is the City of Morro Bay and the other environmental groups wanting to purchase this Salinan sacred site ready to except this responsibility and all that comes with it? Patti Dunton, Playano Salinan Sent from my iPhone

Dana Swanson

From: Jamie Irons
Sent: Monday, May 22, 2017 6:31 PM
To: B. Doerr
Cc: Dana Swanson
Subject: Re: C1 - Purchase of Cerritos Peak - 5/23/2017

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MAY 23 2017
City Clerk

Thanks for your email and input regarding Cerrito Peak. Your input will be park of agenda correspondence for this item.

Regards,
Jamie

From: B. Doerr [redacted]
Sent: Monday, May 22, 2017 5:26 PM
To: Jamie Irons; Matt Makowetski; Marlys McPherson; Robert Davis; John Headding
Subject: C1 - Purchase of Cerritos Peak - 5/23/2017

Mayor and City Council,
We support the purchase of Cerritos Peak. This is certainly and emergency, and a legal action.
Thank you,
Barbara & Bob Doerr

Dana Swanson

From: Jamie Irons
Sent: Monday, May 22, 2017 8:40 PM
To: Dana Swanson
Subject: Fw: Cerrito Peak Trees and Bushes

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City of Morro Bay
MAY 23 2017
City Clerk

Dana, please ad to agenda correspondence.

Thanks - Jamie

From: B D [redacted]
Sent: Monday, May 22, 2017 5:25 PM
To: Jamie Irons; Dave Buckingham
Subject: Cerrito Peak Trees and Bushes

In the 1950s all or nearly all the trees and some bushes on Cerrito Peak were planted by me, myself using seeds, except for the north side that is close to Highway One(maybe a few of those also). There were four or five different projects, each with a different owner, each of the owners agreeing with me that I would keep ownership of whatever grew from each seed. Now I do not have a preference to any of the uses of the trees or whatever on Cerrito Peak.

Dana Swanson

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MAY 23 2017
City Clerk

From: Tim Crowley [redacted]>
Sent: Monday, May 22, 2017 9:37 PM
To: Council
Subject: Cerrito Peak Purchase

I support your staff's recommendation that the city purchase the lot atop Cerrito Peak. .

Seizing this opportunity would be an important first step to preserving this open space for residents and visitors alike. It would also be a subtle, yet significant, indication of Morro Bay's dedication to its better nature.

Tim Crowley

Morro Bay

Dana Swanson

From: Jamie Irons
Sent: Monday, May 22, 2017 10:51 PM
To: Diane Ludin
Cc: Dana Swanson
Subject: Re: Cerritos property

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MAY 23 2017
City Clerk

Thank you for your email and input. They will be included as agenda correspondence for the record.

Regards,
Jamie

From: Diane Ludin <[redacted]>
Sent: Monday, May 22, 2017 10:31 AM
To: Jamie Irons; Marlys McPherson; Matt Makowetski; John Headding; Robert Davis
Subject: Cerritos property

Please purchase the Cerritos property and end decades of squabbles over what to do with it.
Diane Ludi[redacted]

Sent from my iPhone

Dana Swanson

From: debbie highfil [redacted]
Sent: Tuesday, May 23, 2017 8:18 AM
To: Council
Subject: The protection and acquisition of Cerrito Peak

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City of Morro Bay
MAY 23 2017
City Clerk

Dear Council members, I am thankful that you are pursuing protection of this incredibly picturesque and unique land formation in Morro Bay. It certainly deserves to be left in its natural state for all to enjoy.

Because I couldn't convey it any better than she did, I am printing below the letter to you submitted by Betty Winholtz. Please heed her sage advice! Thank you,
Debbie Highfill

Dear City Council:

Of your three options--enforce the writ rescinding the permit, purchase the property so it's off the market, do nothing hoping no one purchases the permit until September--I assume your desire is to choose the action with the best guarantee of protecting the Peak. Therefore, staff is recommending option two.

To that end, upon ownership, if you are sincere about permanent preservation, change the zoning to ESH and/or Open Space lest another council decides to resell the property should the Conservancy fail to raise the money. You do not have to wait for the General Plan/LCP update to do this. Amendments can go to the California Coastal Commission anytime. In addition, you must be willing to swallow a $350,000 loss if the Conservancy doesn't raise the money because the town will not tolerate a resell of this property once told, or implied, this is the road to permanent protection.

The motion Tuesday night should include a time frame within which the Conservancy is responsible for raising the money. This is a huge affront to the residents that you would spend emergency reserve money on purchasing a piece of property, particularly in a time of economic concern for the City. Even if it is a longer deadline, like 5 years, it's best to have a deadline for accountability.

Sincerely,
Betty Winholtz

Dana Swanson

From: Craig Schmollinger
Sent: Tuesday, May 23, 2017 8:56 AM
To: Dana Swanson
Cc: Lori Kudzma
Subject: FW: agenda item c-1

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City of Morro Bay
MAY 23 2017
City Clerk

Dana,

Please see below input as public comment for item C-1 tonight.

Thanks,
Craig

From: betty winholtz[redacted]
Sent: Tuesday, May 23, 2017 1:11 AM
To: Jamie Irons <jirons@morrobayca.gov>; Matt Makowetski <mmakowetski@morrobayca.gov>; John Headding <jheadding@morrobayca.gov>; Robert Davis <rdavis@morrobayca.gov>; Marlys McPherson <mmcpherson@morrobayca.gov>
Cc: Craig Schmollinger <cschmollinger@morrobayca.gov>
Subject: agenda item c-1

Dear City Council:

Of your three options--enforce the writ rescinding the permit, purchase the property so it's off the market, do nothing hoping no one purchases the permit until September--I assume your desire is to choose the action with the best guarantee of protecting Cerrito Peak. Therefore, staff is recommending option two.

To that end, if you are sincere about permanent preservation, then upon ownership, change the zoning to ESH and/or Open Space. You do not have to wait for the General Plan/LCP update to do this. Amendments can go to the California Coastal Commission anytime.

In addition, the motion Tuesday night should include a time frame within which the Conservancy is responsible for raising the money. This is a huge affront to the residents that you would spend emergency reserve money on purchasing a piece of property, particularly in a time of economic concern for the City. If you truly want the Conservancy to succeed, then a realistic deadline like 4-5 years should be included in the motion that also establishes accountability to the public.

Sincerely,
Betty Winholtz

Virus-free. www.avast.com

Dana Swanson

From: JOHN MANDEVILLE <[redacted]
Sent: Tuesday, May 23, 2017 10:54 AM
To: Council
Subject: Council Agenda Item C-1

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City of Morro Bay
MAY 23 2017
City Clerk

The City Council has a rare opportunity to implement multiple General Plan policies with no long-term cost to the city.

Cerrito Peak is a documented trove of environmental, cultural and archaeological resources, as well as a loved recreational oasis with easy access. Environmental resources include habitat for monarch butterflies, migrating birds and raptors. The peak is part of the bay watershed and provides sweeping views of the bay and ocean. The peak is culturally significant to Native American descendants with archaeological evidence of their ancestor's presence. The peak is also important to several generations of people who have grown up in Morro Bay.

The Land Use Element of the City's existing General Plan contains several policies that can be implemented by the City's short-term ownership of the property. These policies are listed below. Existing policy should be respected for the thought and effort that went into making them, especially in light of the work currently taking place to update the General Plan.

Some have argued that purchasing the property would not be an appropriate use of Emergency Fund monies. Contrary to that opinion, Resolution 33-15 that establishes the Emergency Reserved does not prohibit the Council from using funds in excess of the required minimum. These funds are being used to implement adopted city policies. In addition, the City can recover the use of these funds in several ways.

The Emergency Funds that would be used purchase the property can be recovered through: 1) a public fundraising effort; 2) grant funds obtained from resource protection organizations and charities; 3) sale of the property to an open space or conservation organization; or 4) resale of a portion of the property to a private party after the City has changed the zoning and adopted a development plan prepared by the City that maximizes protection of the sensitive resource areas. Options 1, 2, and 3 can be done in combination.

Public fundraising raised $750,000.00 for the Cayucos Pier reconstruction two years ago. Less than half of that would reimburse the City. Given the variety of resources present on the property, funding can be sought under watershed, open space, wildlife preservation and cultural/historic preservation grant sources. Full reimbursement of the Emergency Funds leaving the site permanently protected as open space is very possible. Even the worst case scenario of selling the land to a private party provides a route to better achieve our General Plan policies.

Please do not let this opportunity pass us by.

General Plan Land Use Policies:

LU-50

It is imperative that methods should be implemented to insure environmental quality and insure that no environmental damage occurs. (OS 47)

LU-51

In an urbanizing area, open space must be maintained in a variety of methods. Methods should be created for maintaining open space not only through public means, but private as well and that they be utilized at every opportunity that presents itself.

LU-55

All environmentally sensitive habitat areas shall be protected against adverse impacts to the maximum extent feasible.

LU-56

Morro Bay Sand Spit, Morro Rock, **and** existing wildlife habitats should be preserved in their natural state.

Dana Swanson

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City of Morro Bay
MAY 23 2017
City Clerk

From: Jamie Irons
Sent: Tuesday, May 23, 2017 10:12 AM
To: Kathy
Cc: Dana Swanson
Subject: Re: Cerrito Peak

Thank you for your email and input. They will be included as agenda correspondence for the record.

Regards,
Jamie

From: Kathy [redacted]
Sent: Tuesday, May 23, 2017 8:24 AM
To: Jamie Irons; Marlys McPherson; Matt Makowetski; John Headding; Robert Davis
Subject: Cerrito Peak

Dear Mayor Irons and Council Members McPherson, Heading, Makowetski and Davis;

Thank you for considering the purchase of Cerrito Peak. We support this acquisition by the city at this time for the following reasons:

-Maintains a unique open space for local residents and visitors to Morro Bay

-Preserves/protects habitats for monarch butterflies, birds and other wildlife

-Helps to protect and allow access to Native American artifacts

We also support the city's goal to sell the property to a conservancy and would hope this can become a reality within the next 2 years. This goal would ensure a return to the city of much needed funds AND that Cerrito Peak would not be available for development in the future.

Sincerely,

Kathy Quigley

Morro Bay Action Team

Together We Will Morro Bay/Indivisible

Dana Swanson

From: Jamie Irons
Sent: Tuesday, May 23, 2017 11:21 AM
To: DAWN ADDIS
Cc: Dana Swanson
Subject: Re: Yes to purchase and preserve Cerrito Peak

Thank you for your email and input. They will be included as agenda correspondence for the record.

Regards,
Jamie

From: DAWN ADDIS [redacted]>
Sent: Tuesday, May 23, 2017 10:29 AM
To: Jamie Irons
Subject: Yes to purchase and preserve Cerrito Peak

Dear Mayor Irons,
I am writing to urge you to vote yes for the city to purchase and preserve Cerrito Peak. As a parent and long time Morro Bay resident I have spent many an afternoon climbing the rocks at Cerrito Peak. It is one of Morro Bay's hidden treasures and all people deserve the opportunity to experience it untouched.

Thank you,
Dawn Addis