



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting Tuesday, September 12, 2023 – 5:30 P.M. Veterans Memorial Hall 209 Surf St., Morro Bay, CA

Public Participation:

Public participation is allowed in the following ways:

- *Community members may attend the meeting in person at the Morro Bay Veterans Hall.*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the “raise hand” feature to indicate your desire to provide public comment.*

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>
Password: 135692
- *Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press *9 to “Raise Hand” for Public Comment*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at council@morrobayca.gov prior to the meeting. Agenda Correspondence received at council@morrobayca.gov by 10 a.m. on the meeting day will be posted on the City website.*

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- Proclamation recognizing the 65th Anniversary of the Estero Bay United Methodist Church.

PUBLIC COMMENT

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

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE AUGUST 22, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE AUGUST 22, 2023, CITY COUNCIL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

- A-3 ADOPTION OF RESOLUTION NO. 55-23 APPROVING A 10-YEAR LEASE AGREEMENT WITH THE CENTRAL COAST MARITIME MUSEUM ASSOCIATION FOR PROPERTY LOCATED AT 1210 EMBARCADERO ROAD; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 55-23 (Attachment 1), approving a 10-year Lease Agreement with the Central Coast Maritime Museum Association, a 501(c)(3), non-profit, public benefit corporation (“Maritime Museum”) for the City property located at 1210 Embarcadero Road including portions of APN: 066-311-041, portions of Front Street and portions of the Embarcadero Road Right-of-Way.

- A-4 ACCEPTANCE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) GRANT; (FIRE DEPARTMENT)

RECOMMENDATION: 1) Authorize the Fire Department to accept the grant award from the California Office of Traffic Safety Grant program for hydraulic extrication equipment and airbags; and 2) Authorize the City Manager to approve execution of grant related documents.

- A-5 ADOPTION OF RESOLUTION NO. 56-23 APPROVING AMENDMENT #1 TO THE LEASE AGREEMENT FOR CALIFORNIA COASTAL INVESTMENTS, LLC, DOING BUSINESS AS LIBERTINE BREWING COMPANY, LEASE SITE 86/86W, 801 EMBARCADERO, MORRO BAY; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 56-23 approving Amendment #1 to the lease agreement for Libertine Brewing Company, Lease Site 86/86/W.

- A-6 ADOPTION OF RESOLUTION NO. 57-23 APPROVING UPDATED RECORDS RETENTION SCHEDULE; (CITY CLERK)

RECOMMENDATION: Staff recommends the Council adopt Resolution No. 57-23 rescinding Resolution No. 76-19, approving the City of Morro Bay Records Retention Schedule, and authorizing subsequent minor updates without further Council action.

- A-7 APPROVAL OF A ONE-YEAR EXTENSION TO THE CONTRACT WITH LENSLOCK INC. FOR BODY WORN CAMERAS; (POLICE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council direct the City Manager to execute a one-year extension with LensLock Inc., service provider of the department’s current Body Worn Camera (BWC) system.

- A-8 APPROVING A REVISED CONSENT OF LANDOWNER (COL) FORM; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council approve a revised Consent of Landowner Form.

- A-9 ACCEPT \$100,000 GRANT FUNDS FROM COMMERCIAL FISHERMAN’S ORGANIZATION OF MORRO BAY, INC., (MBCFO), AMEND HARBOR CIP BUDGET AND APPROVE USE OF FUNDS; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 58-23, approving the acceptance of the MBCFO grant funds of \$100,000 designated for the Harbor Commercial Fishing Dock Repair Project, approve the MOU, approve amending the Harbor budget for said amount and appropriating the funds for both

the revenues (923-9960-3390) and expenditures in the Harbor CIP fund (923), and adding them to the “Storm Recovery-Dock Repairs” CIP project account number 923-9960-6106.

- A-10 ADOPTION OF RESOLUTION NO. 59-23 APPROVING A CONSENT OF LANDOWNER DOCUMENT FOR LEASE SITE 62/62W (MORRO BAY PADDLE SPORTS, 551 EMBARCADERO); (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 59-23, approving a Consent of Landowner (COL) document for Morro Bay Paddle Sports, lease site 62/62W as presented.

- A-11 CONSIDERATION OF APPOINTMENT OF DOUG HILL TO THE PUBLIC WORKS ADVISORY BOARD; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council appoint Doug Hill to the Public Works Advisory Board (“PWAB”) to fill an unscheduled vacancy for the remainder of a term through January 31, 2024.

- A-12 PROCLAMATION RECOGNIZING THE 65TH ANNIVERSARY OF THE ESTERO BAY UNITED METHODIST CHURCH; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARING ITEMS

- B-1 APPEAL OF THE PLANNING COMMISSION APPROVAL OF A PROPOSED MIXED USE RESIDENTIAL/LIVE-WORK PROJECT THAT INCLUDES 5 ATTACHED RESIDENTIAL DWELLINGS, 2 WITH LIVE/WORK SPACE ON THE GARAGE LEVEL LOCATED AT 1140 ALLESANDRO AVENUE; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No 60-23, denying the appeal and upholding the Planning Commission (or PC) approval of the Coastal Development Permit CDP22-004, Conditional Use Permit CUP22-06 and TTM22-04 for the proposed tentative map and new mixed-use project to be located at 1140 Allesandro Avenue.

C. BUSINESS ITEMS

- C-1 CERTIFY RESULTS OF CITIZENS INITIATIVE PETITION ENTITLED “INITIATIVE MEASURE TO AMEND CITY OF MORRO BAY’S GENERAL PLAN (PLAN MORRO BAY), ADOPTED BY CITY COUNCIL ON MAY 25, 2021, TO PROHIBIT, UNLESS APPROVED BY MORRO BAY VOTERS, ANY CHANGE TO LAND USE DESIGNATIONS OF VISITOR-SERVING COMMERCIAL OR COMMERCIAL/RECREATIONAL FISHING, ON CERTAIN DESIGNATED PARCELS WITHIN THE CITY” AND THEN: 1) ORDER A REPORT ON THE EFFECTS OF THE PROPOSED INITIATIVE; 2) ADOPT THE ORDINANCE WITHOUT ALTERATION; OR, 3) SUBMIT THE ORDINANCE WITHOUT ALTERNATION TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE AT A REGULAR MUNICIPAL ELECTION; (CITY MANAGER/CITY CLERK)

RECOMMENDATION: Staff recommends the City Council receive the staff report, discuss the options provided by Elections Code section 9215 and described in this report, and then pursuant to statutory duties under Election Code section 9215 take one of the following actions:

1. Order a Report on the Effects of the Proposed Ordinance. Pursuant to Election Code section 9215, Council may order a report from City staff pursuant to Election

Code section 9212. Staff requests that if Council orders a report, that Council (consistent with Election Code section 9212 options, see below) provide direction on the desired contents of the report. The public report would potentially help Council to decide whether to choose between Option 2 or Option 3 below and would also be available to the voters if Council should decide to send the measure to the voters rather than adopt the ordinance. This comprehensive report needs to be available within 30 days (i.e., by the October 10 regular Council meeting). When the report is presented to the Council, the Council shall then either adopt the ordinance (at that meeting or within 10 days) or order an election be held on the ordinance; or

2. **Adopt the Ordinance.** Adopt, without alteration, by title only, with further reading waived, Ordinance No. 659(a), adopting “Initiative Measure to Amend City of Morro Bay’s General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on certain designated parcels within the City”; or

3. **Order an Election on the Proposed Ordinance.** Call for an election on the ordinance by adopting Resolution No. 61-23 calling for a General Municipal Election to be held on Tuesday, November 5, 2024, for the submission of Ordinance No. 659(b) to the qualified voters of the City as a proposed measure, and adopt Resolution No. 62-23 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 63-23 providing for the filing of rebuttal arguments..

****Election Code section 9282 provides that “For measures placed on the ballot by petition, the persons filing an initiative petition pursuant to this article may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance.” If Council desires pursuant to Election Code section 9282 to submit an argument against the proposed measure, then one or two members should be appointed for the task as provided for in section 2 of Resolution No. 62-23, as discussed further in this report. Otherwise, Council should not approve section 2 of Resolution No. 62-23.****

- C-2 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 660 AMENDING SECTION 3.24.100, AND REPEALING AND REPLACING SECTION 3.24.110, OF CHAPTER 3.24 OF THE MORRO BAY MUNICIPAL CODE, UPDATING THE TRANSIENT OCCUPANCY TAX APPEALS PROCESS; (CITY MANAGER/CITY ATTORNEY/ASSISTANT CITY MANAGER/ADMIN SERVICE DIRECTOR)

RECOMMENDATION: Staff recommends the City Council introduce for first reading by title only, with further reading waived, Ordinance No. 660 Amending Section 3.24.100, and Repealing and Replacing Section 3.24.110, of Chapter 3.24 of the Morro Bay Municipal Code, Updating the Transient Occupancy Tax Appeals Process.

- C-3 DISCUSSION OF WATERFRONT MASTER PLAN UPDATE AND AUTHORIZATION TO SUBMIT A GRANT APPLICATION FOR CALIFORNIA COASTAL COMMISSION LCP LOCAL ASSISTANT GRANT PROGRAM FUNDING; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt Resolution No. 64-23 authorizing staff to submit a grant application for California Coastal Commission (CCC) LCP Local Assistance Grant Program to fund the update of the City’s 1996 Waterfront Master Plan in the amount of \$500,000.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

- E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, September 26, 2023 at 5:30 p.m.**

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL, 595 HARBOR ST, MORRO BAY, CA 93442 FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
AUGUST 22, 2023 – 3:00 P.M.
CITY HALL CONFERENCE ROOM

AGENDA NO: A-1
MEETING DATE: September 12, 2023

PRESENT: Carla Wixom Mayor
Laurel Barton Council Member
Cyndee Edwards Council Member
Jennifer Ford Council Member
Zara Landrum Council Member

ABSENT: None

STAFF: Sarah Johnson-Rios Assistant City Manager/Admin. Services Director
Chris Neumeyer City Attorney
Scot Graham Community Development Director
Emily Conrad Finance Manager
Dana Swanson City Clerk
Keri Calloway Consultant, HdL Companies

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 3:01 p.m. with all members present.

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

CLOSED SESSION PUBLIC COMMENT – Mayor Wixom opened public comment for items on the agenda.

Scott Mather, Larry Newland, Bob Fowler, and Jeremiah O'Brien spoke on behalf of the Morro Bay Maritime Museum, expressing appreciation for the City's support toward helping the Maritime Museum to fulfill its mission to provide educational opportunities for local residents and visitors.

The public comment period was closed.

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

Council Member Ford recused herself from Item CS-1 and left the meeting at 3:11 p.m.

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

Property: Morro Bay Maritime Museum site, located at 1210 Embarcadero, adjacent to Front Street Parking Lot
Property Negotiator: Scott Mather, President; Bonnie Jones, Treasurer; on behalf of Central Coast Maritime Museum Association
Agency Negotiators: Yvonne Kimball, City Manager; Scot Graham, Community Development Director; and Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

Council Member Ford rejoined the meeting at 3:27 p.m.

CS-2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code subdivision 54956.9(d)(1)

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 4:15 p.m.

Recorded by:

Dana Swanson
City Clerk

PRESENT: Carla Wixom Mayor
Laurel Barton Council Member
Cyndee Edwards Council Member
Jennifer Ford Council Member
Zara Landrum Council Member

ABSENT: None

STAFF: Yvonne Kimball City Manager
Chris Neumeyer City Attorney
Dana Swanson City Clerk
Sarah Johnson-Rios Assistant City Manager/Admin Services Dir.
Greg Kwolek Public Works Director
Scot Graham Community Development Director
Daniel McCrain Fire Chief
Amy Watkins Police Chief
Ted Schiafone Harbor Director
Paul Amico WRF Program Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/6CYWAKMgFEU?si=j5jJAXYTVu1hwxAc&t=127>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/6CYWAKMgFEU?si=ClaaqVfKY1CnounU&t=581>

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/6CYWAKMgFEU?si=CUG3IQ2IAd1LKko&t=1055>

Aaron Ochs, Morro Bay, felt there was consensus opposing the battery storage project and suggested a community task force be formed including those who support and oppose the citizens' initiative.

Linda Winters, Morro Bay, shared she attended the San Luis Obispo City Council Meeting to speak in support of Hope Village's effort to provide permanent housing for the unhoused and encouraged the City to implement a program similar to Morro Bay's Monday Night Dinners.

Terry Simons, Morro Bay, made inquiries about the company providing fiber optic internet to portions of the city and whether they had a franchise agreement with the City.

Chuck Stoll, Morro Bay resident and President of the Morro Bay Lions' Club, spoke regarding the Club's activities and ways they serve the community.

Sharon O'Leary, Morro Bay resident and Community Resource Connections volunteer, shared partnering agencies who coordinate Monday Night Dinners had served 32,000 dinners to residents over a period of nearly 9 years and suggested a second site in north Morro Bay was needed.

Betty Winholtz, Morro Bay, commented on landscaping of the bike trail and raised questions regarding grading and fencing.

Mayor Wixom closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/6CYWAKMgFEU?si=8nBECcxQpmqaKCp9&t=2308>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE AUGUST 8, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE AUGUST 8, 2023, CITY COUNCIL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-3 FOURTH QUARTER INVESTMENT REPORT (PERIOD ENDING JUNE 30, 2023) FOR FISCAL YEAR (FY) 2022-23; (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Receive the attached Fourth Quarter Investment Report (period ending June 30, 2023) for FY 2022-23.

A-4 DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR ABC LICENSE – 295 ATASCADERO RD., HAMPTON INN (ESCAPE HOSPITALITY, LLC); (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council make the Determination of Public Convenience or Necessity to approve the request to allow sales of alcohol for off sale beer and wine type 20 license for Hampton Inn at 295 Atascadero Rd.; and direct staff to provide the applicant with a letter of support.

A-5 DESIGNATION OF VOTING DELEGATE AND ALTERNATE AT LEAGUE OF CALIFORNIA CITIES 2023 ANNUAL CONFERENCE BUSINESS MEETING; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council:
1. Select Council Member Barton, as the voting delegate, and Council Members Edwards and Landrum, as the alternate voting delegates, for the upcoming annual

business meeting to be held at the League of California Cities Annual Conference; and 2. Authorize City Clerk to sign the League of California Cities' form affirming the selection of the voting delegate and the alternate voting delegates (page 4 of Attachment 1)

A-6 HARBOR DIRECTOR FINANCIAL SUSTAINABILITY REVIEW OF HARBOR DEPARTMENT LEASE MANAGEMENT POLICY; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends Council review and approve the proposal for Harbor Director review of the current Harbor Department Lease Management Policy for financial sustainability.

A-7 2023 ZERO EMISSION BUS (ZEB) ROLLOUT PLAN; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 53-23 approving the 2023 ZEB Rollout Plan.

Mayor Wixom opened public comment for the Consent Agenda.

<https://youtu.be/6CYWAKMgFEU?si=t8x1OrhsBH3fMPOz&t=2310>

Homer Alexander, Morro Bay, commented on Item A-3 and suggested these and other investment reports be reviewed by the Citizens Finance Oversight Committee.

Betty Winholtz, Morro Bay, spoke regarding Item A-3, concurring with Mr. Alexander investment reports should be referred back to the Citizens Finance Advisory Committee; regarding Item A-4, she raised concerns about serving alcohol next to Morro Bay High School; and regarding A-7, she questioned trolley ridership and whether three trolleys were needed.

The public comment period was closed.

MOTION: Council Member Barton moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Edwards and carried 5-0.

C. BUSINESS ITEMS

C-1 CONSIDERATION OF FIFTY PERCENT FEE REDUCTION REQUEST FOR PERMIT FEES ASSOCIATED WITH PROPERTIES DAMAGED BY THE 2023 WINTER STORMS; (COMMUNITY DEVELOPMENT DEPARTMENT)

<https://youtu.be/6CYWAKMgFEU?si=KJNEoFtS2YUar-OA&t=2703>

Community Development Director Graham provided the report and responded to Council inquiries.

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

<https://youtu.be/6CYWAKMgFEU?si=PIFo8F2qWkmig9PR&t=3369>

Heather Baker, Morro Bay, commented and shared a video showing flood damage to their home from the January 2023 storms. She requested the Council consider a full waiver of permit fees necessary to rebuild.

Terry Simons, Morro Bay, spoke in support of the proposed fee reduction.

Nattalia Merzoyan, Morro Bay, agreed with Mr. Simons and urged the City to take responsibility.

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

Staff responded to additional Council questions.

MOTION: Council Member Edwards moved to approve Resolution No. 54-23 temporarily reducing Building and Planning Permit fees by fifty percent for properties damaged by the 2023 winter storms. The fee reduction would run through the end of 2023 and be available to those that can demonstrate that other sources of recovery dollars (FEMA, Homeowners insurance) are insufficient to cover costs of repair and permitting. The motion was seconded by Council Member Ford for discussion.

Following individual comments, the motion carried 5-0.

C-2 REVIEW AND COMMENT ON FISCAL YEAR 2023 QUARTER 4 WRF QUARTERLY REPORT; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/6CYWAKMgFEU?si=SbR8nMmWnfZID8bW&t=5453>

Public Works Director Kwolek, Water Reclamation Facility Program Manager Amico and Dan Heimel from Confluence Engineering provided the report and responded to Council inquiries.

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

<https://youtu.be/6CYWAKMgFEU?si=lpmJqUx622bjGIZg&t=6866>

Terry Simons, Morro Bay, urged the Council to explore direct reuse of reclaimed water as an alternative to injection well technology.

Betty Winholtz, Morro Bay, commented on the report and urged the Council to explore alternatives to the reclamation portion of the project.

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

Staff responded to questions raised during public comment.

The Council did not take any formal action on this item.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/6CYWAKMgFEU?si=TByTMBmRZRugQMyT&t=7652>

None

E. ADJOURNMENT

The meeting adjourned at 7:39 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-3

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: August 29, 2023

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Resolution No. 55-23 Approving a 10-Year Lease Agreement with the Central Coast Maritime Museum Association for property located at 1210 Embarcadero Road

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 55-23 (Attachment 1), approving a 10-year Lease Agreement with the Central Coast Maritime Museum Association, a 501(c)(3), non-profit, public benefit corporation (“Maritime Museum”) for the City property located at 1210 Embarcadero Road including portions of APN: 066-311-041, portions of Front Street and portions of the Embarcadero Road Right-of-Way.

ALTERNATIVES

The City Council could choose not to approve the Lease Agreement and direct staff to either alter the Agreement in a manner agreed upon by a majority of Council or the Council may choose to not lease the space to the Maritime Museum.

FISCAL IMPACT

With approval of the Lease Agreement the City would receive \$1.00 per year in rent resulting in a total rent payment of ten dollars over the life of the Lease Agreement. The Lease Agreement is provided as Attachment 2 to this staff report.

BACKGROUND/DISCUSSION

In 2017, the City Council approved a License Agreement (LA) with the Maritime Museum, a registered 501(c)3 nonprofit, for operation of the Maritime Museum in its current location at 1210 Embarcadero. The LA became effective June 30, 2017, and expired on December 31, 2022.

The LA stipulates that placement of all improvements is subject to approval of the Community Development and Harbor Directors, and subject to any necessary discretionary permits. (See LA provided as Attachment 3 to this staff report.)

The LA stipulates that the Maritime Museum and the City would replace the LA with a long-term Lease Agreement within six months of occupancy of the main museum building, subject to extension by mutual agreement. The building became occupied in approximately 2019, but a long-term lease agreement was never negotiated.

Prepared By: SG Dept Review: SG
City Manager Review: YK City Attorney Review: LNL

The City has been in ongoing discussions with the Maritime Museum over the last year to move from the LA to a long-term Lease Agreement. Eric Endersby, the City's recently retired Harbor Director, was lead on this effort, but with his retirement lease negotiation was handed over to the Community Development Department.

November 2022: Maritime Museum received approval from the City for expansion of the Museum site to include:

- New 1,700 square foot Quonset hut to be used for events/meetings;
- 2 storage containers to include public displays inside; and
- Several outdoor interactive displays and kiosks.

Notable Lease Agreement terms include the following:

- Term: 10-years (section 2.2);
- Rent: \$1.00 per year (section 3.1);
- Tenant is required to maintain the property and exhibits in good condition (section 7.1);
- Exclusive right to negotiate extension: Maritime Museum has an exclusive right to negotiate a lease extension upon City adoption of an updated Waterfront Master Plan (section 2.4).

CONCLUSION

The Maritime Museum provides a free venue for citizens and visitors to explore the City's maritime history. The Maritime Museum has been a beneficial steward of the 1210 Embarcadero Road location, having raised funds to build a permanent Museum building and several interesting exhibits. The Museum receives a significant number of visitors and it is rare when you can drive by the site and not see at least a couple of people viewing the exhibits/Kiosks. The Lease Agreement represents a valuable partnership between the Maritime Museum and City, and with the recent City approval of plans to expand the Museum, will serve to allow the Museum to grow and hopefully thrive for years to come. Staff, therefore, recommends Council adopt Resolution No. 55-23, approving a new 10-year Lease Agreement with the Maritime Museum for lease of the 1210 Embarcadero location, pursuant to the terms in the Lease Agreement provided as Attachment 2 to this staff report.

ATTACHMENTS:

1. Resolution No. 55 -23
2. Lease Agreement
3. 2017 License Agreement

RESOLUTION NO. 55-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 10-YEAR LEASE AGREEMENT FOR
THE PROPERTY LOCATED AT 1210 EMBARCADERO ROAD BETWEEN
THE CITY OF MORRO BAY AND
THE CENTRAL COAST MARITIME MUSEUM ASSOCIATION**

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

WHEREAS, the City of Morro Bay (City) is the lessor of the property at 1210 Embarcadero Road, in the City of Morro; and

WHEREAS, Central Coast Maritime Museum Association, a 501(c)(3), Non-Profit, Public Benefit Corporation (Lessee) is proposing to lease the 1210 Embarcadero Road location for use as a Maritime Museum; and

WHEREAS, Lessee's operation of the Maritime Museum furthers the public general welfare and benefit as an institution furthering public education, tourism and the City's unique maritime history; and

WHEREAS, City and Lessee have agreed to a new 10-year lease agreement, for the property located at 1210 Embarcadero Road.

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

1. The attached new Lease Agreement for the property located at 1210 Embarcadero Road is hereby approved.
2. The City Manager is hereby authorized to execute said Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of September 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

COMMERCIAL LEASE AGREEMENT

By and Between

**CITY OF MORRO BAY,
a municipal corporation**

“Landlord”

and

**Central Coast Maritime Museum Association,
a 501(c)(3), Non-Profit, Public Benefit Corporation**

“Tenant”

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“**Lease**”) is made effective this 13th day of September, 2023, by and between the CITY OF MORRO BAY, a municipal corporation (“**Landlord**”), and Central Coast Maritime Museum Association, a 501(c)(3), non-profit, public benefit corporation (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and jointly as the “**Parties**.”

RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: (i) that certain real property, commonly identified as 1210 Embarcadero Road, Morro Bay, including portions of APN:066-331-041, and portions of the Front Street and Embarcadero Road Right of Way, as shown in the map depictions in Exhibit A hereto, hereinafter referred to as the “**Premises**.” The Premises are located in Landlord’s Waterfront Area (“**Waterfront Area**”).

B. Tenant is a 501(c)(3), non-profit, public benefit corporation, currently operating a Maritime Museum. Tenant has constructed, or will construct, various commercial building fixtures, museum display areas and exhibits, signage and informational kiosks on the Premises as follows:

- a. *Museum Building*: one existing main building serving as a maritime museum main building being approximately 400-square-foot museum building on a 20-foot by 20-foot concrete pad on the Premises (hereinafter, the “**Museum Building**”). The Museum Building was constructed by Tenant for its permitted museum uses; however, upon expiration or earlier termination of this Lease, the Museum Building will remain on the Premises and ownership thereof will inure to Landlord.
- b. *Theater Shelter*: one 30-foot by 60-foot, approximately 1700-square-foot, “Quonset” hut to be installed on the Premises by Tenant pursuant to that “Minor Modification to UP0-092 for Maritime Museum” (hereinafter, the “**Theater Shelter**”) for the purposes of operating theater programs and holding certain exhibits attendant to Tenant’s museum uses. Upon expiration or earlier termination of this Lease, the Theater Shelter will be removed from the Premises by Tenant, and the underlying Premises area will be returned to substantially pre-existing condition to the extent reasonably possible.
- c. *Signs/Kiosks*: various signage and informational kiosks serving public invitees to Tenant’s museum operations (hereinafter, the “**Signage/Kiosks**”) installed, or to be installed, by Tenant on the Premises. Upon expiration or earlier termination of this Lease, all Signage/Kiosks will be removed from the Premises by Tenant, and the underlying Premises area will be returned to substantially pre-existing condition to the extent reasonably possible.

- d. *Display Areas, Display Boats and Exhibits:* Tenant has constructed and will construct additional displays and exhibits including several display boats and ‘hands on’ exhibits for demonstration to the museum’s visitors (as further shown in Exhibit A hereto). Upon expiration or earlier termination of this Lease, all display boats and exhibits will be removed from the Premises and display areas by Tenant, and the underlying Premises area will be returned to substantially pre-existing condition to the extent reasonably possible.
- e. The foregoing fixtures and non-fixed improvements identified in this Recital are collectively referred to as “**Improvements.**” The Improvements, and each of them, their location, and Tenant’s permit conditions related to all Improvements and use of the Premises are further described and depicted in Exhibit A hereto.

C. The Parties desire to enter into this written Lease agreement and to confirm the rights and obligations of both Parties with respect to Tenant’s uses of the Premises. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s use as the public Maritime Museum.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

1. LEASE OF PREMISES; CONDITION OF PREMISES.

- 1.1. **Lease.** The foregoing Recitals are hereby incorporated into the terms hereof by this reference. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises (as defined in the Recitals incorporated herein) solely for the uses specified in Section 4. Tenant’s use and occupation of the Improvements is granted to Tenant on an exclusive basis. Access otherwise to, on, over and across the Premises is granted to Tenant on a non-exclusive, open-to-the-public basis.
- 1.2. **Condition of Premises.** Tenant acknowledges it has, and shall, accept the Premises from Landlord in its “AS IS” condition without representation or warranty. Tenant has inspected the Premises and is aware of its condition. Landlord makes no representations or warranties as to the suitability of the Premises for existing or future Improvements constructed, installed or operated by Tenant. Pursuant to California Civil Code Section 1938, Tenant is advised the Premises have not undergone an inspection by a Certified Access Specialist; and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of September 13th, 2023 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.

- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of ten (10) years, and terminate without notice on September 13th, 2033 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 or 29.13.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty (60) days’ written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Term Extension.** If the Landlord adopts an updated Waterfront Master Plan within the initial ten-year Term of this Lease, the Tenant shall have the exclusive right (but not the obligation) to enter into a ninety (90) day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payment terms) (the “**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than one hundred eighty (180) days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen (15) business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term in accordance with Section 29.13. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

3. RENT & PERFORMANCE STANDARD.

- 3.1. **Yearly Rent.** Tenant agrees to pay One Dollar (\$1) per year, in advance, due no later than the anniversary date of the Lease for which rent is being paid (“**Rent**”); with the first payment being due on September 13th, 2023. Landlord is charging Tenant nominal Rent in consideration for (i) Landlord taking full ownership of the Museum Building, which was constructed by Tenant, upon the expiration or earlier termination of this Lease, and (ii) the educational, tourism and community services provided by Tenant to the public consistent with Section 4.
- 3.2. **Performance Standards.** As further material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

- 4.1. **Authorized Uses; Minimum Program Requirements.** Tenant shall use the Premises solely as a Maritime Museum as further identified in Exhibit A. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a Maritime Museum, currently named “Central Coast Maritime Museum Association.” No other name shall be used with respect to Tenant’s use of the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

- 4.2. **Prohibited Uses.** Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.
- a. Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.
 - b. Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any permit conditions for Tenant's use of the Premises, or of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings or Improvements within the Premises and appurtenances.
 - c. Tenant shall not permit smoking or vaping on any portion of the Premises.
 - d. Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any "going out of business" or similar sign.
 - e. Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction

thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms “Hazardous Materials” and “Environmental Laws” in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

- 4.3. **Abandonment; Removal of Personal Property and Certain Improvements.** Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease except as otherwise expressly permitted by this Lease (including without limitation Section 2.3). Upon expiration or termination of this Lease for any reason and unless otherwise agree-to by Landlord in writing, Tenant shall remove any personal property belonging to Tenant; any exhibits or personal property left on the Premises shall be deemed to be abandoned and, at the option of Landlord, shall become the property of Landlord. Landlord may exercise all legal remedies to recover from Landlord the Landlord’s actual and reasonable costs of removing any of Tenant’s abandoned personal property holding-over on the Premises that is designated for Tenant removal pursuant to this Section.

Upon expiration or termination of this Lease for any reason, Improvements shall be removed by Tenant or shall inure to Landlord as follows:

- a. *Museum Building*: Upon expiration or termination of this Lease for any reason, Tenant shall remove all displays and non-fixed personal property (including exhibits) from the Museum Building. Otherwise, the Museum Building shall remain on the Premises intact, in good condition, shall be deemed to be abandoned and shall become the property of Landlord.
- b. *Landscaping*: Tenant has implemented landscaping and walkways on the Premises pursuant to City-approved landscape plan(s). Nothing herein shall require, or authorize, Tenant’s removal of such landscaping upon the expiration or termination of this Lease. Such landscaping shall become the property of Landlord.
- c. *Theater Shelter, Display Boats, Exhibits and Signage/Kiosks*: The Theater Shelter, display boats and all Signage/Kiosks shall be treated as personal property (as well as all exhibits attendant thereto) and removed pursuant to the terms of this Section 4.3.

5. **REAL ESTATE TAXES.** Tenant shall pay any and all real property taxes applicable to Tenant’s possessory interests (including any Improvements) in the Premises. All such payments shall be made at least ten (10) days prior to the due date of the applicable installment.

Tenant shall promptly (at least five (5) days prior to the due date) furnish Landlord with satisfactory evidence such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, then Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect; and Tenant may apply to the County of San Luis Obispo (the "County") for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges, although Landlord is a municipal entity exempt from real property taxes, Tenant's possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant's possessory interest in the Premises. Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

If Tenant is exempt from any of the taxes identified in this Section 5, Tenant shall provide written evidence of such exemption from the applicable taxing entity(ies) to the Landlord at least ten (10) days prior to the due date of the applicable levy(ies). Tenant shall only be responsible for the taxes pursuant to this Section 5 for which Tenant is non-exempt.

6. **PERSONAL PROPERTY TAXES.** During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures (including any Improvements), furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

If Tenant is exempt from any of the taxes identified in this Section 6, Tenant shall provide written evidence of such exemption from the applicable taxing entity(ies) to the Landlord at least ten (10) days prior to the due date of the applicable levy(ies). Tenant shall only be responsible for the taxes pursuant to this Section 6 for which Tenant is non-exempt.

7. **MAINTENANCE AND REPAIRS.**

- 7.1. **Maintenance and Repair by Tenant.** Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises and Improvements in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, exhibits, walkways, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the Premises, Improvements and all landscaping consistent with the maintenance standards.

Upon expiration or termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition (or as reasonably close thereto and except for reasonable use and wear), consistent with the terms of this Lease, together with any additional alternations that have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If upon the expiration or earlier termination of this Lease the Landlord wants to reserve the right to require Tenant to remove any such additional improvements or make further repairs to the Premises (other than reasonable wear or tear), then Landlord shall provide Tenant a written notice providing Tenant a reasonable period of time (not to exceed five (5) business days) to commence said removal or repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same.

If Tenant is required to remove any additional improvements from the Premises upon termination or expiration of this Lease, then Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal.

Tenant acknowledges Tenant's maintenance obligations under this Section are material considerations to Landlord for this Lease and, therefore, this Section shall be construed liberally for the protection and preservation of the Premises.

- 7.2. **Landlord Renovations or Maintenance.** If any renovation, repair or maintenance work is performed by Landlord on the Premises, such work shall not unreasonably interfere with Tenant's operations and rights hereunder. Landlord shall not be responsible for, or conduct, renovation, repair or maintenance to Tenant's exclusive use Improvements unless otherwise specified herein.

8. ALTERATIONS

- 8.1 **To Premises.** Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises (i.e., improvements other than the Improvements already authorized hereunder), then Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen (15) days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated additional improvements or alterations. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements or alterations under this Section, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to

pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord, in its governmental and proprietary capacities, prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant, unless otherwise specified by Landlord in writing. Prior to commencing any work of improvement/alteration under this Section, Tenant shall notify Landlord so that Landlord can post and record an appropriate "**Notice of Non-Responsibility.**"

9. **COMPLIANCE WITH LAWS.** Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The terms and requirements of Minor Modification No. MIN22-022 (in Exhibit A hereto) are incorporated into the terms of this Lease and Tenant will comply with all terms of that, and any other, applicable permit. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. **Tenant to Provide Property Insurance.** Tenant shall maintain, at Tenant's sole cost and expense, fire, and excess coverage insurance throughout the Term of this Lease, on all buildings and improvements (including the Improvements as defined herein) located on the Premises, in an amount equal to one hundred percent (100%) of the replacement value of the Premises. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Tenant hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against.

10.2. **Tenant's Insurance Obligations.**

10.2.1. **Liability Insurance.** During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of One Million Dollars (\$1,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000)

products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. To the extent legally applicable to Tenant's operations on the Premises, Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and pursuant to Subsections 10.2.1 and 10.2.2 shall be endorsed to name Landlord, its employees, officials, agents and volunteers as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty (30) days' prior written notice by registered mail to Landlord, unless the cancellation is for non-payment of a premium and then such written notice shall be no less than ten (10) days. Within ten (10) business days after execution of this Lease by the last Party to sign, and at least thirty (30) days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and required endorsements evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

11. INDEMNIFICATION. Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises and construction/occupancy of Improvements by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims

made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon written notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises or Improvements, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises, Improvements or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

12. NO LIENS. Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, then Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at a rate of four percent (4%) on the amount of the mechanic's lien claim.

13. SIGNS. Excepting approved Signage/Kiosks, Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any additional signs installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three (3) days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs, including Signage/Kiosks, without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen (14) days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. Tenant's Responsibilities. Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises or Improvements by Tenant or any of its subtenants, licensees, or concessionaires during the entire Term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by Tenant-related activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of (i) inspecting the same and the Improvements thereon, or (ii) identifying and making repairs, alterations or maintenance for which Landlord may be responsible hereunder, if any, or (iii) identifying and ordering repairs, alterations or maintenance for which Tenant may be responsible hereunder, or (iv) posting Notices of Non-Responsibility for any alterations, additions or repairs, or (v) identifying the need for, and placing upon the Premises, any usual or ordinary signs for public safety as determined by Landlord. Landlord shall make reasonable efforts to coordinate times for any inspections, work or repairs to the Premises to the extent practicable to avoid any interference with Tenant's use of the Premises or Improvements.

16. DAMAGE AND DESTRUCTION.

16.1. Notice to Landlord. Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.

16.2. Substantial Damage to Premises. If the Premises, including Improvements, are damaged or destroyed by any casualty such that (i) Tenant's use of the Premises as contemplated by this Lease is materially impeded, rendered impractical or impossible, such that Maritime Museum operations are necessarily reduced by at least 33% capacity for public participation in Museum operations, or (ii) the casualty results in a public nuisance or threat to public health, safety or welfare as determined in the sole discretion of the Landlord, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety (90) days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty (20) days following Tenant's receipt of Landlord's cancellation notice, and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.

16.3. Reconstruction. In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.

16.4. Termination. Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except

for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.

16.5. Determination of Percentage of Damage or Destruction. If either Landlord or Tenant contends the percentage of the damage or destruction referred to above exceeds one-year's rent total and the other Party disagrees, then the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, then Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

17.1. Assignment and Subletting. Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease, which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is in good corporate standing and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed

assignee's or subtenant's business experience and financial viability and such other information as required by Landlord to verify that the criteria set forth herein are met.

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. **Default by Tenant.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five (5) days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty (30) days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty (30) days, then Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default, but within no more than one hundred eighty (180) days from commencement of the cure.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the Lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right of Landlord elect to terminate the Lease and Tenant's right to possession hereunder.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover Rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

18.2. No Waiver. Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

18.3. Landlord's Default. Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance, then Landlord shall not be deemed in default if Landlord commences performance within that thirty-day period and thereafter diligently prosecutes the same to completion.

18.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity to enforce any applicable provision of this Lease.

18.5. Termination.

18.5.1. The Parties acknowledge this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of this Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.

18.5.2. The Parties acknowledge this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

19. SURRENDER OF PREMISES. The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

20. FORCE MAJEURE. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of any Rent.

21. ESTOPPEL CERTIFICATE. Tenant shall, at any time and from time to time upon not less than twenty (20) days' prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

22. SUBORDINATION. The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.

23. CONDEMNATION. In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:

- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and

- b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

24. **USE OF LANDLORD'S NAME.** Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion.
25. **TRADE FIXTURES.** Tenant has the right to use the Landlord's personal property located on the Premises, but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease, but Tenant shall not remove any trade fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion.
26. **QUIET ENJOYMENT.** As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.
27. **HOLDOVER.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days' written notice, and upon terms and conditions as existed during the last month of the Term.
28. **NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION**
 - 28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et seq.* Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et seq.*) in

connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

- 28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.6. **Time.** Time is of the essence of this Lease.
- 29.7. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.

- 29.8. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.9. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, sexual preference or identity or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.
- 29.10. **Non-Collusion.** No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non-interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.
- 29.11. **Notices.** Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 93442

With a copy to: Aleshire & Wynder, LLP
Attn: Chris F. Neumeyer, City Attorney
18881 Von Karman Ave., Suite 1700, Irvine CA
92612

Tenant: Central Coast Maritime Museum Association
1210 Embarcadero,
Morro Bay, CA 93442

- 29.12. **Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.13. **Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.14. **Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.15. **Acknowledgement of Content.** Each Party acknowledges they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

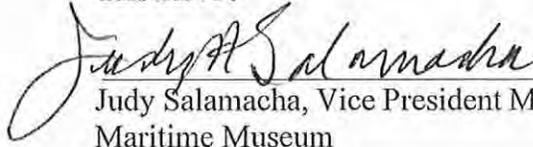
LANDLORD:

CITY OF MORRO BAY,
a municipal corporation

By: _____
Yvonne Kimball, City Manager

_____, 2023

TENANT:


Judy Salamacha, Vice President Morro Bay
Maritime Museum

September 5, 2023

ATTEST:

_____, 2023

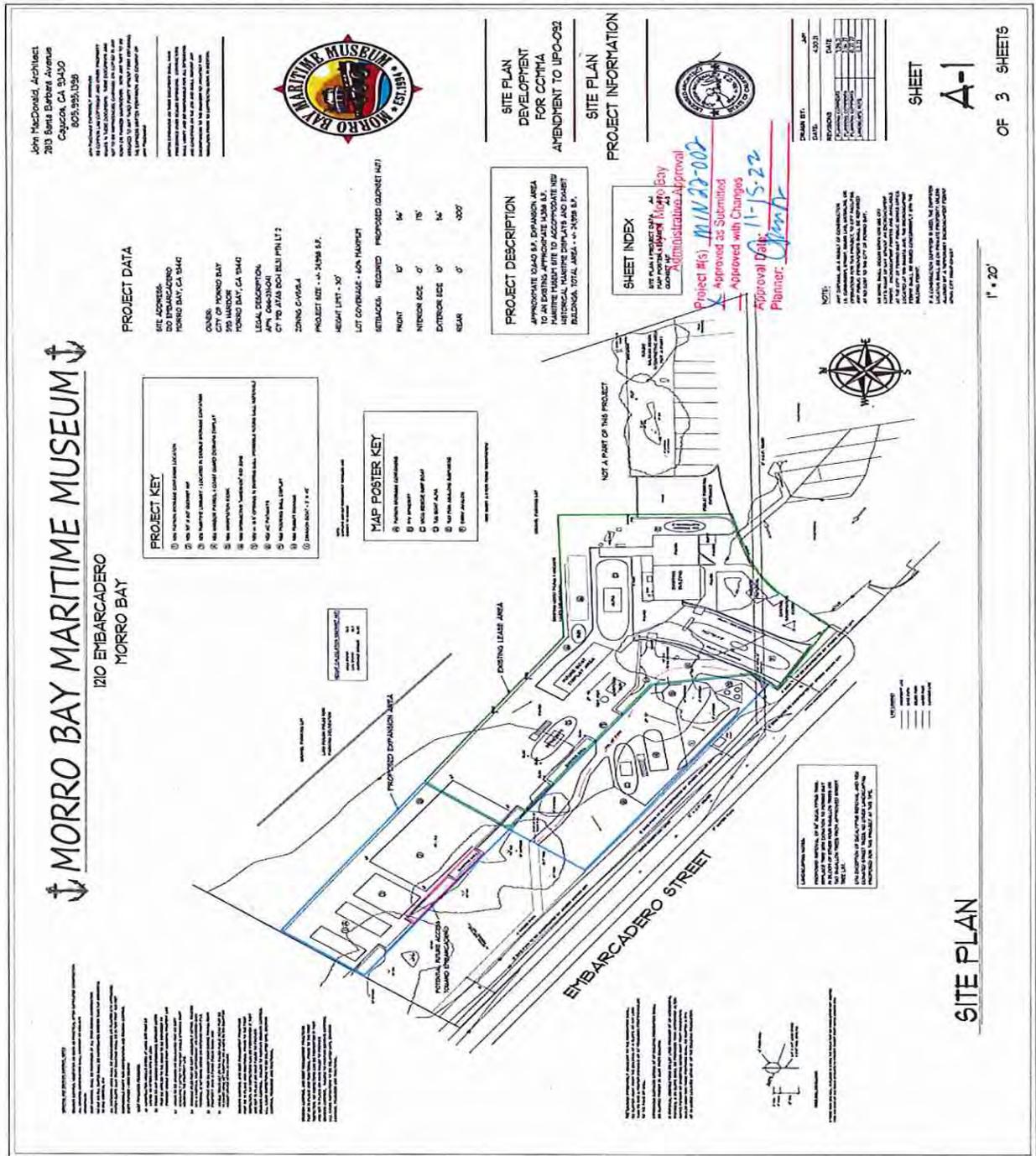
Dana Swanson, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Chris F. Neumeyer, City Attorney

EXHIBIT A

DEPICTION OF PREMISES, IMPROVEMENTS AND CONDITIONS OF USE



John MacDonald, Architect
 200 Bena Barbara Avenue
 Capucan, CA 94000
 805.959.0398



PROJECT DATA

SITE ADDRESS:
 120 EMBARCADERO STREET, MORRO BAY, CA 94040

OWNER:
 MORRO BAY MARITIME MUSEUM
 MORRO BAY, CA 94040

LEGAL DESCRIPTION:
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PROJECT KEY

- 1. EXISTING BUILDING
- 2. PROPOSED EXPANSION AREA
- 3. EXISTING LEASE AREA
- 4. EXISTING PARKING LOT
- 5. EXISTING DRIVEWAY
- 6. EXISTING SIDEWALK
- 7. EXISTING CURB
- 8. EXISTING STREET LIGHTS
- 9. EXISTING UTILITY LINES
- 10. EXISTING TREE
- 11. EXISTING FENCE
- 12. EXISTING SIGN
- 13. EXISTING WALL
- 14. EXISTING GROUND COVER
- 15. EXISTING TERRAIN
- 16. EXISTING ELEVATION
- 17. EXISTING DRAINAGE
- 18. EXISTING FLOOD ZONE
- 19. EXISTING SEWER
- 20. EXISTING WATER
- 21. EXISTING GAS
- 22. EXISTING ELECTRIC
- 23. EXISTING TELEPHONE
- 24. EXISTING CABLE
- 25. EXISTING SATELLITE
- 26. EXISTING ANTENNA
- 27. EXISTING RADAR
- 28. EXISTING SONAR
- 29. EXISTING GPS
- 30. EXISTING LIDAR
- 31. EXISTING PHOTOGRAMMETRY
- 32. EXISTING AERIAL PHOTOGRAPHY
- 33. EXISTING GROUND PENETRATING RADAR
- 34. EXISTING REMOTE SENSING
- 35. EXISTING GIS
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MAP POSTER KEY

- 1. EXISTING BUILDING
- 2. PROPOSED EXPANSION AREA
- 3. EXISTING LEASE AREA
- 4. EXISTING PARKING LOT
- 5. EXISTING DRIVEWAY
- 6. EXISTING SIDEWALK
- 7. EXISTING CURB
- 8. EXISTING STREET LIGHTS
- 9. EXISTING UTILITY LINES
- 10. EXISTING TREE
- 11. EXISTING FENCE
- 12. EXISTING SIGN
- 13. EXISTING WALL
- 14. EXISTING GROUND COVER
- 15. EXISTING TERRAIN
- 16. EXISTING ELEVATION
- 17. EXISTING DRAINAGE
- 18. EXISTING FLOOD ZONE
- 19. EXISTING SEWER
- 20. EXISTING WATER
- 21. EXISTING GAS
- 22. EXISTING ELECTRIC
- 23. EXISTING TELEPHONE
- 24. EXISTING CABLE
- 25. EXISTING SATELLITE
- 26. EXISTING ANTENNA
- 27. EXISTING RADAR
- 28. EXISTING SONAR
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- 30. EXISTING LIDAR
- 31. EXISTING PHOTOGRAMMETRY
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MORRO BAY MARITIME MUSEUM

1210 EMBARCADERO
MORRO BAY

John Macdonald, Architect
2810 Santa Barbara Avenue
Cajon, CA 92009
805.955.1959

THE PROJECT ARCHITECT'S OFFICE
1210 EMBARCADERO, MORRO BAY, CA 92009
PHONE: 805.955.1959
WWW.JMACDONALDARCHITECT.COM
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SITE PLAN
DEVELOPMENT
FOR COMMA
AMENDMENT TO UPO-092
MAP POSTER
4 EXHIBITS



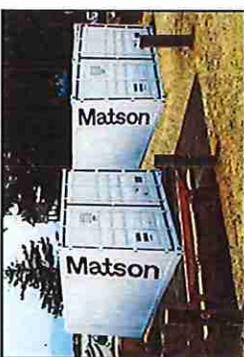
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SHEET
A-2
OF 3 SHEETS

Welcome to the Morro Bay Maritime Museum

This museum is a public-private partnership, combining the efforts of the City of Morro Bay and the Morro Bay Maritime Museum.

Color and Maritime Museum and for the City of Morro Bay. The City of Morro Bay is pleased to have the Morro Bay Maritime Museum as a part of its historic downtown. The museum is a public-private partnership between the City of Morro Bay and the Morro Bay Maritime Museum. The museum is a public-private partnership between the City of Morro Bay and the Morro Bay Maritime Museum. The museum is a public-private partnership between the City of Morro Bay and the Morro Bay Maritime Museum.



Historic Matson Shipping Containers 20' x 8'

8 1/2 x 10 1/2 x 10 1/2

- 188 Century Ship Cannon 8' x 3'
- 1888 Century Ship Cannon 8' x 3'

MAP POSTER

MAP POSTER KEY

- 1. Public Outreach Information
- 2. City of Morro Bay
- 3. Approved as Submitted
- 4. Approved with Changes



MORRO BAY MARITIME MUSEUM SIGNAGE
POINTED TO PARKING MALL
3" HIGH RETAIL OR ACRYLIC LETTERING

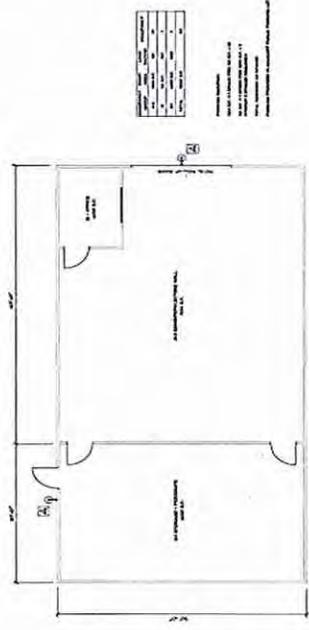
PROJECT SIGNAGE

MORRO BAY MARITIME MUSEUM

1210 EMBARCADERO
MORRO BAY

John MacDonald, Architect
2815 Santa Barbara Avenue
Cajon, CA 94300
805.925.1398

ALL PROJECTS ARE SUBJECT TO THE CITY OF MORRO BAY'S ZONING ORDINANCES AND THE CITY ENGINEER'S REVIEW. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREIN. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THESE PLANS. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION PROVIDED BY OTHERS. THE ARCHITECT'S LIABILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THESE PLANS. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION PROVIDED BY OTHERS.

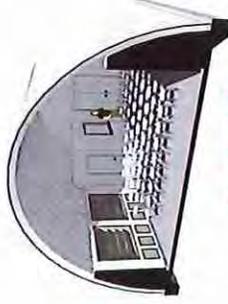
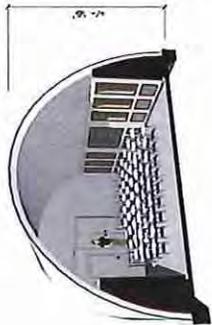


Room	Area (sq. ft.)	Volume (cu. ft.)
Office	100	1000
Storage	200	2000
Workshop	300	3000
Restroom	50	500
Entry	100	1000
Exterior	100	1000
Total	850	8500

PROPOSED QUONSET HUT FLOOR PLAN

EXTERIOR LIGHT FIXTURES
All exterior lighting fixtures, including landscape lighting, shall be designed to provide uniform illumination of the site and to be in accordance with the City of Morro Bay's Ordinance 11.02.010. All lighting shall be shielded to prevent light trespass and glare.

PROPOSED QUONSET HUT RENDERING



PROPOSED QUONSET INTERIOR RENDERINGS

City of Morro Bay
Administrative Approval
Project #(s) M/22-002
Approved as Submitted
Approved with Changes
Approval Date: 11-15-22
Planner: [Signature]

SITE PLAN
DEVELOPMENT
FOR COMMUNITY
AMENDMENT TO UPO-092
QUONSET HUT



DESIGNED BY:	JAM
DATE:	4-20-23
REVISIONS:	DATE
1	11-15-22
2	11-15-22
3	11-15-22

SHEET
A-3
OF 3 SHEETS

**Conditional Use Permit
Minor Modification
CASE NO. MIN22-002 / UP0-092
SITE LOCATION: 1210 EMBARCADERO**

I. FINDINGS OF APPROVAL

The Community Development Director has reviewed this minor modification to a Conditional Use Permit application and finds the following:

1. The project is exempt from the California Environmental Quality Act, under Class 3, Section 15303(c) for a new approximate 1700sf Quonset hut and storage containers with outdoor maritime displays not involving hazardous substances and Class 23, Section 15323 for proposed use as normal operation of facilities for public gatherings.
2. That the project as Minor Modification to UP0-092 for Maritime Museum. Proposed expansion includes new single-story approximate 1700sf Quonset hut to be used as event/meeting space, 2 Matson containers with public displays inside, outdoor interactive displays & kiosks. The existing museum is located on city-owned property in the C-VS zoning district and proposed expansion would be located in the M-2/PD/I zoning district with land use designation of Public Facilities. The property is also located within the Coastal Commission original jurisdiction.

II. CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Permit: This permit is granted for the land described on Assessor Parcel Number 066-331-041 and plans received by the City date stamped received October 4, 2022 and on file with the Community Development Department.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director, upon finding that the project complies with all applicable provisions of the Mono Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Any minor change may be approved by the Community Development Director. Any substantial change will require the filing of an application for an amendment.
4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Mono Bay, and any other governmental entity shall be complied with in the exercise of this approval.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or

1 of 7
1210 Embarcadero Morro Bay Maritime Museum
MUP Amendment (MIN22-002/ UP0-092)

applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Planning and Building Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Mono Bay Municipal Code and is a misdemeanor.
7. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
8. Compliance with Mono Bay Standards: This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.

PLANNING CONDITIONS;

1. CEQA Exemption: If the applicant elects to post the Categorical Exemption with the County Clerk's Office then a required fee of \$53 shall be made payable to "County of San Luis Obispo" and delivered to the County Clerk along with the Categorical Exemption form attached to the coastal development permit. This filing has the effect of starting a 35-day statute of limitations period for challenges to the decision in place of the 180-day period otherwise in effect.
2. Construction Hours: Pursuant to section 9.28.030.1, Construction or Repairing of Buildings. The erection (including excavating), demolition, alteration or repair of any building or general land grading and contour activity using equipment in such a manner as to be plainly audible at a distance of fifty feet from the building other than between the hours of seven a.m. and seven p.m. on weekdays and eight a.m. and seven p.m. on weekends except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the community development department, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues.
3. Dust Control: That prior to issuance of any grading permit, a method of control to prevent dust and windblown earth problems shall be submitted for review and approval by the Building Official.
4. Boundaries and Setbacks: The property owner is responsible for verification of lot boundaries. At the time of foundation inspection, the property owner shall verify lot boundaries and building setbacks to the satisfaction of the City Community Development Director.
5. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing

Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

6. All previous conditions of approval for UP0-092 shall remain in full force and effect as applicable to this minor modification MIN22-002.
7. Applicant shall submit an amended Coastal Development Permit, or waiver as applicable prior to issuance of a building permit for the work included in this CUP amendment.

BUILDING CONDITIONS:

A. CONDITIONS PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.
2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.
3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.
4. The owner shall comply with the City Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.
5. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided. Alternatively, submit a completed City of Mono Bay soils report waiver request.
6. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.
7. **BUILDING PERMIT APPLICATION:** To apply for building permits, submit three (3) sets of construction plans, fire sprinkler plans, if applicable, and supplemental documents to the Building Division.

8. The Title sheet of the plans shall include, but not limited to:
- Street address, lot, block, track and Assessor Parcel Number
 - Occupancy Classification(s)
 - Construction Type
 - Maximum height of the building allowed and proposed
 - Floor area of the building(s)
 - Fire sprinklers proposed or existing
 - Minimum building setback allowed and proposed

All construction will conform to the 2019 California Building Code (CBC), 2019 California Residential Code (CRC), 2019 California Fire Code (IFC), 2019 California Mechanical Code (CMC), 2019 California Plumbing Code (CPC), 2019 California Electrical Code (CEC), 2019 California Energy Code, 2019 California Green Building Code (CGBC), Title 14 and 17 of the Morro Bay Municipal Code.

(Code adoption dates are subject to change. The code adoption year is established by application date of plans submitted to the Building Division for plan review.)

B. CONDITIONS TO BE MET DURING CONSTRUCTION:

1. **SITE MAINTENANCE:** During construction, the site shall be maintained to not infringe on neighboring property, such as debris and dust. A storm water management plan shall be maintained through the duration of the project. The storm water management measures such as fiber rolls, silt fencing, etc. will be enforced by City staff by random site visits.
2. **ARCHAEOLOGICAL MATERIALS:** In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify to county coroner. If human remains are found to be of ancient age and of archaeological and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.
3. **FOUNDATION SETBACK VERIFICATION:** Prior to the placement of concrete and upon completed form installation, a licensed surveyor is required to measure and record the distance from the proposed foundation walls to the established lot lines. The contractor shall submit these findings in letter format to the building inspector upon the request for a foundation inspection. Letter shall specify the findings of front, sides and rear yard setbacks as defined in Title 17 of the MBMC. The Building Official shall have discretion on a case by case basis for some lot types.
4. **BUILDING HEIGHT VERIFICATION:** Prior to roof sheathing or shear wall inspection, a licensed surveyor is required to measure and record the height of the structure. The contractor shall submit this finding in letter format to the building inspector upon the request for roof sheathing/shear wall inspection. Letter shall specify the recorded height of structure as defined in Title 17 of the MBMC. The Building Official shall have discretion on a case by case basis for some site-specific projects.

5. **EXISTING BUILDINGS:** Where windows are required to provide emergency escape and rescue openings, replacement windows shall comply with the maximum sill height requirements of section R310.2.2 and the minimum opening area requirements of section R310.2.1 of the 2019 California Residential Code.

C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF THE CERTIFICATE OF OCCUPANCY:

1. Prior to building division final approval and request for final inspection, all required inspections from the other various divisions and departments must be completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card. This permit card shall then be turned into the building division for scheduling of the final building inspection.
2. Any as-built drawings that were required by the building inspector or plans examiner must be submitted for approval prior to the request for final inspection.
3. If structural observations were required, the final structural observation report shall be submitted to the building division prior to issuance of the certificate of occupancy or final inspection approval.
4. If special inspections were required, the final special inspection report shall be submitted to the building division prior to the issuance of the certificate of occupancy or final inspection approval.
5. Final soils summary report from the geotechnical representative indicating compliance with the required conditions set forth in the soils report.
6. Final T-24 energy reports (Certificates of Installation, CF2R forms).

PUBLIC WORKS CONDITIONS

1. **Stormwater Management:** The City has adopted Low Impact Development (LID) and Post Construction requirements. All proposed projects must complete the "Performance Requirement Determination Form" to determine if any requirements should be submitted. The requirements can be found in the Stormwater management guidance manual on the City's website www.monro-bay.ca.us/EZmanual (MBMC 14.48.140)

*Removed by PW 12-12-20
Growth*

2. **Frontage Improvements:** The installation of frontage improvements is required. Applicant to install 12ft multi-path for bikes and pedestrians as part of development project to match future neighboring improvements. (MBMC 14.44.020)
3. **Erosion and Sediment Control Plan:** For small projects less than 1/2 acre and less than 15% slope, provide a standard erosion and sediment control plan. Show on plans the control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. Guidelines for the control plan may be found on the City's website at the following location: <https://www.monobayca.gov/documentcenter/view/462>

5 of 7

1110 Embarcadero Mono Bay Maritime Museum
MUP Amendment (MIN23-002/UP0-092)

Revised
by
PW
12-12-22
Smith

4. Future Path: Remove future 4ft path along Embarcadero Frontage as it does not match required frontage improvements. On-site 4ft paths to be designed to accommodate Maritime Museum site and be installed as part of development project. (MBMC 14.44.020)
5. Grading and Drainage: Indicate on plans the contours, drainage patterns, spot elevations, finish floor elevation and all existing and proposed drainage pipes and structures. (CBC107.2.1)
6. Utilities: Show all existing and proposed locations of the sewer lateral, water service, and water and sewer mains on the building plans. Include sizes where appropriate. Note the location of all overhead utilities and construction underground service entrances per the CBC 107.2.1.

Add the following Notes to the Plans:

1. Any damage, as a result of construction operations for this project, to City facilities i.e. curb/bcm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Mono Bay.
2. No work shall occur within (or use of) the City's Right of Way without an encroachment permit. Encroachment permit application and requirements are available on the City's website at the following location: <https://www.monroebay.ca.us/197/Public-Works>
 - If a construction dumpster is used, the dumpster location shall be on private property, unless allowed by a temporary encroachment permit within the City right-of-way.

LICENSE AGREEMENT

FOR USE OF PUBLIC PROPERTY

This License ("this License") is entered into by and between the City of Morro Bay ("Licensor") and Central Coast Maritime Museum Association ("Licensee").

RECITALS

- A. Licensee is a 501(c)(3), non-profit, public-benefit corporation, organized and existing under the laws of the State of California since 1994 for educational, scientific and charitable purposes, with the express purpose of preserving the maritime history of the Central Coast of California.
- B. Licensor is a municipal corporation formed under the laws of the state of California as a general laws city located in San Luis Obispo County, California;
- C. On January 14, 2011, Licensee and Licensor entered into a "Memorandum of Understanding Maritime Museum Design and Permit Processing" ("MOU");
- D. Licensor and Licensee now desire to enter into a License Agreement concerning Licensee's use and occupation of certain real property owned by Licensor;
- E. Licensee and Licensor hereby acknowledge and ratify the terms of the January 14, 2011, MOU;
- F. Licensee and Licensor intend, to the extent any term or provision of this License conflicts with the MOU, this License shall control.
- G. Licensee and Licensor intend this License to be a temporary agreement, to be replaced by a long-term lease agreement with terms consistent with the provisions of this License and the MOU, to be entered into no later than six months after the first museum building is occupied, subject to extension by mutual agreement.

Based upon the foregoing Recitals, Licensor and Licensee hereby agree to the following:

1. GRANT OF LICENSE: Licensor hereby grants to Licensee a license ("this License") for use of the real property located at Front Street Parking Lot, the area commonly referred to as the Triangle Parking Lot and associated public property and rights-of-way, as illustrated on the attached Exhibit A, attached hereto and incorporated herein (the "Premises"), subject to the Recitals and all the following terms and conditions.
2. USE: Subject to all the provisions of this License, including the Recitals and only in recognition of the purpose set forth in this Paragraph, Licensee shall have permission to use of the Premises for "Phase I" of the Maritime Museum project for solely the following:
 - (a) to provide for the public display of three vessels, namely the AVALON, CG 30615 and ALMA and associated equipment, including the placement of barriers, steps and similar items, subject to the reasonable approval of the Community Development Director. In addition, subject to conditional approval of all required land use entitlements from Licensor, acting in its governmental capacity, and any other applicable governmental

- body or subject to written conditional approval from the Community Development Director, if no other land use entitlement is required, two additional vessels may also be publicly displayed on Premises;
- (b) Licensee will provide opportunities for the public to view (i) the exterior of the Vessels at any and all times at no cost; Licensee may at times open said vessels for public viewing and charge a reasonable fee or request a reasonable donation to viewers. Licensee will inform the City Harbor Director via email or in person when interior viewing will take place;
 - (c) Licensee may construct one approximately 400-square-foot museum building on a 20-foot by 20-foot concrete pad on the Premises, and associated landscaping, hardscaping and other public improvements, such as, but not limited to addition of picnic tables, benches and public art or historical and cultural artifacts;
 - (d) Licensee may install and maintain a maximum of four architectural-grade informational kiosks for Licensee to display items related to the Vessels of Licensee's purposes as described in the Recitals, above. Kiosks shall not exceed 16 square feet in floor area and no more than 10 feet in height for use in conjunction with the Vessels; and
 - (e) Licensee may occasionally, with approval of the City Harbor Director, hold fundraising events on the Premises. Such fundraising events will be in compliance with all applicable Licensor rules, regulations and laws; and
 - (f) There are currently no utilities (electricity, gas, water, wastewater, internet or phone) available for servicing the Premises. Licensee shall have the right, but not the obligation, to cause to be installed any such service(s) as Licensee may determine in its sole discretion to be necessary or desirable, at Licensee's sole expense. Licensor shall cooperate as necessary to facilitate connection of services. Notwithstanding the foregoing, to the extent any such service may be required by any land use entitlement or, permit approval, Licensee, at its sole costs, shall cause such service to be provided to the Premises.

The specific location of all vessels, displays and landscape, hardscape and public improvements shall be subject to collaboration and approval of City's Harbor Director and Community Development Director, and any and all required and applicable permits and approvals must be appropriately obtained. The parties understand this License does not create any predetermination regarding whether any permits shall be approved, conditionally approved or denied.

The foregoing shall be defined as the "Permitted Uses."

Licensee shall not use the Premises for any of the following:

- (a) attempting to influence legislation,
- (b) organizing or engaging in protests, petitions, boycotts, or strikes,
- (c) assisting, promoting or deterring union organizing,
- (d) impairing existing contracts for services or collective bargaining agreements,
- (e) engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office,

- (f) participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials,
- (g) engaging in religious instruction; conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization,
- (h) providing a direct benefit to a business organized for profit; a labor union; a partisan political organization; a nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and an organization engaged in the religious activities described in the preceding subclause, unless Corporation assistance is not used to support those religious activities,
- (i) any other activity prohibited by any law, rule or regulation or Licensor cannot legally perform or participate in, or
- (j) any other activity Licensor cannot legally perform or participate in.

The parties agree Licensee's use of the Premises for the Permitted Uses shall be exclusive of any other use or user except that of Licensor, subject to Paragraph 18, below.

3. LICENSOR REQUIREMENTS: In connection with the Permitted Uses, Licensee shall comply with all applicable Federal, State and local laws rules and regulations, including payment of local business taxes, if applicable.
4. EFFECTIVE DATE OF LICENSE: This License shall be deemed effective as of June 30, 2017, after it is signed on behalf of both parties (the "Effective Date").
5. TERM: The term of this License shall be for the period from the Effective Date, until the earlier of December 31, 2022, termination pursuant to Paragraph 17, below, or replacement by a long-term lease agreement (the "Term"). This License may be renewed for an additional five-year term (the "Additional Term") by the City Harbor Director. The Additional Term shall be from January 1, 2023, until the earlier of December 31, 2027, termination pursuant to Paragraph 17, below, or replacement by a long-term lease agreement.
6. FEES. There is no fee to be paid by Licensee for this License.
7. OPERATION COSTS: Licensee shall be responsible for all costs related to its use of the Premises, including the utilities used by Licensee for the Premises.
8. MAINTENANCE: Licensee shall be responsible to maintain the Premises in a clean and presentable manner and keep the Premises free from waste, debris, trash and other rubbish. Upon termination of this License for any reason, Licensee shall leave the Premises free

from waste, debris, trash and other rubbish and in a good condition, subject to normal wear and tear.

9. SIGNS: Any and all signs installed or used by Licensee that are visible to the public from outside the Premises are subject to approval by the Community Development Director. All signage is subject to all applicable Licensor zoning laws, rules and regulations.
10. IMPROVEMENTS: Licensee shall not make any improvements to the Premises without prior approval from Licensor's City Harbor Director and Community Development Director.
11. REPORTS: During the Term, Licensee shall report to the City Harbor Director on an annual basis regarding programs and the general operating status of Licensee. Annual reporting shall be subject to a mutually-agreeable format and timing between Licensee's Board of Trustees and the City Harbor Director, but no later than December 31st of each year.
12. LICENSEE OBLIGATIONS: Termination of this Licensee shall not terminate Licensee's obligations pursuant to Paragraphs 13, 14, 15, 16 and 17.
13. TAXABLE INTEREST: This License is not intended to create any interest in real property. If it is determined, by a governmental agency dually authorized to make such decision, this License creates any taxable interest, including, but not limited to, a possessory interest, then Licensee shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.
14. HOLD HARMLESS: Licensee agrees to and hereby does hold harmless, indemnify and defend Licensor and its officers, agents and employees ("Indemnitees") from any claim, judgment, liability, award, damages, loss or expense, including reasonable attorney's fees and court costs, arising out of or related to the use of the Premises by Licensee, including, but not limited to, any hazardous materials releases; provided, that Licensee's obligation to indemnify and hold harmless shall apply only to the extent Licensee, its officers, employees or agents caused the claim, loss or expense. For purposes of this License, hazardous materials shall mean any materials as defined by State or Federal laws.
15. INSURANCE: Without limiting the obligation set forth in the immediately preceding sentence, during the term of this License Licensee shall provide evidence of insurance as provided in Exhibit B.
16. NO LIENS ON PREMISES: Licensee shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of Licensee; and Licensee agrees to indemnify and hold harmless Licensor and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with Licensee's use of the Premises.

17. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either party shall have the right to terminate this License, with (subject to the opportunity to cure set forth in this Paragraph 17) or without cause, upon one hundred eighty-days' (180-days') written notice to the non-terminating party, as set forth in Paragraph 22. Subject to the last sentence of this Paragraph, Licensor shall not be liable (i) for any displacement or relocation benefits or expenses experienced by Licensee, (ii) for reimbursement for any improvements installed by Licensee or (iii) for any damages in condemnation, inverse condemnation, loss of goodwill or other legal or equitable bases resulting, directly or indirectly, from any action or inaction of or on behalf of Licensor that may be in any way connected with any termination of this License for any reason or any relocation of Licensee from the Premises for any reason. If City exercises its right to terminate this License for no cause, then City shall reimburse Licensee for a pro rata share of the actual hard and soft costs Licensee paid for installation of the improvements described in Subparagraphs 1. (c) and (d) (the "Costs"), based on a 5-year depreciation of the Costs.

Termination by Licensor for cause shall be effective only if the notice described above provides sufficient detail of the cause for termination to allow Licensee an opportunity to cure within the 180-day period. If, during that 180-day period or longer period granted by the City Council, the cure is completed, as determined in writing to the reasonable satisfaction of City's City Manager, then the notice to terminate for cause shall be deemed rescinded.

Nothing in this Paragraph 17 shall prevent Licensor from retaking immediate possession of the Premises in the event the Premises is endangered, destroyed or required for Licensor's use due to natural disaster, as declared by local, state or federal authorities in accordance with applicable law.

18. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If arises out of this License, then venue shall be in the Superior Court of San Luis Obispo County.
19. ALTERNATIVE DISPUTE RESOLUTION: Licensee and Licensor agree before either party may bring any legal or equitable against the other party regarding this License, then each party shall promptly make good faith efforts to negotiate written voluntary resolution of the matter. If the matter remains unsettled for forty-five days after notification (as set forth in Paragraph 22) a dispute exists, the parties shall immediately and jointly retain a mutually-agreed neutral mediator with at least five-years' experience in dispute resolution and participate in confidential mediation to continue attempting to work out a written voluntary settlement.

20. LICENSOR USE OF PREMISES: Licensor may use the Premises for programs and storage and other municipal uses; provided, that such use shall not unreasonably interfere with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposes set forth herein; and provided, further, that Licensor shall be responsible for all operation costs and maintenance for the portion of the Premises Licensor uses or occupies. In addition, without any implied or expressed limitation on Licensor's authority and right to access and inspect the Premises in its governmental capacity, Licensor shall have the right to access at any time to the Premises for inspections upon 8-hours' notice. If, pursuant to this Paragraph any portion of the Premises is used or leased by Licensor to a third party, then that third party shall provide at least 30-days' written notice to Licensee to provide Licensee and that third party an opportunity to meet and confer concerning the intended use by the third party. The third party's use shall not unreasonably interfere with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposes set forth herein.
21. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by Licensee without the prior written consent of Licensor.
22. NOTICES: All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Licensor:

City of Morro Bay
Attn: Harbor Director
595 Harbor Street
Morro Bay, CA 93442

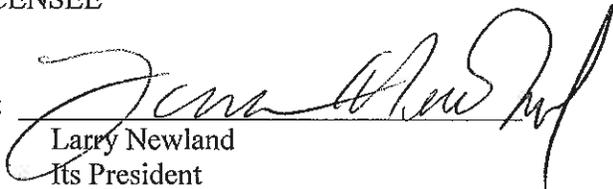
To Licensee:

Central Coast Maritime Museum Association
Attn: Larry Newland/Jack Hunter
PO Box 1775
Morro Bay, CA 93443

23. ENTIRE AGREEMENT: This License (i) constitutes the entire agreement of the parties hereto relating to the use, operation and maintenance of the Premises and (ii) shall supersede prospectively from the date it is entered into the Right-of-Way Encroachment Agreement of April 25, 2011. This License does not nullify or modify other historical agreements or resolutions regarding Licensee or the "Maritime Museum," including but not limited to, the MOU (the "Historical Agreements"). Notwithstanding the foregoing, the parties acknowledge their intent to work in good faith to negotiate and enter into a long-term lease, as referenced in Paragraphs G. and 5., above, which will supersede this License, all previous written or oral agreements that may exist between the parties, including the Historical Agreements. This License shall not be modified in any particular except by a written amendment duly executed by the parties.

LICENSEE

Dated: 29 Sept 2017

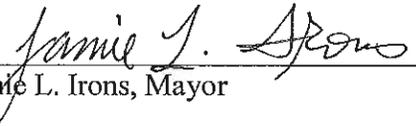
By: 
Larry Newland
Its President

Dated: _____

By: _____
Its _____

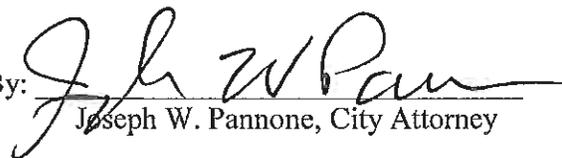
LICENSOR

Dated: Sept 27, 2017

By: 
Jamie L. Irons, Mayor

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: 
Joseph W. Pannone, City Attorney

ATTEST:


Dana Swanson, City Clerk

EXHIBIT A

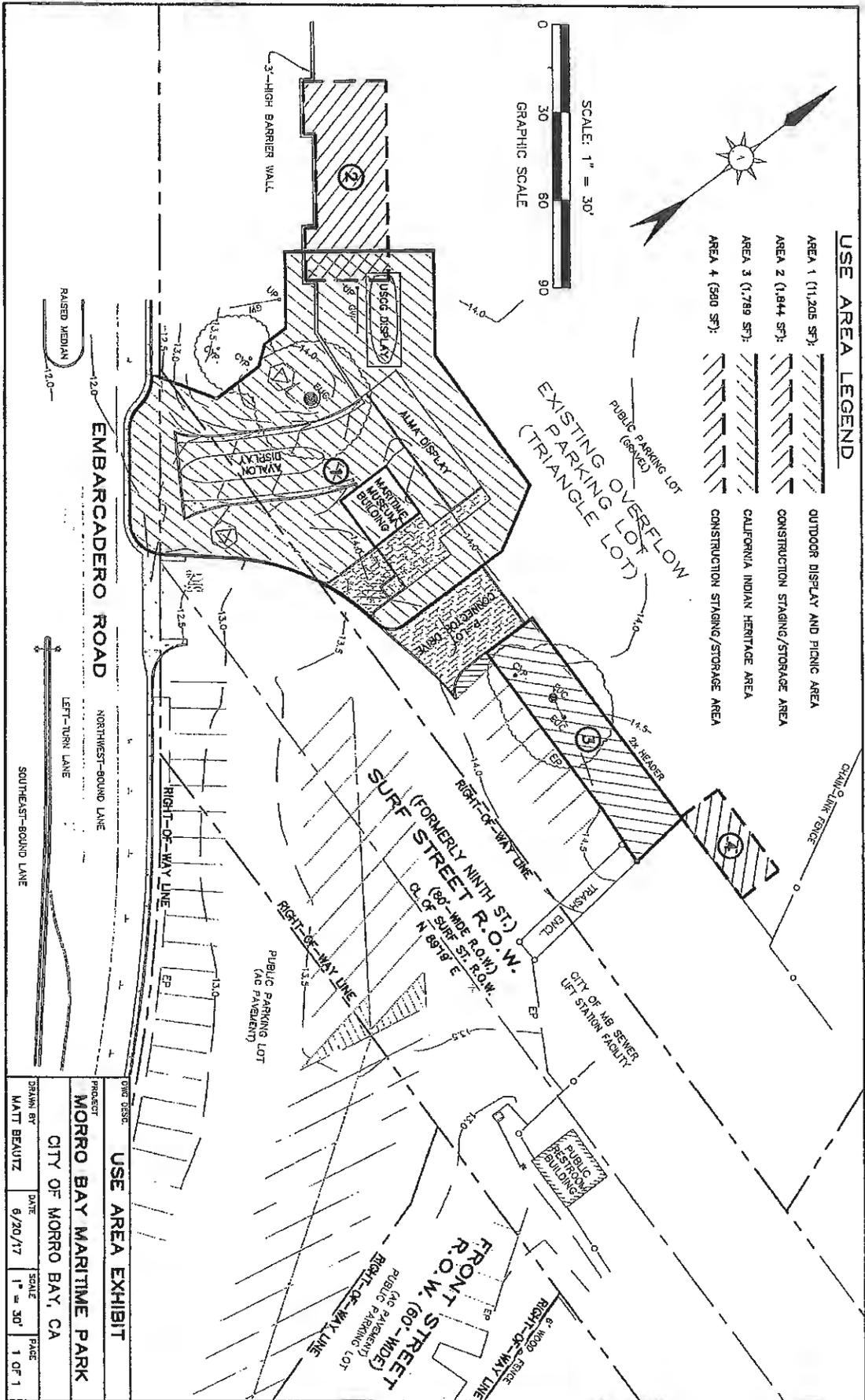
ASSESSOR MAP AND AERIAL OF PREMISES
INCLUDING CCMMA CONCEPTUAL SITE PLAN

(Immediately behind this page)

Google Maps



Imagery ©2017 Google, Map data ©2017 Google United States 50 ft



USE AREA LEGEND

- AREA 1 (11,205 SF): [diagonal hatching] OUTDOOR DISPLAY AND PICNIC AREA
- AREA 2 (1,844 SF): [horizontal hatching] CONSTRUCTION STAGING/STORAGE AREA
- AREA 3 (1,789 SF): [vertical hatching] CALIFORNIA INDIAN HERITAGE AREA
- AREA 4 (590 SF): [cross-hatching] CONSTRUCTION STAGING/STORAGE AREA
- [diagonal hatching] PUBLIC PARKING LOT
- [triangle symbol] EXISTING OVERFLOW PARKING LOT (TRIANGLE LOT)
- [dashed line] PUBLIC (EXIST.)
- [dotted line] CHAIN-LINK FENCE
- [solid line] 24' HEADER
- [dashed line] TRASH ENCL.
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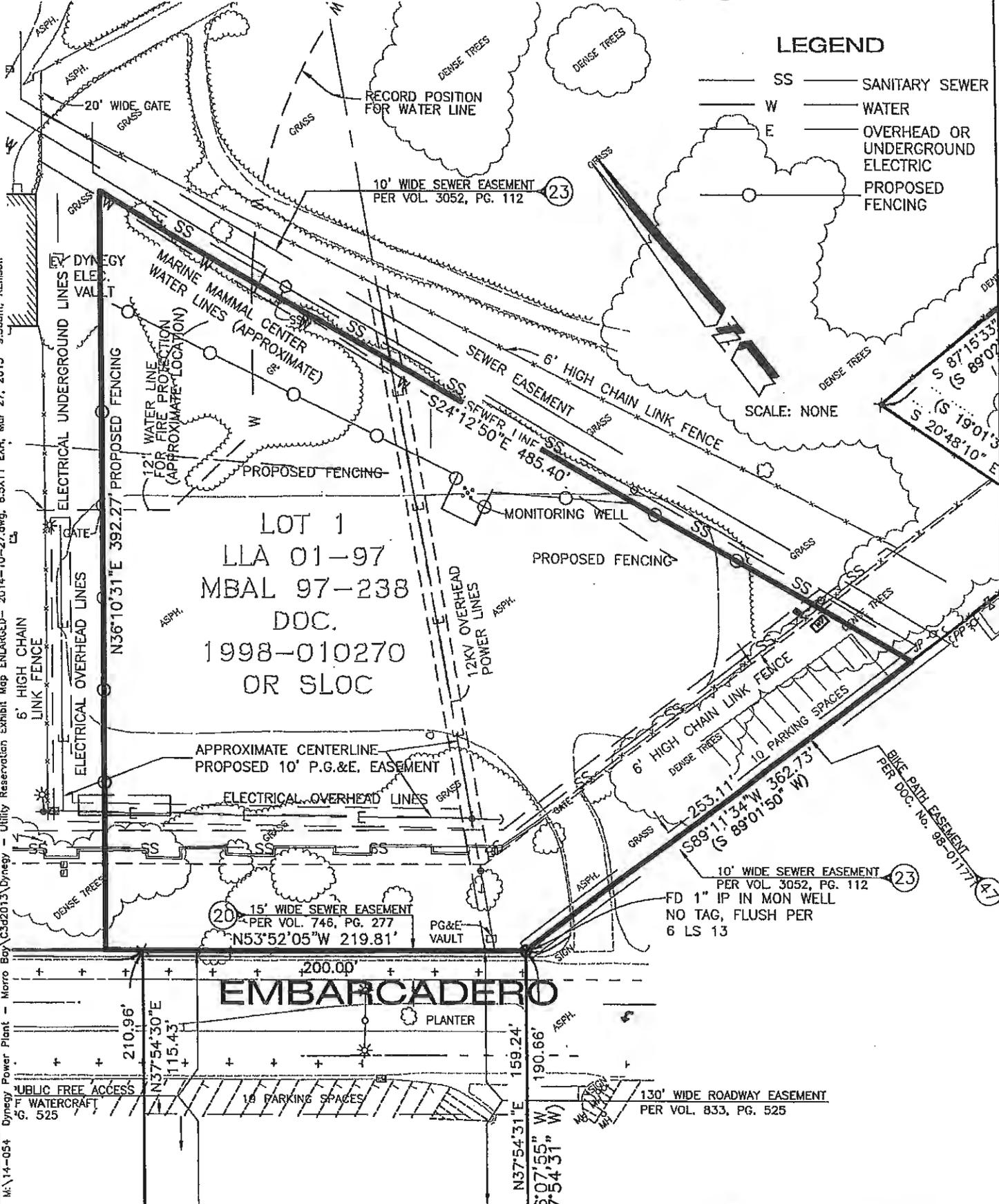
DRAWN BY MATT BEVUTZ			
DATE 9/20/17			
SCALE 1" = 30'			
PAGE 1 OF 1			
PROJECT MORRO BAY MARITIME PARK			
CITY OF MORRO BAY, CA			
TITLE USE AREA EXHIBIT			

EXISTING UTILITY RESERVATIONS

LEGEND

- SS — SANITARY SEWER
- W — WATER
- E — OVERHEAD OR UNDERGROUND ELECTRIC
- (Circle with dot) — PROPOSED FENCING

M:\14-054 Dynegy Power Plant - Morro Bay\Cad2013\Dynegy - Utility Reservation Exhibit Map ENLARGED - 2014-10-27.dwg, 6.5X11 EKH, Mar 27, 2015 9:55am, REllison



LOT 1
 LLA 01-97
 MBAL 97-238
 DOC.
 1998-010270
 OR SLOC

15' WIDE SEWER EASEMENT
 PER VOL. 746, PG. 277
 N53°52'05"W 219.81'

10' WIDE SEWER EASEMENT
 PER VOL. 3052, PG. 112
 FD 1" IP IN MON WELL
 NO TAG, FLUSH PER
 6 LS 13

EMBARCADERO
 200.00'

PUBLIC FREE ACCESS
 WATERCRAFT
 G. 525

130' WIDE ROADWAY EASEMENT
 PER VOL. 833, PG. 525



MICHAEL B. STANTON, PLS 5702
 3563 SUELDO ST. UNIT Q
 SAN LUIS OBISPO, CA 93401
 805-594-1960

DYNEGY POWER PLANT
 EMBARCADERO, MORRO BAY, CA

**CITY OF MORRO BAY
EXHIBIT B**

INSURANCE REQUIREMENTS

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

Licensee shall provide the following types and amounts of insurance:

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

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

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

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

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Licensor for injury to employees of Licensee, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of Licensor following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

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

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

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

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

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

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

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

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AGENDA NO: A-4

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 7, 2023

FROM: Daniel McCrain, Fire Chief

SUBJECT: Acceptance of California Office of Traffic Safety (OTS) Grant

RECOMMENDATION

1. Authorize the Fire Department to accept the grant award from the California Office of Traffic Safety Grant program for hydraulic extrication equipment and airbags; and
2. Authorize the City Manager to approve execution of grant related documents.

ALTERNATIVES

1. Decline to accept the grant award this year and reapply next year.

FISCAL IMPACT

The OTS grant program does not have a cost share for funding. The cost of equipment is funded 100% through the program up to the total award amount but must first be purchased by the city and then be reimbursed by the office of Traffic Safety 90 days after purchase. If the equipment purchased exceeds the award amount, the city would be required to contribute the additional funds without the expectation of reimbursement on the additional amount. The financial burden for the city would be encumbering the funds to purchase the equipment for 90 days while awaiting a refund. The grant award is approved for up to \$48,000.00. This award includes \$41,000 for extrication tools and \$7,000 for an airbag set. Due to manufacturers' price increases since the time of the grant application, I anticipate a shortfall of approximately \$4,500 between the updated purchase price of the equipment and the amount awarded by OTS. Staff anticipates being able to absorb the difference.

BACKGROUND

The Office of Traffic Safety (OTS) is tasked with developing and implementing a highway safety program that addresses behavioral factors that impact safety on the road. The goal of the annual program is to prevent serious injury or death resulting from motor vehicle crashes so that all roadway users arrive at their destination safely. Using Federal Highway Safety Program funds, the OTS partners with political subdivisions of the state to address California's highway safety needs at the state, county, and local level. The grant application period ran from December 7th, 2022, through January 31st, 2023. The grant applications were reviewed between February and May with awards being made in June 2023.

DISCUSSION

A majority of the hydraulic extrication equipment currently in use by Morro Bay Fire Department was

Prepared By: __DM__

Dept Review: _____

City Manager Review: YK_____

City Attorney Review: CFN_____

scheduled for replacement in the 2017/2018 fiscal year but due to budget constraints most of these items have not been replaced. While the gasoline power pumps were replaced during the 2018/2019 fiscal year, all other equipment is overdue to be replaced. The Spreaders and cutters were purchased in 2011, and the rams and air bags were purchased in 2009. The equipment has a life expectancy of approximately 10 years depending on the item. Last year Governor Newsom signed AB 1346 requiring the phase out of all gasoline powered small engines beginning in 2024. To comply with this upcoming law, we are looking to replace the current gasoline powered hydraulic extrication equipment with battery powered equipment. This new electric equipment has higher operating strengths than our current equipment and is designed for the high tensile strength materials of modern vehicles that our current equipment cannot cut. Upgrading this equipment also reduces our dependence on petroleum products and reduces emissions levels in accordance with the council's stated goal of Climate Action. The adopted budget for small tools and equipment is \$3,685.66. The estimated cost to replace all of the extrication equipment and air bags is approximately \$139,891.96 depending on current pricing and brand chosen. Purchasing this equipment would be a significant increase to the line-item budget if funded through the general fund or measure Q&E funds. By seeking grant funding, we could potentially procure this equipment while being reimbursed for almost the entire cost of the equipment.

CONCLUSION

The grant administrator for the California Office of Traffic Safety (OTS) has awarded the Morro Bay Fire Department a grant in the amount of \$48,000.00 for one set of battery powered extrication equipment and rescue airbag system. This award amount is a reduced amount from the \$139,891 that was requested. The Grant Administrators for OTS decided to award a reduced amount to allow for more awards to other agencies. This reduced amount will allow for the replacement of one set of extrication equipment for the first out apparatus. This grant will cover the majority of the purchase price of the equipment. Due to manufacturers' price increases we expect to have a difference of approximately \$4,500 that will have to come from city funds which we believe the current operational budget can absorb. This is an annual grant program, and we intend to apply for a second set next year.

ATTACHMENT

1. Draft grant agreement

<p>E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY</p> <p>NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758</p>	<p>9. SAM INFORMATION</p> <p>SAM #: KAFQZMM3MRA5 REGISTERED ADDRESS: 595 Harbor St CITY: Morro Bay ZIP+4: 93442-1957</p>
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10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
				AGREEMENT TOTAL		\$48,000.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT		\$48,000.00
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT		\$ 0.00
				TOTAL AMOUNT ENCUMBERED TO DATE		\$48,000.00
OTS ACCOUNTING OFFICER'S SIGNATURE			DATE SIGNED			

1. PROBLEM STATEMENT

The Morro Bay Fire Department is an all-risk Advanced Life Support Fire Department. Our current staffing model divides a four-person engine company into two engine companies staffed with two personnel on each engine to respond to simultaneous incidents. The City of Morro Bay is situated along the highly trafficked Pacific Coast Highway 1 and Highway 41. These state routes experience substantial traffic, resulting in numerous injuries and fatalities annually from motor vehicle crashes. According to Caltrans Traffic Census Data for 2020, Highway 1 in North Morro Bay sees an average daily traffic of 20,500 vehicles, with the Highway 41 and Highway 1 junction seeing an average daily traffic of 17,100 vehicles.

Morro Bay Fire Department provides automatic and mutual aid response to the unincorporated rural areas of San Luis Obispo County along Highway 1, Highway 41, and South Bay Boulevard, which connects Morro Bay to the community of Los Osos. Highway 41 is a narrow, two-lane, undivided highway with many sharp blind turns, steep drop-offs, and limited areas for slower traffic to yield. Vehicle crashes in this section of Highway 41 between Morro Bay and the City of Atascadero often result in a head-on crash as drivers attempt to pass slower vehicles in unsafe locations. As a result of this, Morro Bay Fire Department often has extended response times to this section of Highway 41 with additional resources being 20 to 30 minutes away.

Between 2020 and 2021, the Department has identified a 31% increase of motor vehicle crashes contributing to an overall 52% increase from 2018 to 2022. The auto extrication equipment currently deployed by Morro Bay Fire Department is outdated and in need of replacement. The average effective lifespan of extrication tools and airbags is around 10 years. The cutters and spreaders that are currently deployed by the Department are 12 years old and the hydraulic rams and airbags are 14 years old. The tools currently in service have required multiple repairs due to hydraulic leaks, carburetor failure, broken valves, and hose failures. The newer technology of extrication equipment improves both firefighter and crash victim safety. The tools have higher operating speeds and the strength to cut through modern materials, reducing the time spent operating the tool and extricating the victim. This reduced operational time due to higher cutting and spreading forces can shorten the entrapment duration for victims and reduce strain on the operator utilizing the device. The new equipment is also lighter, reducing the risk of injury to the operator due to their weight.

Modern extrication equipment requires less personnel to move, set up, and operate due to the lack of additional components such as remote pumps and hoses. This ease of operation is significant based on the staffing model of two personnel on each apparatus and the extended response times for additional resources. The higher strengths and faster operating speeds reduce the amount of time needed to complete the operation, resulting in more rapid extrication of the victim, allowing for more immediate access to patient care, thereby increasing the chances of victim survivability. Ease of use, coupled with better performance, reduces the time firefighters are working in the roadway to extricate a patient, limiting their exposure to traffic and other safety hazards. Increased traffic along Highway 1 and Highway 41 has also increased the number of motor vehicle crashes and infrastructure projects such as the construction of a water reclamation facility has increased the use of heavy equipment within city limits leading to a potential for increase emergency response calls. By updating the current extrication equipment to modern standards, first responder personnel can make effective use of their time when they arrive at the scene of a crash with a victim that requires extrication, thereby increasing safety for first responders as well as survivability for crash victims.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Decrease the average extrication time, from the time of arrival at the crash site to transport.

B. Objectives:

1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be

Target Number

1

<p>emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.</p>	
<p>2. Purchase and place fully equipped extrication systems in strategic locations within the jurisdiction.</p>	<p>1</p>
<p>3. Purchase and place pieces of specialized rescue equipment in strategic locations within the jurisdiction.</p>	<p>1</p>
<p>4. Train firefighters in the use of the new equipment.</p>	<p>14</p>
<p>5. Conduct traffic safety presentations with an effort to reach persons and communities.</p>	<p>2</p>
<p>6. Display the OTS funded equipment during Public Safety Fairs, community festivals and/or other Department or community events.</p>	<p>2</p>
<p>7. Report on the number of times the grant-funded equipment is used during an extrication, provide a brief overview of the incident and indicate if the equipment was used to save a life.</p>	<p>1</p>
<p>8. Decrease the average extrication time, from the time of arrival at the crash site to transport, from 28 minutes to 15 minutes.</p>	<p>15</p>
<p>3. METHOD OF PROCEDURE</p> <p>A. <u>Phase 1 – Program Preparation (1st Quarter of Grant Year)</u></p> <ul style="list-style-type: none"> • Determine specific equipment requirements. • Request equipment vendor price quotation for the required equipment per host agency requirement. • Submit purchase orders to equipment vendors for purchase of the equipment. • Prepare and execute Memorandums of Understanding (MOU) with recipient agencies. <p><u>Media Requirements</u></p> <ul style="list-style-type: none"> • Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS coordinator and OTS PIO. 	
<p>B. <u>Phase 2 – Program Operations (Throughout Grant Year)</u></p> <ul style="list-style-type: none"> • Inventory the new equipment following delivery. • Disperse equipment to identified recipient agencies. • Plan a media event announcing the grant funded equipment. • Recipient agencies will identify training needs and objectives and coordinate instructional staff to conduct a high quality training program for their respective agency. • Recipient agencies will develop a preventive maintenance schedule for the new equipment following manufacturers' recommendations. <p><u>Media Requirements</u></p> <p>The following requirements are for all grant-related activities:</p> <ul style="list-style-type: none"> • Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated. • The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the Coordinator. • Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at pio@ots.ca.gov and your OTS coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases 	

are an exception to this policy and require prior approval before distribution to the media and public.

- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at pio@ots.ca.gov for approval and copy to your OTS Coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your Coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).
- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at pio@ots.ca.gov and your Coordinator with embargoed date and time or with "INTERNAL ONLY: DO NOT RELEASE" message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a subgrantee, requires prior approval. Please send to the OTS PIO at pio@ots.ca.gov for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.
- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.
- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS Coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event. If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.
- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- Contact the OTS PIO or your OTS Coordinator for consultation when changes from any of the above requirements might be warranted.

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit grant claim invoices (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.

- Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
- Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
- Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
402EM-24	20.600	State and Community Highway Safety	\$48,000.00

COST CATEGORY	FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS				
<u>Straight Time</u>				\$0.00
<u>Overtime</u>				\$0.00
Category Sub-Total				\$0.00
B. TRAVEL EXPENSES				
				\$0.00
				\$0.00
Category Sub-Total				\$0.00
C. CONTRACTUAL SERVICES				
				\$0.00
Category Sub-Total				\$0.00
D. EQUIPMENT				
Air Bag Lift System	402EM-24	\$7,000.00	1	\$7,000.00
Fully Equipped Extrication System	402EM-24	\$41,000.00	1	\$41,000.00
Category Sub-Total				\$48,000.00
E. OTHER DIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
F. INDIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
GRANT TOTAL				\$48,000.00

BUDGET NARRATIVE
<p>PERSONNEL COSTS</p> <p>-</p>
<p>TRAVEL EXPENSES</p> <p>-</p>
<p>CONTRACTUAL SERVICES</p> <p>-</p>
<p>EQUIPMENT</p> <p>Air Bag Lift System - Air Bag Lift Systems are generally comprised of a high pressure regulator, dual air controller, inline relief valves, high pressure hoses, and high pressure lifting bags (high tonnage rated) used for lifting vehicles or heavy objects in extrication incidents. It includes equipment, modifications, attachments, accessories, and auxiliary apparatus necessary to make it usable for the purpose it was acquired, and costs \$5,000 or more (including tax, shipping, and installation).</p> <p>Fully Equipped Extrication System - Fully equipped extrication systems are generally comprised of a hydraulic pump, fluid, hoses, control valves, and hydraulically actuated spreaders and cutters used primarily for vehicle extrication incidents as well as edraulic tools. It includes every piece of extrication equipment, modifications, attachments, accessories, and auxiliary apparatus necessary to make it usable for the purpose it was acquired, and costs \$5,000 or more (including tax, shipping, and installation).</p>
<p>OTHER DIRECT COSTS</p> <p>-</p>
<p>INDIRECT COSTS</p> <p>-</p>
<p>STATEMENTS/DISCLAIMERS</p> <p>There will be no program income generated from this grant.</p>

Certifications and Assurances for Fiscal Year 2024 Highway Safety Grants (23 U.S.C. Chapter 4 or Section 1906, Public Law 109-59, as amended by Section 25024, Public Law 117-58)

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies, and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, [Public Law 109-59](#), as amended by Sec. 25024, [Public Law 117-58](#);
- [23 CFR part 1300](#)—Uniform Procedures for State Highway Safety Grant Programs;
- [2 CFR part 200](#)—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- [2 CFR part 1201](#)—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

NONDISCRIMINATION

(applies to all subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- *Title VI of the Civil Rights Act of 1964* ([42 U.S.C. 2000d](#) et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- [49 CFR part 21](#) (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- [28 CFR 50.3](#) (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, ([42 U.S.C. 4601](#)), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- *Federal-Aid Highway Act of 1973*, ([23 U.S.C. 324 et seq.](#)), and *Title IX of the Education Amendments of 1972*, as amended ([20 U.S.C. 1681-1683](#) and [1685-1686](#)) (prohibit discrimination on the basis of sex);
- *Section 504 of the Rehabilitation Act of 1973*, ([29 U.S.C. 794 et seq.](#)), as amended, (prohibits discrimination on the basis of disability) and [49 CFR part 27](#);
- *The Age Discrimination Act of 1975*, as amended, ([42 U.S.C. 6101 et seq.](#)), (prohibits discrimination on the basis of age);
- *The Civil Rights Restoration Act of 1987*, (Pub. L. 100-209), (broadens scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- *Titles II and III of the Americans with Disabilities Act* ([42 U.S.C. 12131-12189](#)) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and [49 CFR parts 37](#) and [38](#);
- [Executive Order 12898](#), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- [Executive Order 13166](#), *Improving Access to Services for Persons with Limited English Proficiency* (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- [Executive Order 13985](#), *Advancing Racial Equity and Support for Underserved Communities through the Federal Government* (advancing equity across the Federal Government); and
- [Executive Order 13988](#), *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

GENERAL ASSURANCES

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.”

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

SPECIFIC ASSURANCES

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in § 21.23(b) and (c) of [49 CFR part 21](#) will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source: *“The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Recipient will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Subgrantee will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs;
 4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 1. Abide by the terms of the statement;
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
 1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to all subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to all subrecipients as well as States)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
(applies to all subrecipients as well as States)

INSTRUCTIONS FOR PRIMARY TIER PARTICIPANT CERTIFICATION (STATES)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or

otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate the transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY TIER COVERED TRANSACTIONS

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

INSTRUCTIONS FOR LOWER TIER PARTICIPANT CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or

otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION— LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST

(applies to subrecipients as well as States)

GENERAL REQUIREMENTS

No employee, officer, or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
 - a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.
 - b. The code or standards shall establish penalties, sanctions, or other disciplinary actions for violations, as permitted by State or local law or regulations.
2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

DISCLOSURE REQUIREMENTS

No State or its subrecipient, including its officers, employees, or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.
2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
3. Conflicts of interest that require disclosure include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE (applies to all subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

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AGENDA NO: A-5

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 7, 2023

FROM: Ted Schiafone, Harbor Director

SUBJECT: Adoption of Resolution No. 56-23 approving Amendment #1 to the lease agreement for California Coastal Investments, LLC, doing business as Libertine Brewing Company, Lease Site 86/86W, 801 Embarcadero, Morro Bay

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 56-23 approving Amendment #1 to the lease agreement for Libertine Brewing Company, Lease Site 86/86W.

ALTERNATIVES

Do not approve Amendment #1 to the lease agreement for Libertine Brewing Company and provide staff direction accordingly.

FISCAL IMPACT

The current Lease Rent is equal to \$32,000 per year with standard percent rent. This lease amendment will increase the base rent to \$45,000 per year with standard percentage rent.

BACKGROUND

A three-year interim lease was executed with Libertine Brewing Company, Inc. for Lease Site 86/86W, effective October 1, 2020. Eric Newton, the owner/operator of Libertine, was the subtenant under the previous master leaseholder, Burt Caldwell. Caldwell, under a Pipkin lease, had attempted to redevelop the site over numerous iterations over the past two decades, none of which came to fruition, so he let the site resort back to the City after the two-year interim lease on the site expired effective September 30, 2020.

Primarily because at the time we were amid the COVID-19 pandemic and all its economic uncertainties, the Council opted to enter into a three-year interim lease with Mr. Newton to allow him to develop and submit a proposal for the site's redevelopment. This lease provided for a September 30, 2021 deadline for Newton to submit his long-term vision for the site, including building size and type, uses and operations, a redevelopment timeline and proposed financing for the redevelopment.

Starting in October 2020, and continuing regularly to this day, Mr. Newton has been working with Community Development and Harbor staff in crafting a proposal, including development of basic plans and drawings, to redevelop the site. Mr. Newton was provided a six-month extension to the COL on May 9, 2023, however the interim lease will now expire on September 30, 2023. This

Prepared By: TS

Dept Review: TS

City Manager Review: YK

City Attorney Review: JWP

amendment extends the interim lease until July 31, 2025, allowing sufficient time to obtain necessary permits.

Implementation of percentage rent based on service type has its challenges. The proposed interim lease extension will allow time for staff and the tenant to possibly come to a mutually beneficial resolution.

CONCLUSION

To avoid any technical default on the lease, staff recommends a lease extension to July 31, 2025. However, staff recommends that the lease extension should not be offered until Tenant substantiates the sales and percentage rent due for Fiscal Years 2021/22 and 2022/23. If it is determined that additional percentage rent is owed to the Harbor, then Tenant must pay the back rent before the lease extension is fully executed. Until the Amendment #1 is fully executed by the City, if the Tenant remains on the site after the expiration of the Interim Master Lease, then double base rent shall be due, as per the holdover provision of the Interim Master Lease.

Staff recommends the City Council adopt Resolution No. 56-23 approving Amendment #1 to the lease agreement for Libertine Brewing Company, lease site 86/86/W.

ATTACHMENTS

1. Resolution No. 56-23
2. Amendment #1 to the Lease Agreement

RESOLUTION NO. 56-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #1 TO THE INTERIM MASTER LEASE AGREEMENT
FOR LEASE SITE 86/86W, LOCATED AT 801 EMBARCADERO,
BETWEEN THE CITY OF MORRO BAY AND LIBERTINE BREWING COMPANY, INC.**

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

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

WHEREAS, Libertine Brewing Company, Inc. is the current interim master leaseholder at Lease Site 86/86W; and

WHEREAS, Tenant's representative was unable to obtain Concept Plan approval from the Planning Commission and City Council on or before April 30, 2023 at 4:00 p.m. as required by the approved Consent of Landowner (COL); and

WHEREAS, the City and Tenant have negotiated a six-month extension of the COL with a cost recovery fee of \$1,680 charged for staff time allocated to preparing the COL extension with daily penalty of \$100/day for any daily delays past the programmed deadlines; and

WHEREAS, the Parties desire to amend the Interim Master Lease term to conform with the date of Condition 13 of the COL, which states "The Applicant must obtain Building Plan approval on or before July 31, 2025 at 4:00 p.m."

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

1. The attached Amendment #1 to the Interim Master Lease Agreement for Lease Site 86/86W is hereby approved subject to Percentage Rent due being paid.
2. The Mayor is hereby authorized to execute said Interim Master Lease Agreement Amendment.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of September 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

**AMENDMENT #1 TO THE LEASE AGREEMENT FOR
LEASE SITE 86/86W,
LOCATED AT 801 EMBARCADERO**

This Amendment (Amendment #1) is made and entered into as of this ____ day of ____, 2023, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Libertine Brewing Company, a California corporation, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment #1 is to that certain master lease, which was signed on behalf of the Parties and is effective as of October 6, 2020 (Master Lease);

WHEREAS, Tenant's representative was unable to obtain Concept Plan approval from the Planning Commission and City Council on or before April 30, 2023 at 4:00 p.m. as required by the approved Consent of Landowner (COL); and

WHEREAS, the City and Tenant have negotiated a six-month extension of the COL with a cost recovery fee of \$1,680 charged for staff time allocated to preparing the COL extension with daily penalty of \$100/day for any daily delays past the programmed deadlines; and

WHEREAS, the Parties desire to amend the Master Lease term to conform with the date of Condition 13 of the COL, which states "The Applicant must obtain Building Plan approval on or before July 31, 2025 at 4:00 p.m.

NOW THEREFORE, Tenant and City agree to amend the Master Lease, as follows:

1. All undefined terms used in this Amendment # 1 shall be as defined in the Master Lease, unless the context requires otherwise.

2. SECTION 1.01 TERM:

The Termination Date shall be amended to read "July 31, 2025."

3. In consideration of the extension of the Master Lease, the following terms and conditions shall apply to the Master Lease, as hereby amended:

(a) Commencing on October 1, 2023, the annual Base Rent shall be increased to \$45,000;

(b) Tenant expressly agrees to provide accurate documentation of sales by specific category, in order for Percentage Rent to be appropriately calculated and then paid by Tenant; and

(c) City may terminate the Master Lease, as hereby amended, if (i) Tenant does not timely and satisfactorily comply with any of major milestones pursuant to the COL or (ii) the City Council does not approve Tenant's Concept Plan.

4. Except as expressly set forth herein, all terms and conditions of the Master Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 as of the date written above and it is effective as of that date.

CITY OF MORRO BAY

Libertine Brewing Company
a Californian corporation

By: _____
Carla Wixom, Mayor

By: _____
Eric Newton, Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Its _____

Chris F. Neumeyer, City Attorney

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: A-6

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 3, 2023

FROM: Dana Swanson, City Clerk

SUBJECT: Adoption of Resolution No. 57-23 Approving Updated Records Retention Schedule

RECOMMENDATION

Staff recommends the Council adopt Resolution No. 57-23 rescinding Resolution No. 76-19, approving the City of Morro Bay Records Retention Schedule, and authorizing subsequent minor updates without further Council action.

ALTERNATIVES

No alternatives are being recommended at this time.

FISCAL IMPACT

The City Clerk's office budget included \$500 for review and update of the City's Records Retention Schedules. Over time, the effective implementation of the proposed Records Retention Schedules will result in significant savings both in labor and document storage expenses.

BACKGROUND/DISCUSSION

In 2017, Morro Bay selected Gladwell Governmental Services, Inc., an expert in local government records, to upgrade its records management program. An upgrade in the existing program, along with ongoing efforts to develop and implement employee training programs, are necessary to ensure the policies are understood and strictly adhered to. Over time, improved records management policies and training will reduce current and future records storage costs, eliminate duplication of effort, increase efficiency and take advantage of current technology and changes in law.

The upgrade of the current records management systems are driven by many factors, including:

- Very limited space in City facilities
 - Many Departments reported they are out of space to store their records.
- Many departments are filing and storing copies of the same records
- Morro Bay produces and manages many permanent records
- Escalating records storage expenses
- Technology advancements
- Changes in law

The purpose of the program is to apply efficient and economical methods to the creation, utilization,

Prepared By: DS

Dept Review:

City Manager Review: YK

City Attorney Review: CFN

maintenance, retention, preservation and disposal of all records managed by the City.

The retention periods are in compliance with all laws and are standard business practice for California cities.

The updated retention schedules were written interactively with opportunities for input from representatives from all departments. The proposed revisions to the policy are illustrated in blue and redline text. They provide clear, specific records descriptions and retention periods, and apply current law and technology to the management of Morro Bay's records. By identifying which department is responsible for maintaining the original record, and by establishing clear retention periods for different categories of records, it is anticipated Morro Bay will realize savings in labor costs, storage costs, free filing cabinet and office space, and realize operational efficiencies.

Highlights of City Council retention policies include City Council agenda packets, recordings of City Council meetings, minutes, resolutions, and ordinances are all retained permanently.

It is standard business practice for California cities to authorize the routine destruction of records that have exceeded their adopted retention period, upon the request of the Department Head and with the consent in writing of the City Clerk and City Attorney, which is provided in Section 2 of the resolution. This will reduce storage costs and improve efficiency for the City.

It is also a standard business practice for California cities to authorize updates to the schedule without further action of the City Council; however, we have presented a more conservative approach: authorizing only minor updates without further Council action. Section 3 states, "Minor updates include changes in Department or Division names, improvements in descriptions, changes in comments, deleting records series that are no longer applicable, and/or what is scanned. Changes in the Total Retention and/or adding new records series must be presented to the City Council of the City of Morro Bay prior to taking affect."

CONCLUSION

The adoption of Resolution No. 57-23 is an important step in the continued effort to improve the City's records management practices. New employee and annual training are necessary to ensure the policies are understood and strictly adhered to by City staff.

ATTACHMENT

1. Resolution No. 57-23 with proposed Records Retention Schedule

RESOLUTION NO. 57-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ADOPTING A RECORDS RETENTION SCHEDULE, AUTHORIZING
DESTRUCTION OF CERTAIN CITY RECORDS, AND RESCINDING PREVIOUS
RESOLUTION NO. 76-19**

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

WHEREAS, the maintenance of numerous and excessive records is expensive, slows document retrieval, and is not necessary after a certain period of time for the effective and efficient operation of the government of the City of Morro Bay; and

WHEREAS, Section 34090 of the Government Code of the State of California provides a procedure whereby any City record which has served its purpose and is no longer required by law to be retained may be destroyed; and

WHEREAS, the State of California has adopted guidelines for retention periods for various government records; and

WHEREAS, the City Council adopted Resolution No. 76-19 adopting a records retention schedule on September 10, 2019; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY RESOLVE:

Section 1. Resolution No. 76-19 is hereby rescinded.

Section 2. The records of the City of Morro Bay, as set forth in the Records Retention Schedule, Exhibit A, attached hereto and incorporated herein by this reference, are hereby authorized to be destroyed as provided by Section 34090 *et seq.* of the Government Code of the State of California and in accordance with the provisions of said Records Retention Schedule upon the request of the Department Head and with the written consent of the City Clerk and City Attorney, without further action by the City Council.

Section 3. With the written consent of the City Clerk, City Manager, and City Attorney, minor updates, as defined below, are hereby authorized to be made to the Records Retention Schedule without further action of the City Council. Minor updates include changes in Department or Division names, improvements in descriptions, correction of non-substantive errors, changes in comments, deletion of records series that are no longer applicable, and changes in what is scanned. Such changes shall be reflected in a revised Records Retention Schedule (the original attached as Exhibit A).

Section 4. The term "records" as used herein shall include documents, instructions, books, microforms, electronic files, magnetic tape, optical media, or papers; as defined by the California Public Records Act.

Section 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Section 6. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held this 12th day of September 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

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AGENDA NO: A-7

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 7, 2023

FROM: Amy Watkins, Police Chief

SUBJECT: Approval of a One-Year Extension to the Contract with LensLock Inc. for Body Worn Cameras

RECOMMENDATION

Staff recommends the City Council direct the City Manager to execute a one-year extension with LensLock Inc., service provider of the Police Department's current Body Worn Camera (BWC) system.

ALTERNATIVE

Direct staff to not sign a one-year extension to the current contract with LensLock Inc. and engage in new Request for Proposal process for BWC systems.

FISCAL IMPACT

A one-year continuation of product/services totaling \$27,073.06 for the term July 1, 2023 – June 30, 2024.

BACKGROUND

Body-worn cameras provide officers with a reliable and compact tool to systematically and automatically record their field observations and encounters. They can be used for documentation purposes, to include interactions with victims, witnesses, and others during police-public encounters, arrests, and critical incidents.

Department Policy 423 requires every officer to be equipped with a portable recorder (BWC) issued by the department.

The current BWC system including services and product has been supplied by LensLock Inc. since 2018. The original five-year contract was awarded in July of 2018. The contract included equipment, online platform services, and professional services. Total cost paid for the five-year contract to date is \$132,609.79.

DISCUSSION

Technology associated with BWC systems has increased rapidly over the past five years. LensLock Inc. has performed well during the five-year contract with supplying updated equipment and online

Prepared By: AW

Dept Review: _____

City Manager Review: YK

City Attorney Review: LNL

platforms to the department.

As part of an ongoing commitment to providing the highest level of police service to the community, the department makes every effort to obtain the best services and products from our vendors. At the end of LensLock's five-year contract, staff requested a one-year extension rather than a five-year extension for the purpose of allowing staff to continue to evaluate the service and technology advancements made by LensLock, while evaluating other vendors to verify and confirm that LensLock Inc. continues to be the best service and product supplier in the BWC market.

CONCLUSION

Department staff conclude a one-year extension of the current contract with LensLock Inc. will provide options and opportunities to ensure the department is receiving the best available product and services for the price.

ATTACHMENT

1. Master Service Agreement Renewal



MASTER SERVICE AGREEMENT RENEWAL

This RENEWAL dated the 25th of July 2023, to the Master Service Agreement between LensLock Inc. (Vendor) and Morro Bay Police Department (Client) serves to provide a continuation of product/services under a one-year term based upon the original Agreement dated July 1st, 2019. This will include any addendums or adjustments that have been made to the Master Service Agreement during the original term period.

All current products and services will continue to be provided to the Client upon the execution of this Renewal and will be invoiced on an annual basis at the rate listed below to align with the existing payment terms of the original Agreement. See below for the schedule of future invoices for the use of these products and services by way of this agreement.

LensLock Equipment & Services Payment Breakdown:

Summary of New Contract Amount

Term	Amount
7/1/2023 – 6/30/2024	\$27,073.06
Grand Total	\$27,073.06

By signing this agreement both parties agree to the continuation of the products and services listed above and on the original Master Service Agreement and agree that these items shall still be considered valid as a continuation of the original contract.

Signature Page to Follow.





LensLock
East Coast Corporate Offices
6408 West Linebaugh Ave.
Suite 103
Tampa, FL 33625
T. 866-LENSLOCK
updates@lenslock.com
www.lenslock.com

CLIENT: City of Morro Bay Police Department:

(City of Morro Bay PD Representative)

(Date)

LENSLOCK, INC.:

(LensLock, Inc. Representative)

(Date)





AGENDA NO: A-8

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 7, 2023

FROM: Ted Schiafone, Harbor Director

SUBJECT: Approving a revised Consent of Landowner (COL) Form

RECOMMENDATION

Staff recommends the City Council approve a revised Consent of Landowner Form.

FISCAL IMPACT

While the fiscal impact of implementing this new form is likely to improve future revenue for the Harbor Department, it is not possible to quantify those results.

BACKGROUND

During this past year, staff had the opportunity to request an extension from Council for a COL for one of the Master Leaseholders that was planning to redevelop a lease site. Staff informed Council of the amount of time it takes to process the extension and that cost recovery should be considered. In addition, staff and Council discussed the reasoning to implement a penalty to the developer of the lease site for missing any future COL deadlines. Council requested staff to form a Harbor Advisory Board Ad Hoc Committee to review the COL form and make recommendations on its revision. The Ad Hoc Committee met multiple times over a 90-day period and conferred with other experts to identify all the issues and possible unintended consequences. One of the major issues with the current Consent of Landowner process is that the Master Lease Holder/Developer cannot control the process times of other City Departments or State and Federal Agencies.

The Ad Hoc Committee recommended the following five updates (in summary):

1. Include a penalty for missing deadlines equal to 1/30th of the Leaseholders base rent.
2. Include language that rewards the Master Lease Holder/Developer for completion of the redevelopment prior to the COL final deadline.
3. Provide a 3rd party adjudication process
4. Provide language to account for natural disaster, acts of God, etc.
5. Update the flowcharts for the Harbor Department Lease Management Policy document.

DISCUSSION

Staff attended several of the Ad Hoc Committee meetings, developed and reviewed the revised form with knowledgeable consultants and submitted the revised form to the Community Development for comments. It became evident that to keep the COL process on a timed schedule, the COL could only require the Master Lease Holder/Developer hold to a specific timed schedule. After receiving the recommendation from the HAB Ad-Hoc Committee, staff recommends the following Consent of Landowner form revisions:

Prepared By: TS

Dept Review: TS

City Manager Review: _YK_____

City Attorney Review: _JWP_____

1. The revised form sets deadlines for the Master Lease Holder/Developer to submit applications and reply to Departments and/or other Agencies. It does not set deadlines for Departments or other Agencies, as they are outside of the Master Lease Holder/Developer's control.
2. The daily penalty for a Master Lease Holder/Developer that misses a deadline is 1/30th of their base rent. This is a fair way to address large and small developments.
3. The revised Consent of Landowner form allows for contingencies, such as natural disaster, acts of God, etc.
4. The revised Consent of Landowner form does NOT allow for a 3rd party to adjudicate a dispute. Council has final decision on disputes.
5. The revised Consent of Landowner form does NOT allow for a reward for early completion. The Master Lease agreement could address that issue if necessary.
6. A revised flowchart has been developed and will be included as an addendum to the Lease Management Policy document.

CONCLUSION

Staff recommends the City Council approve a revised Consent of Landowner Form.

ATTACHMENTS

1. Harbor Advisory Board Ad Hoc Recommendations
2. Revised Consent of Landowner Form
3. Former Consent of Landowner Form
4. Revised Flow Charts

TO: Harbor Advisory Board, City Council, and Harbor Director
FROM: Working group on COL timeline incentives and penalties
SUBJECT: COL Recommendations

RECOMMENDATION

At the request of the City Council and Harbor Director, a working group of Harbor Advisory Board Members conducted an investigation and analysis of opportunities to improve the Consent of Landowner (COL) process; specifically, regarding incentivizing timely completion of construction milestones.

The working group involved local community representatives, conducted discovery on COL processes used in other California Tidelands Trust regions, and did a literature review of the existing City COL documentation.

The working group proposes the following changes to the City's COL process:

1. Inclusion of language in the COL agreement that institutes a penalty for delays of milestone completions such as, "The Applicants must meet the specified dates, or the City Council can deem this COL to be expired with 10-days' written notice to the Applicant or impose a penalty of 1/30th the base rent for each day, or portion thereof, that milestone was not met."
2. Inclusion of language in the COL agreement that institutes a reward for early completion of milestones such as "If Applicant completes all milestones before final timeline date, applicant receives 0% on percentage until the project completion date."
3. 3rd party adjudication of proposed timelines. Because the City and Applicant have competing incentives with regards to the project timeline, we recommend inclusion of a "timeline dispute adjudication" process in the City's COL documentation. We recommend that the cost of hiring a neutral third-party adjudicator be shared 50/50 between the City and the Applicant should the need arise.
4. Inclusion of examples of reasons for timeline extensions. We recommend inclusion of examples in the COL agreement such as, "If, due to any reason outside the control of Applicant (such as natural disasters, acts of god, materials shortages, etc.), as reasonably determined by the Harbor Director, then one or more extensions to any or all of these compliance dates may be granted without penalty by the City Council in its sole discretion."
5. Updates to the flow charts for the "NEW MASTER LEASE – Flow Chart" and "Expiring Lease/Lease Site Redevelopment – Flow Chart" to include steps for setting, aligning, and adjudicating timelines.

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

Consent For:

Redevelopment of Lease Site _____, _____ Embarcadero Road,
by _____

_____, as proposed to the City Council
On _____.

Site Location: _____

Property Owner: _____ Telephone: _____

Address: _____ City: _____ State: _____ Zip: _____

Applicants: _____ Telephone: _____

Address: _____ City: _____ State: _____ Zip: _____

I, as representative of the City of Morro Bay, the owner of record of the trust interest in the above noted land for which an application for a Conditional Use Permit is being requested by the Applicant, do certify Consent of Landowner (COL) is given for the preliminary site plans presented to the City Council on _____, and to be submitted to the City of Morro Bay Community Development Department for processing in accordance with the following timelines:

1. Obtain a Conditional Use Permit (CUP) from the City:

- **Applicants** must submit for Design Review within **30 days** after COL approval.
 - COL Approval _____ Submittal _____ Estimated _____
- **Applicants** must submit for CUP within **60 days** after Design Review approval.
 - COL Approval _____ Submittal _____ Estimated _____
- If Design Review is not required, then **Applicants** will submit a CUP application within **60 days** after COL approval.
 - COL Approval _____ Submittal _____ Estimated _____
- The City will schedule a City Council hearing for review and approval of the project within a reasonable time based upon agenda time and noticing requirements.

2. Other agency permits and approvals:

- **Applicants** shall submit to the California Coastal Commission (CCC) for a Coastal Development Permit (CDP) within **45 days** after City Council approval of the proposed project.
 - COUNCIL Approval _____ Submittal _____ Estimated _____
- **Applicants** shall submit to the Army Corps of Engineers for the appropriate Permit within **15 days** after CCC approval of the proposed project or before as warranted.

- CCC Approval _____ Submittal _____ Estimated _____
- **Applicants** shall submit to the Regional Water Quality Control Board (RWQCB) for the appropriate Permit within **15 days** after CCC approval of the proposed project or before as warranted.
 - COL Approval _____ Submittal _____ Estimated _____

3. Long-term lease and Financing:

- **Applicants** shall execute Master Lease Agreement **90 days** after Council approval of the proposed project.
 - COUNCIL Approval _____ Submittal _____ Estimated _____
- **Applicants** shall secure financing within **180 days** after Council approval of the proposed project.
 - i. Obtain evidence of available financing, acceptable to the Finance Director and City Attorney
 - ii. Submit a professionally prepared business plan.
 - iii. Submit a professionally prepared marketing plan.
 COUNCIL Approval _____ Submittal _____ Estimated _____

4. Return to City for project modifications by CCC or other agencies:

- **Applicants** shall submit to the City for any project amendments within **30 days** after CCC modification. This timeline may be amended if required by the other agencies for permit processing time.
 - CCC Mod. _____ Submittal _____ Estimated _____

5. Obtain a building permit from the City:

- **Applicants** shall submit to the City for a building permit within **120 days** after all agency approvals are complete.
 - AGENCY Approvals _____ Submittal _____ Estimated _____
- **Applicants** shall resubmit for building plan check comments on the following time schedule:
 1. **Applicants** shall resubmit within **90 days** after the first City complete plan check.
PLAN CHECK DATE _____ Submittal _____
 2. **Applicants** shall resubmit within **30 days** after minor corrections.
PLAN CHECK DATE _____ Submittal _____
 3. **Applicants** shall resubmit within **60 days** after major corrections.
PLAN CHECK DATE _____ Submittal _____
- The City shall issue a building permit within a reasonable time after all plan check comments have been satisfactorily corrected/completed by **Applicants**. This timeline

may be amended, for example, eelgrass surveys are required prior to issuance of building permits (see notes below).

6. Construction commencement dates:

- o **Applicants** shall commence construction within **120 days** after a building permit has been issued. "Commence construction" shall mean when **Applicants** have spent a minimum of \$_____ on hard construction costs.
 - BLDG PMT Issued _____ Start Date _____ Estimated _____
- o The following are allowable construction commencement delays and timing shall be coordinated with the City but in any case, no more than 12 months after issuance of building permit:
 - Pre-con eelgrass surveys:
 1. To be no more than 30 to 60 days before start of construction.
 2. Survey to be performed during the eelgrass growing season – April 1 to October 31. Unless otherwise approved by the appropriate agencies.

7. Construction completion:

- o The **Applicants** must complete construction for the approved project within **450 days** after construction commencement, as evidenced by a Certificate of Occupancy (C.O.) issued by the City.
 - Const. Com. _____ C.O. Date _____ Estimated _____

Applicants must meet the **specified dates**, or the City Council can deem this COL to be expired with 10-days' written notice to **Applicants** or impose a penalty of 1/30th the base rent for each day, or portion thereof, that milestone was not met.

If, due to any reason outside the control of **Applicants**, as reasonably determined by the Harbor Director, any of the above compliance dates is not met, then one or more extensions to any of those compliance dates may be granted without penalty by the City Council in its sole discretion.

Yvonne Kimball, City Manager

Date

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

Consent For:

Redevelopment of Lease Site **Embarcadero Road,**
by **doing business as**
as proposed to the City Council
on May 24, 2022, and negotiation of new lease.

Site Location: _____

Property Owner: City of Morro Bay Telephone: _____

Address: _____ City: Morro Bay State: CA Zip: 93442

Applicant: _____ Telephone: _____

Address: _____ City: San Luis Obispo State: CA Zip: 93401

I, as representative of the City of Morro Bay, the owner of record of the trust interest in the above noted land for which an application for a Conditional Use Permit is being requested by the Applicant, do certify Consent of Landowner is given for the preliminary site plans presented to the City Council on May 24, 2022 and to be submitted to the City of Morro Bay Community Development Department for processing in accordance with the following timelines:

1. The Applicant must file a complete application for a Conditional Use Permit for the project as-proposed, per the City Planned Development Overlay Zone and Concept Plan Submittal Requirements, with the Community Development Department by August 31, 2022 at 4:00 p.m. or this Consent of Landowner Agreement will expire on September 1, 2022.
2. The Applicant must obtain Concept Plan approval from the Planning Commission and City Council on or before April 30, 2023 at 4:00 p.m. or this Consent of Landowner Agreement will expire on May 1, 2023.
3. Prior to City approving any long-term lease, the Applicant must do all of the following:
 - a. obtain evidence of available financing for completion of the project, acceptable to the Finance Director and City Attorney. Such evidence could include letters of interest or commitment from accredited financiers, or proof of sufficient cash reserves committed to fund the proposed project, on or before June 30, 2023 at 4:00 p.m. or this Consent of Landowner Agreement will expire on July 1, 2023;
 - b. submit a professionally-prepared business plan for the proposed redevelopment that includes industry-standard elements expected of such a plan on or before June 30, 2023 at 4:00 p.m. or this Consent of Landowner Agreement will expire on July 1, 2023; and
 - c. submit a professionally-prepared marketing plan for the proposed redevelopment that includes industry-standard elements expected of such a plan on or before June 30, 2023 at

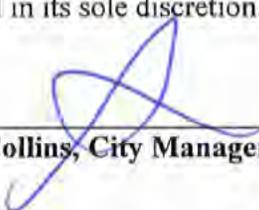
4:00 p.m. or this Consent of Landowner Agreement will expire on July 1, 2023.

4. The Applicant, after obtaining Concept Plan approval by the Planning Commission and City Council, shall negotiate in good faith for a new lease on the lease site, and shall have until June 30, 2023 to do so, or this Consent of Landowner will expire on July 1, 2023.
5. Once the new lease is effective, the Applicant shall secure financing for the proposed project as evidenced by a Deed of Trust approved by the City Council on or before 120 days after the lease's effective date.

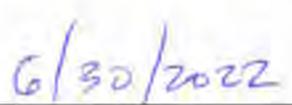
The following conditions and deadlines shall be incorporated into the new lease agreement, unless negotiated otherwise in said agreement:

6. The Applicant must file a complete application for a Coastal Development Permit from the Coastal Commission, and any other necessary agency permits, for the approved Concept Plan for the project on or before July 31, 2023 at 4:00 p.m.
7. The Applicant must obtain a Coastal Development Permit and other permits on or before December 31, 2023 at 4:00 p.m.
8. The Applicant must file a complete application for Precise Plan by the Planning Commission and City Council approval for the project by March 31, 2024 at 4:00 p.m.
9. The Applicant must obtain Precise Plan approval from the Planning Commission and City Council for the project on or before July 31, 2024 at 4:00 p.m.
10. The Applicant must file for Building Plan approval by the Building Department for the project on or before October 31, 2024, at 4:00 p.m.
11. The Applicant must obtain Building Plan approval on or before January 31, 2025 at 4:00 p.m.
12. The Applicant must commence construction for the approved project on or before April 30, 2025 at 4:00 p.m. "Commence construction" shall mean when the Applicant has spent a minimum of on hard construction costs.
13. The Applicant must complete construction for the approved project on or before April 30, 2026, as evidenced by a Certificate of Occupancy issued by the City.

If, due to any reason within or outside the control of Applicant, as reasonably determined by the City Manager, one or more extensions to any or all of these compliance dates may be granted by the City Council in its sole discretion.

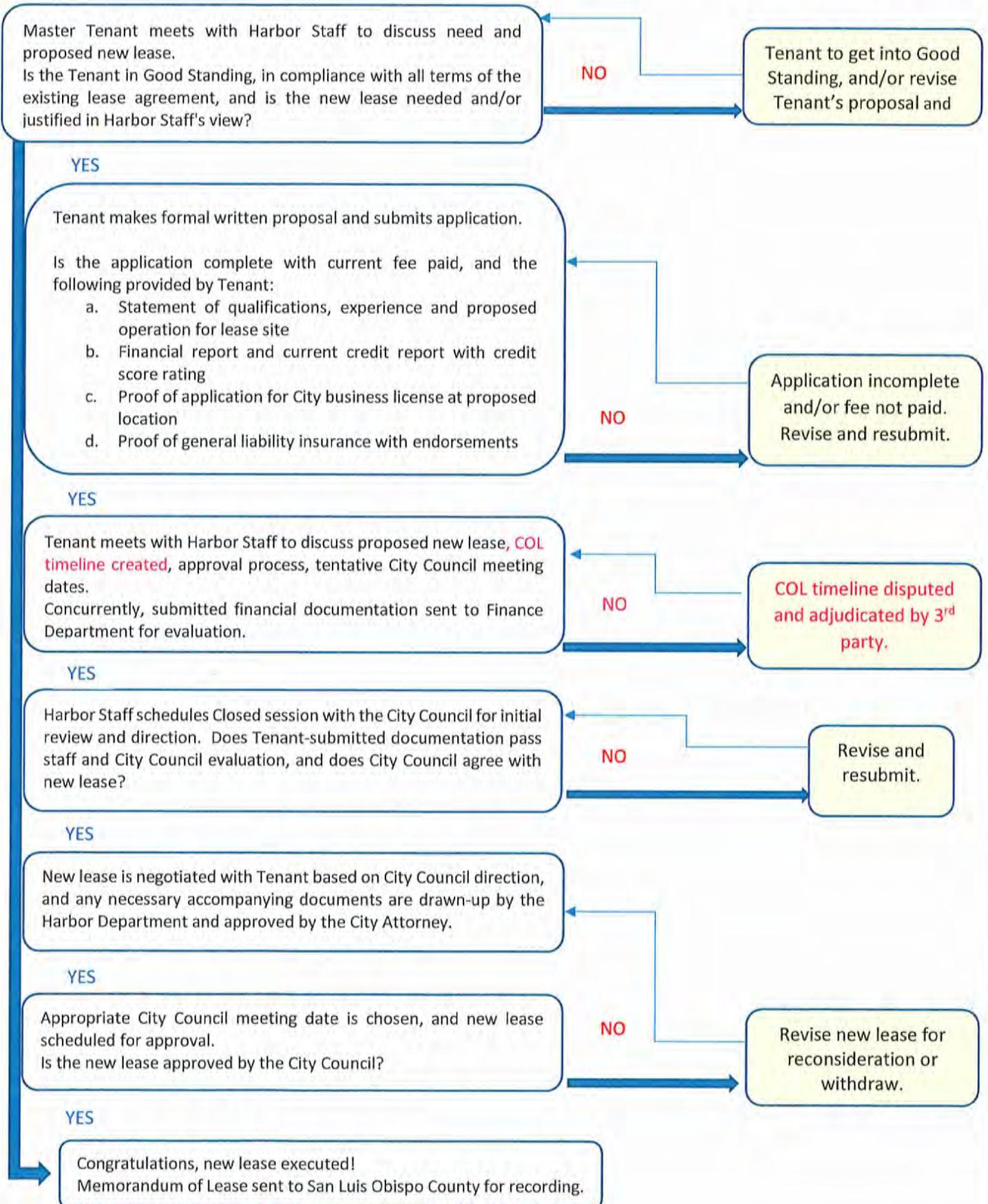


Scott Collins, City Manager

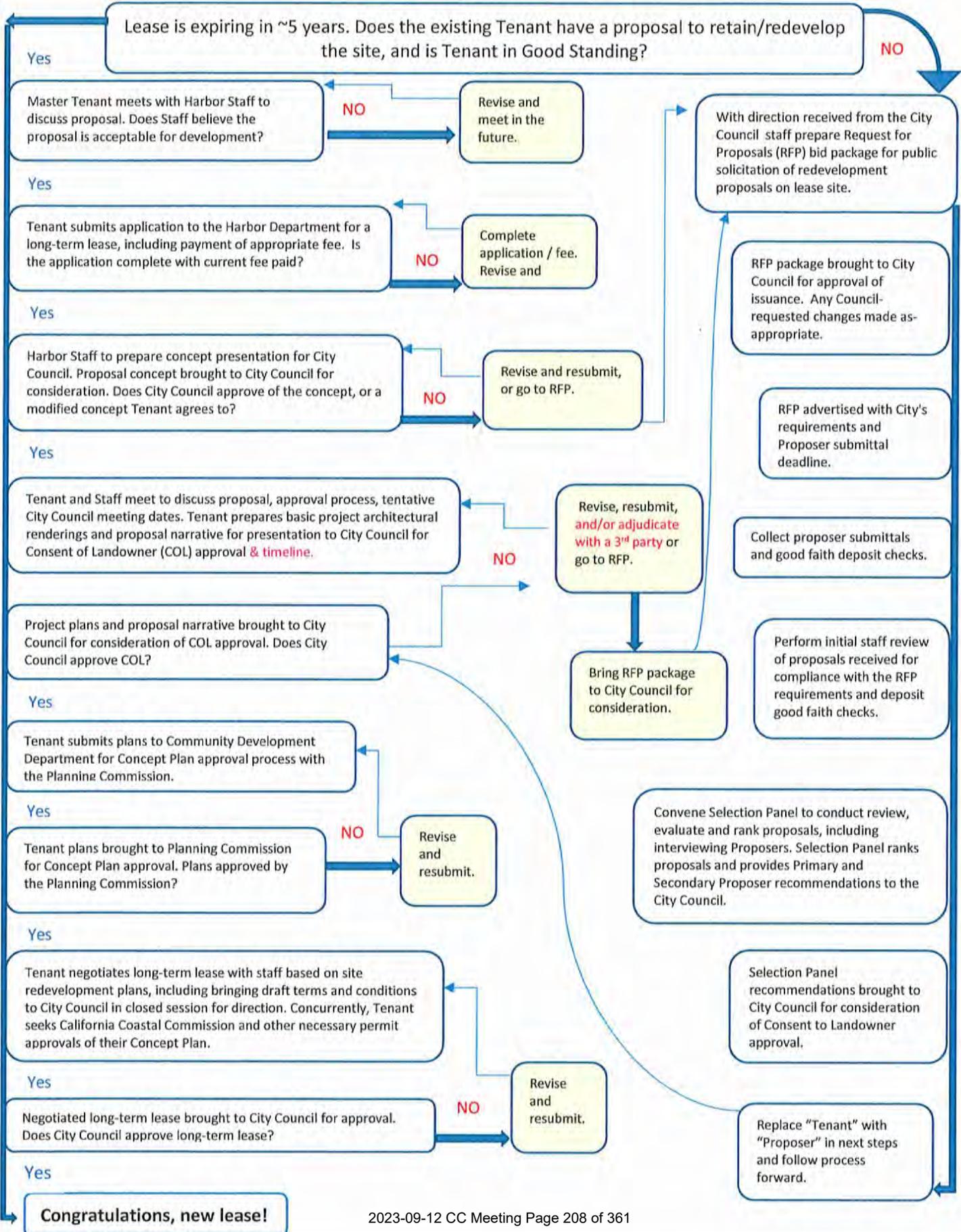


Date

NEW MASTER LEASE - Flow Chart



Expiring Lease/Lease Site Redevelopment – Flow Chart





AGENDA NO: A-9

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: August 31, 2023

FROM: Ted Schiafone, Harbor Director

SUBJECT: Accept \$100,000 grant funds from Commercial Fisherman’s Organization of Morro Bay, Inc., (MBCFO), amend Harbor CIP budget and approve use of funds

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 58-23, approving the acceptance of the MBCFO grant funds of \$100,000 designated for the Harbor Commercial Fishing Dock Repair Project, approve the MOU, approve amending the Harbor budget for said amount and appropriating the funds for both the revenues (923-9960-3390) and expenditures in the Harbor CIP fund (923), and adding them to the “Storm Recovery-Dock Repairs” CIP project account number 923-9960-6106.

FISCAL IMPACT

Acceptance of the \$100,000 grant funds from MBCFO will be added towards the Harbor Commercial Fishing Dock Repair Project. The Harbor Department had budgeted \$200,000 in the 2023/24 budget year to repair storm damaged commercial fishing docks. The MBCFO grant will increase the funds available for the dock repair project to a total of \$300,000.

BACKGROUND

During the winter storms in January and March of 2023 significant damage occurred at Morro Bay Harbor to the commercial fishing docks. The docks continue to deteriorate due to constant stress of tidal surge and winds. Some commercial fishing docks are not usable in their current condition.

DISCUSSION

The Harbor commercial fishing docks have reached their useful life. They have not been maintained due to financial constraints and recent storms have weakened them further. Daily tide changes are adding stress to the already damaged structural components. The Harbor Department does not have adequate reserves or anticipated earnings to replace docks and pilings. Even if adequate reserves or earnings were available, it would take years to complete a dock replacement project.

Future dock failures are imminent. If we don’t act, we have the potential to lose slip rent revenue, which compounds our current financial stability. Staff recommends an interim plan to repair the docks in such a manner they would remain in service for at least 8-10 more years. Substantial dock repairs, like the recent emergency dock repair, allows the Harbor Department time to develop a long-term financial plan with sustainable annual revenue.

Staff shall advertise a bid package to find a contractor with experience, equipment and schedule that

Prepared By: TS

Dept Review: TS

City Manager Review: _YK_____

City Attorney Review: _JWP_____

can accommodate these substantial repairs and will bring back a contract for Council approval at a future meeting.

CONCLUSION

Staff recommend the City Council adopt Resolution No. 58-23, approving the acceptance of the MBCFO grant funds of \$100,000 designated for the Harbor Commercial Fishing Dock Repair Project, approve the MOU, approve amending the Harbor budget for said amount and appropriating the funds for both the revenues and expenditures in the Harbor CIP fund (923), and adding them to the “Storm Recovery-Dock Repairs” CIP project at account 923-9960-6106.

ATTACHMENTS

1. Resolution No. 58-23
2. MOU

RESOLUTION NO. 58-23

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING THE CITY OF MORRO BAY TO ENTER
INTO A FY 2023/2024 GRANT AGREEMENT WITH THE COMMERCIAL
FISHERMAN'S ORGANIZATION OF MORRO BAY IN THE AMOUNT OF \$100,000.00**

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

WHEREAS, the City of Morro Bay has authority over State tidelands within its jurisdictional boundaries, including, but not limited to, the commercial fishing slip; and

WHEREAS, the commercial fishing slips are in need of repair and through its City Council allocated \$200,000 for the Repair Project which is insufficient to complete the slip repair project; and

WHEREAS, the Commercial Fisherman's Organization Of Morro Bay agreed to assist the City of Morro Bay by providing funding for the completion of the commercial fishing slip repair project through a grant agreement; and

WHEREAS, the funding will enable the Harbor Department to continue to provide designated commercial fishing slips to qualified commercial fishing vessels; and

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

1. The City is hereby authorized to enter into a FY 2023/2024 grant agreement in the amount of \$100,000.00 for commercial slip repairs with the Commercial Fisherman's Organization Of Morro Bay.
2. City Manager, or designee, is hereby authorized to act as the City's agent in regard to all aspects of the grant contract agreement.
3. The FY 2023-24 Adopted Budget is amended to increase the revenue budget in the Harbor Capital Improvement Fund by \$100,000 (923-9960-3390) and the expenditure budget by \$100,000 (923-9960-6106) to reflect the expenditure of these funds on their intended use.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of September, 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

Carla Wixom, Mayor

ATTEST:

Dana Swanson, City Clerk

GRANT AGREEMENT
BY THE COMMERCIAL FISHERMAN'S ORGANIZATION OF MORRO BAY, INC.
TO THE CITY OF MORRO BAY AND

THIS AGREEMENT is made and entered into this ____ day of _____, 2023, and is effective as of the 1st day of July, 2023, by and between the CITY OF MORRO BAY, a municipal corporation of the State of California (hereinafter GRANTEE), and COMMERCIAL FISHERMAN'S ORGANIZATION OF MORRO BAY, INC., a California nonprofit corporation, (hereinafter GRANTOR).

WITNESSETH

WHEREAS, GRANTEE has authority over State tidelands within its jurisdictional boundaries, including, but not limited to, the commercial fishing slips shown on Exhibit A (Slips); and

WHEREAS, the Slips are in need of repair (Repair Project); and

WHEREAS, GRANTEE, through its City Council allocated \$200,000 for the Repair Project (City-budgeted Amount); and

WHEREAS, the City-budgeted Amount is insufficient to complete the Repair Project; and

WHEREAS, GRANTOR desires to assist GRANTEE by providing funding for the complete of the Repair Project.

NOW, THEREFORE, THE PARTIES AGREE, as follows:

1. Subject to the terms of this Agreement, on or before June 30, 2024, Grantor agrees to remit to GRANTEE \$100,000 (Grant) for GRANTEE to use solely for the Repair Project.
2. GRANTEE shall use the Grant only to supplement the City-budgeted Amount and only for actual expenditures for the Repair Project.
3. GRANTEE shall cause the Repair Project to be commenced on or before December 1, 2023, (Commencement Date) and completed on or before December 31, 2025, (Completion Date), unless delayed by any cause not the fault of GRANTEE.
4. Unless delayed by any cause not the fault of GRANTEE, GRANTEE shall return to GRANTOR (i) the total amount of the Grant if the Commencement Date is not met and (ii) that amount of the Grant not spent by the Completion Date. Such repayment shall be made within 30-days after GRANTEE receives written notice from GRANTOR demanding such repayment.
5. Neither GRANTOR nor GRANTEE may assign any rights or obligations created by this agreement to any other person without the prior approval of the other party.

01181.0024/914492.1

6. The terms and conditions of this Agreement can only be amended in writing approved and signed by GRANTOR and GRANTEE.

7. MISCELLANEOUS PROVISIONS

A. The Caption

The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of the interpretation.

B. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party shall have any claim or right of action hereunder for any cause whatsoever.

C. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

D. No Pledging of GRANTEE'S Credit

Under no circumstances shall GRANTOR have the authority or power to pledge the credit of GRANTEE or incur any obligation in the name of GRANTEE.

E. Venue

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and GRANTOR covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

H. Non-liability of GRANTEE Officers and Employees

No officer or employee of GRANTEE shall be personally liable to the GRANTOR, or any successor in interest, in the event of any default or breach by GRANTEE or for any amount which may become due to GRANTOR or to its successor, or for breach of any obligation of the terms of this Agreement.

I. Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above set forth.

City of Morro Bay

Commercial Fisherman's Organization of
Morro Bay, Inc.

City Manager

Tom Hafer, President

APPROVED AS TO FORM:

Jeremiah O'Brien, Vice President

Chris Neumeyer, City Attorney

EXHIBIT A – Depiction of Slips



AGENDA NO: A-10

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 7, 2023

FROM: Ted Schiafone, Harbor Director

SUBJECT: Adoption of Resolution No. 59-23 Approving a Consent of Landowner Document for Lease Site 62/62W (Morro Bay Paddle Sports, 551 Embarcadero)

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 59-23, approving a Consent of Landowner (COL) document for Morro Bay Paddle Sports, lease site 62/62W as presented.

FISCAL IMPACT

Annual rent started in September 2019 at \$13,000/year with annual CPI adjustments. There is little fiscal impact until the site can be re-developed. The site is currently on the new lease terms and should provide a modest positive fiscal impact once re-developed and fully utilizes all available space for revenue generating purposes.

BACKGROUND

Council approved a 5-year Interim Lease Agreement for Lease Site 62/62W, formerly known as Kayak Horizons, in September 2019. The site is being operated by Todd and Tamara Baston and subleases to Morro Bay Paddle Sports (MBPS). The Bastons hold the lease on Gray's Inn and Gallery which is adjacent to this site. The Bastons obtained the lease site through an RFP process and are working towards a redevelopment plan.

DISCUSSION

Now that the Baston's are ready to move forward to submit for Conceptual Review, it is appropriate that the City Council approve a Consent of Landowner (COL) to give the Baston's legal permission to move forward to Concept Plan approval and executing a long-term lease.

CONCLUSION

Staff recommend the City Council adopt Resolution No. 59-23, approving a Consent of Landowner (COL) document for Morro Bay Paddle Sports, lease site 62/62W as presented.

Completion of the redevelopment of this lease site will modernize and upgrade this property, and ultimately result in additional revenues to the City. The Baston's have diligently pursued their vision for the site under the requirement of this interim lease.

ATTACHMENTS

1. Consent of Landowner for redevelopment of Lease Site 62/62W
2. Resolution No. 59-23

Prepared By: TS

Dept Review: TS

City Manager Review: YK

City Attorney Review: JWP

RESOLUTION NO. 59-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING CONSENT OF LANDOWNER DOCUMENT
FOR TODD AND TAMARA BASTON,
DOING BUSINESS AS MORRO BAY PADDLE SPORTS,
TO REDEVELOP LEASE SITE 62/62W**

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

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

WHEREAS, Todd and Tamara Baston are the current interim master leaseholder at Lease Site 62/62W; and

WHEREAS, Under the interim lease, Todd and Tamara Baston are required to submit for the City's consideration an acceptable redevelopment plan for the lease site; and

WHEREAS, Todd and Tamara Baston have submitted their preliminary site plans for redevelopment and had it was considered on May 23, 2023, by the City Council for input; and

WHEREAS, Todd and Tamara Baston will now be going forward submit the preliminary site plans for redevelopment to the City of Morro Bay Community Development Department for processing in accordance with the timeline stated in the Consent of Landowner document; and

WHEREAS, Todd and Tamara Baston intend to have a proposed lease for the site held and operated by December of 2024.

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

1. The attached Consent of Landowner agreement provides Todd and Tamara Baston the permission and authority to submit their Lease Site 62/62W redevelopment plans for Conditional Use Permit approval by the City.
2. The City Manager is hereby authorized to execute said Consent of Landowner agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of September 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

Carla Wixom, Mayor

ATTEST:

Dana Swanson, City Clerk

City of Morro Bay

Tidelands Trust Grant Properties

Consent of Landowner Agreement Form

Consent For:

**Redevelopment of Lease Site 62/62W, 551 Embarcadero Road,
by Todd and Tamara Baston, doing business as
Morro Bay Paddle Sports, as proposed to the City Council
On June 27, 2023.**

Site Location: Lease Site 62/62W, 551 Embarcadero, Morro Bay, CA 93442

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

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

Applicants: Todd and Tamara Baston Telephone: 805-772-3911

Address: 561 Embarcadero City: Morro Bay State: CA Zip: 93442

I, as representative of the City of Morro Bay, the owner of record of the trust interest in the above noted land for which an application for a Conditional Use Permit is being requested by the Applicant, do certify Consent of Landowner (COL) is given for the preliminary site plans presented to the City Council on May 23, 2023, and to be submitted to the City of Morro Bay Community Development Department for processing in accordance with the following timelines:

1. Obtain a Conditional Use Permit (CUP) from the City:

- **Applicants** must submit for Design Review within **30 days** after COL approval.
 - COL Approval _____ Submittal _____ Estimated - October, 2023
- **Applicants** must submit for CUP within **60 days** after Design Review approval.
 - COL Approval _____ Submittal _____ Estimated - January, 2024
- If Design Review is not required, then **Applicants** will submit a CUP application within **60 days** after COL approval.
 - COL Approval _____ Submittal _____ Estimated - November, 2023
- The City will schedule a City Council hearing for review and approval of the project within a reasonable time based upon agenda time and noticing requirements.

2. Other agency permits and approvals:

- **Applicants** shall submit to the California Coastal Commission (CCC) for a Coastal Development Permit (CDP) within **45 days** after City Council approval of the proposed project.
 - COUNCIL Approval _____ Submittal _____ Estimated-November,2024
- **Applicants** shall submit to the Army Corps of Engineers for the appropriate Permit within **15 days** after CCC approval of the proposed project or before as warranted.

- CCC Approval _____ Submittal _____ Estimated – May 2025
- **Applicants** shall submit to the Regional Water Quality Control Board (RWQCB) for the appropriate Permit within **15 days** after CCC approval of the proposed project or before as warranted.
 - COL Approval _____ Submittal _____ Estimated - May 2025

3. Long-term lease and Financing:

- **Applicants** shall execute Master Lease Agreement **90 days** after Council approval of the proposed project.
 - COUNCIL Approval _____ Submittal _____ Estimated-December 2024
- **Applicants** shall secure financing within **180 days** after Council approval of the proposed project.
 - i. Obtain evidence of available financing, acceptable to the Finance Director and City Attorney
 - ii. Submit a professionally prepared business plan.
 - iii. Submit a professionally prepared marketing plan.

COUNCIL Approval _____ Submittal _____ Estimated - March 2025

4. Return to City for project modifications by CCC or other agencies:

- **Applicants** shall submit to the City for any project amendments within **30 days** after CCC modification. This timeline may be amended if required by the other agencies for permit processing time.
 - CCC Mod. _____ Submittal _____ Estimated - June 2025

5. Obtain a building permit from the City:

- **Applicants** shall submit to the City for a building permit within **120 days** after all agency approvals are complete.
 - AGENCY Approvals _____ Submittal _____ Estimated–January 2026
- **Applicants** shall resubmit for building plan check comments on the following time schedule:
 1. **Applicants** shall resubmit within **90 days** after the first City complete plan check.
PLAN CHECK DATE _____ Submittal _____
 2. **Applicants** shall resubmit within **30 days** after minor corrections.
PLAN CHECK DATE _____ Submittal _____
 3. **Applicants** shall resubmit within **60 days** after major corrections.
PLAN CHECK DATE _____ Submittal _____
- The City shall issue a building permit within a reasonable time after all plan check comments have been satisfactorily corrected/completed by **Applicants**. This timeline

may be amended, for example, eelgrass surveys are required prior to issuance of building permits (see notes below).

6. Construction commencement dates:

- **Applicants** shall commence construction within **120 days** after a building permit has been issued. “Commence construction” shall mean when **Applicants** have spent a minimum of \$50,000 on hard construction costs.

- BLDG PMT Issued _____ Start Date _____ Estimated – May 2026

- The following are allowable construction commencement delays and timing shall be coordinated with the City but in any case, no more than 12 months after issuance of building permit:

- Pre-con eelgrass surveys:

- 1. To be no more than 30 to 60 days before start of construction.
 - 2. Survey to be performed during the eelgrass growing season – April 1 to October 31. Unless otherwise approved by the appropriate agencies.

7. Construction completion:

- The **Applicants** must complete construction for the approved project within **450 days** after construction commencement, as evidenced by a Certificate of Occupancy (C.O.) issued by the City.

- Const. Com. _____ C.O. Date _____ Estimated - August 2027

Applicants must meet the **specified dates**, or the City Council can deem this COL to be expired with 10-days’ written notice to **Applicants** or impose a penalty of 1/30th the base rent for each day, or portion thereof, that milestone was not met.

If, due to any reason outside the control of **Applicants**, as reasonably determined by the Harbor Director, any of the above compliance dates is not met, then one or more extensions to any of those compliance dates may be granted without penalty by the City Council in its sole discretion.

Yvonne Kimball, City Manager

Date

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AGENDA NO: A-11

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: August 29, 2023

FROM: Dana Swanson, City Clerk

SUBJECT: Consideration of Appointment of Doug Hill to the Public Works Advisory Board

RECOMMENDATION

Staff recommends the City Council appoint Doug Hill to the Public Works Advisory Board (“PWAB”) to fill an unscheduled vacancy for the remainder of a term through January 31, 2024.

ALTERNATIVES

Direct staff to begin a recruitment to fill the unscheduled vacancy.

FISCAL IMPACT

There is no fiscal impact.

BACKGROUND/DISCUSSION

At the January 24, 2023 City Council meeting, the Council interviewed and made appointments to various advisory bodies. Doug Hill was interviewed for the Public Works Advisory Board at that time and had expressed interest in serving should a future vacancy occur.

On August 7, 2023, staff was notified by Doug Rogers that, for personal and professional reasons, he was resigning from the Public Works Advisory Board. Mr. Rogers’s term would have expired on January 31, 2024.

Since Mr. Hill had already been interviewed at the January 24, 2023 City Council meeting, received favorable comments and the next highest number of votes by the City Council, staff recommends the City Council consider the appointment of Mr. Hill to fill the current unscheduled vacancy for a term ending January 31, 2024.

CONCLUSION

Staff recommends the City Council review Mr. Hill’s application, and by vote, decide if they wish to fill the vacant PWAB position. This term will expire on January 31, 2024.

ATTACHMENT

1. Doug Hill’s Application

Prepared By: <u> HG/DS </u>	Department Review: <u> </u>
City Manager Review: <u> YK </u>	City Attorney Review: <u> CFN </u>

2023-09-12 CC Meeting Page 221 of 361



CITY OF MORRO BAY ADVISORY BODY APPLICATION

RECEIVED
City of Morro Bay

DEC 13 2022

Administration

Contact Information

Full Name Douglas Hill	Home Phone
Street Address [REDACTED]	Cell Phone [REDACTED]
Mailing Address (if different than above)	Work Phone
City, State, Zip Code Morro Bay CA 93442	Email Address [REDACTED]

Do you live within the Morro Bay City Limits?

Yes

No

Are you registered to vote in the City of Morro Bay?

Yes

No

Advisory Body Information

I would like to be considered for appointment to the following Commission/Advisory Body:

- Citizens Oversight and Citizens Finance Advisory Committee*
- Harbor Advisory Board
 - Marine-Oriented Business
 - Waterfront Leaseholder
 - Recreational Boating
 - Member-at-Large
 - South Bay/Los Osos Representative
 - Morro Bay Commercial Fisherman's Association (MBCFO)
 - Alternate Member to MBCFO
- Planning Commission*
- Public Works Advisory Board*
- Recreation & Parks Commission
- Tourism Business Improvement District Advisory Board
 - Hotelier (Member-at-Large)
 - Hotelier (No. of rooms _____)
 - Vacation Rental Representative
 - Community Member-at-Large*
- Visit SLO County (VSLOC) Board of Directors - County and Regional Board

* Must be a resident and registered to vote in the City of Morro Bay during the term of appointment.

Employment Information

Present or Last Employer retired	Position or Occupation
Employer Address	How Many Years
City, State, Zip Code	

Education and Training

Institution Name, City and State	Major, Degree or Area of Study
San Jose State Univ	Biology
Calif.State Contractors Lic (inactive)	

Qualifications and Interests

Please use the space provided, or attach a separate document, responding to the questions below. If desired, you may attach a resume or other additional documentation for consideration.

- Are you currently or have you previously served on a board, commission, committee, or other public body, if so, which one and when? What do you feel were the advisory body's major accomplishment(s) during your tenure?
I served on the boards of :
The Los Gatos Lions Club 1985-1987. Various town volunteer projects and fund raisers.
Plant 51 Home Owners Assn. San Jose 2011-2017. High rise HOA with 265 units and over 500 residents. (projects included soft water system and EV charging stations,
- What experience, technical training, and skill qualify you for an appointment, considering your experience and activities in business, labor, professional, social, or other organization?
I have been a Project manager for several large scale general contractors (A-1) and have worked on many large and small scale public works projects throughout my career (40 + years) including, parks, highway projects, landscaping projects, water works, golf courses. I have been a RME (responsible managing employee)
- Why are you interested in serving on this advisory board, commission, or committee?
I am a full time resident and can bring a wealth of personal experience and knowledge to the Board.

I have read the Advisory Bodies Handbook regarding the expectations and responsibilities of this Commission/Advisory Board/Committee and, should I be appointed, am able and willing to devote the necessary time to perform the required duties.



(Signature)

12/11/22

(Date)

This application is a public record that be disclosed to the public upon request. All appointees to a City Commission, Advisory Board, or Committee will be required, in accordance with State law to file a "Statement of Economic Interest Form 700" which remains available for public inspection.

Completed applications may be emailed to cityclerk@morrobayca.gov or mailed to: Office of the City Clerk, City Hall, 595 Harbor Street, Morro Bay, CA 93442

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**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
RECOGNIZING THE 65TH ANNIVERSARY
OF THE ESTERO BAY UNITED METHODIST CHURCH**

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

WHEREAS, the Estero Bay United Methodist Church traces its origin to a worship service in July of 1957, conducted by the Rev. William F. Oglesby in the building of the International Order of Odd Fellows (IOOF) at Harbor Street and Piney Way in Morro Bay; and

WHEREAS, the church was founded on April 27, 1958; and

WHEREAS, the subsequent growth of the church led to the purchase of six acres of a dairy farm in northeast Morro Bay for \$12,000; and

WHEREAS, with the Rev. Benjamin Torres, Jr. and successive pastors, the church was able to construct its present building on that site at 3000 Hemlock Avenue; and

WHEREAS, with Rev. Rex Britt as pastor, a new building was consecrated September 23, 1962; and

WHEREAS, in the years during Rev. Steve Islander pastorate, the church expanded its commitment to serve the Morro Bay community with the installment of an eight-sided Peace Pole; and through programs for families at its Pre-School and After-School Children Center, and Community Garden; and

WHEREAS, in 2008 the congregation welcomed its first female pastor, Rev. Paula Hulet, who guided us to becoming a Reconciled United Methodist Church; and

WHEREAS, during COVID years the church continued to focus on its ministries: serving our community and increasing our discipleship in the community in new ways by using Zoom as a tool to broadcast Sunday Worship Services; and

WHEREAS, for six and one-half decades the church has strived to maintain traditions of the past while continuing its role in ministry throughout the Estero Bay area; and

NOW, THERE FORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby recognize its important contributions to our community and congratulate the Estero Bay United Methodist Church on its' 65th Anniversary.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
seal of the City of Morro Bay to be
affixed this 12th day of September,
2023

CARLA WIXOM, MAYOR
City of Morro Bay, California

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AGENDA NO: B-1

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 5, 2023

FROM: Nancy Hubbard, Contract Planner

SUBJECT: Appeal of the Planning Commission approval of a proposed Mixed Use Residential/Live-work project that includes 5 attached residential dwellings, 2 with live/work space on the garage level located at 1140 Allesandro Avenue

RECOMMENDATION:

Staff recommends the City Council adopt Resolution No 60-23, denying the appeal and upholding the Planning Commission (or PC) approval of the Coastal Development Permit CDP22-004, Conditional Use Permit CUP22-06 and TTM22-04 for the proposed tentative map and new mixed-use project to be located at 1140 Allesandro Avenue.

ALTERNATIVE(S)

1. Uphold the appeal and send the project back to Planning Commission with direction from City Council on desired changes.

APPELLANT:

Betty Winholtz

LEGAL DESCRIPTION:

1140 ALLESANDRO AVE

APN :

066-031-008



Prepared By: NH

Dept Review: SG

City Manager Review: YK

City Attorney Review: LNL

SUMMARY OF PLANNING COMMISSION APPROVAL (August 1, 2023): The PC thoroughly discussed the project and found it in compliance with the Residential Design Guidelines, the General Plan and the Coastal Land Use Plan as well as the mixed-use designation in the current zoning code. The PC also indicated the project was well designed, including adequate visual interest and building articulation. The project was designed with a 2-story residential and pedestrian friendly frontage along Marengo, providing a good buffer and transition between single family residential uses on Marengo and the light industrial/commercial uses existing along Quintana and Allesandro Street.

The PC asked many questions of Eric Riddiough, City Engineer, related to the public improvement requirements and the requested abandonment of 5 feet of right-of-way along Marengo and concluded that approving the right-of-way abandonment resulted in a better project and more appealing project frontage along Marengo Drive.

Following a two-hour discussion, including public participation, the PC approved the project in a 4/1 vote with three conditions added to the Resolution. The added conditions relate to (1) Director level review of any sculpture or artwork to be included in the landscaped area in the vacant portion of the public right-of-way at the Allesandro and Marengo intersection; (2) a recommendation for Public Works to review traffic patterns and future designs for the public improvements, also at that intersection; and (3) for the CC&R's to be submitted for the final tentative tract map to include a statement making future owners of these residential/live-work units aware that they are across the street from an industrial/commercial area. These additions are included as Planning Conditions #12, 17 and 18 in Resolution13-23 included in Exhibit C.

APPEAL OF PLANNING COMMISSION DECISION:

Betty Winholtz filed an appeal on August 11, 2023 objecting to the Planning Commission's approval of the Coastal Development Permit (CDP22-004), Conditional Use Permit (CUP22-06) and the Tentative Tract Map (TTM22-04).

GROUNDS FOR APPEAL: (paraphrased for clarity)

The appeal did not include specific information, presenting difficulty with respect to fairly apprising the Council of the substance of appellant's objections so that Council has a fair opportunity to evaluate and respond to such objections. The appeal referred to the following objections in general terms and staff offers the following responses based on their notional understanding:

1. Vacation of the 5-foot section of public right-of-way along Marengo Drive.
Staff Response: The City Engineer has the authority to make decisions related to abandonment or vacation of City right-of-way. In this case, a 4-foot wide by 113-foot-long area was approved for abandonment by the City in 1992. However, it was later discovered that the issue they were trying to resolve at that time, an existing 1960's era semisubterranean building, extended more than 4 feet into the public right-of-way. Upon the recent review, the applicant and the Public Works Department determined that it was a better, more consistent street design to increase the abandonment request to 5 feet for the length of the site's Marengo frontage, tapering off at the "Y" intersection of Marengo and Allesandro.
2. Inconsistency with what the building is being called and what facilities are included in the 'drawing' plans.

Staff Response: *The zoning code allows mixed use that includes residential uses with a commercial component. The Land Use Plan identifies live/work as an ideal use to buffer between commercial/industrial uses and residential uses. The project was designed to meet this criterion. The residential units can be described with the common term “attached residential units” or more commonly known as townhome units.*

3. Setbacks.

Staff Response: *Two versions of this project were submitted for a conceptual review by the Planning Commission in October 2021. A conceptual review is a detailed review by the Planning Commission resulting in comments or suggestions for aspects of the project that can be improved. Both versions of the project that were presented at that time included the 5-foot setbacks along Marengo and 5-foot setbacks in certain places along Allesandro. Planning Commission determined that the reduced setbacks resulted in a better design, and they provided the applicant with suggestions and comments to incorporate before bringing the project back for a decision. The applicant finalized the details of the plan preferred by the PC and worked through the public works conditions to produce the project that was presented to PC on August 1, 2023 for approval. PC reviewed this project and noted in the presentation that they appreciated that the applicant revised the project in consideration with the input they provided in 2021. The Planning Commission has the discretion to approve reduced setbacks if it results in a better design and this was approved in the recent hearing.*

4. Building Orientation.

Staff response: *There is no context in the appeal that explains what the appellant is objecting to related to building orientation. However, given the site shape and topography, as well as two differing zoning districts on each side of the site, the Planning Commission found that the placement of the building on the site as approved, meets several findings related to the MCR Special Development standards, such as landscaping buffers along the streets and placement of the project on the site to allow the commercial portion to be visually separate from the residential portion.*

5. Impact to neighborhood.

Staff Response: *Again, there is no context related to anything specific the appellant is objecting to. There was public comment about traffic and parking, although this project will produce more vehicle trips than a vacant site, the hearing discussion also noted that the project will eliminate the current issues of illegal parking on the site and trespass, including overnight parking. The PC did add a condition asking the Public Works Departments to look into the future design of the “Y” intersection between Allesandro and Marengo; however, that recommendation and any action that occurs as a result of that recommendation does not impact the project design as approved.*

6. Lack of public improvements in a timely fashion.

Staff Response: *As the City Engineer pointed out at the PC meeting, most of this site has frontage along two public streets (Marengo and Allesandro). The project is subject to a condition that requires frontage improvements*

along both streets. However, the public frontage improvements along Marengo Drive are subject to a deferral agreement until such date as the adjacent properties on the North side of Marengo Drive redevelop triggering frontage improvements along the entire north side of Marengo Drive. There are no existing or pending public improvements along the south side of Marengo Drive. Based on the steep slopes along the north side of Marengo Drive, the Public Works Department will need to consider an intersection design to address traffic safety before a design for frontage improvements will be required of the applicant, and design of the intersection is within the ambit of a Public Works decision, design and cost.

REQUESTED RELIEF OR ACTION:

The appellant has requested the following relief or action:

1. Reexamination for compliance with the items mentioned in the Grounds for Appeal.
Staff Response: This hearing meets the requested 'reexamination for compliance' that the appellant requests.

2. Requirement for a public benefit if the public improvements are not timely.
Staff Response: The installation of frontage improvements can either be required at the time of project construction (such is the case with Allesandro frontage improvements) or deferred, as is the case for the public improvements along Marengo. The deferral agreement has provisions identifying when the City will require the improvements to be installed, such as when they are determined to be necessary or if part of a larger public works project. Once the property owner is provided a 30-day notice, they have 6 months in which to complete the required improvements. The City's Municipal Code does not require any public benefit in association with the deferral of frontage improvements. Morro Bay Municipal Code section 14.44.040 grants authority for deferral of frontage improvements to the director of public works.

That said, this applicant is already proposing a public benefit by offering to landscape and provide maintenance for the landscaped area designed for the unused public right-of-way area at the westerly tip of the site (at the junction of Marengo and Allesandro).

REGULATORY REQUIREMENTS FOR APPEALS TO CITY COUNCIL:

The function and duties of the City Council as the appellate body are to review the appeal, administrative record, and written correspondence received by staff and included in the staff report, and take the following actions:

- A. Conduct a public hearing considering the concerns raised by the appellant, and uphold or deny the appeal; and
- B. If new evidence comes to light at the hearing that was not previously considered by the Planning Commission that is relevant to the City Council decision related to the appeal, the Council may remand the matter back to Commission for further review and action.

In holding the public hearing, the Council shall conduct a de novo review, meaning that the Council shall consider the same application, plans and related materials that were the

subject of the original decision, and is not required to give any deference to the original determination (i.e., the Council reviews this matter with “fresh” eyes).

ENVIRONMENTAL DETERMINATION:

Environmental review was performed for this project and the project meets the requirements for a Categorical Exemption under CEQA Guidelines Section 15303 3b. This exemption applies to additions in urban areas creating up to 6 new dwelling units. Additionally, none of the Categorical Exemption exceptions, noted under Section 15300.2, apply to the project.

PUBLIC HEARING NOTICE:

Notice of a public hearing on this item was published in the San Luis Obispo Tribune newspaper on September 1, 2023, and all property owners and occupants of record within 500 feet of the project site were notified of this evening’s public hearing and invited to voice any concerns on this application or related to the proposed project.

CONCLUSION:

The City of Morro Bay’s processing of this application was thorough and in compliance with the requirements of the zoning code and land use designations. The project was found to be a good design for the site and a good ‘buffer’ use between commercial/industrial uses and single-family homes.

Staff recommends the City Council adopt Resolution No 60-23, denying the appeal and upholding the Planning Commission approval of the Coastal Development Permit CDP22-004, Conditional Use Permit CUP22-06 and TTM22-04 for the proposed new mixed-use project located at 1140 Allesandro Ave.

ATTACHMENTS:

1. Exhibit A – Resolution 60-23 (Deny the appeal and uphold the Planning Commission approval of the project)
2. Exhibit B – Winholtz Appeal, filed August 11, 2023
3. Exhibit C – Planning Commission Staff Report and Resolution approved by PC August 1, 2023.
4. Exhibit D – Plans for 1140 Allesandro project

RESOLUTION NO. 60-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
TO DENY THE APPEAL OF THE PLANNING COMMISSION APPROVAL OF
CONDITIONAL USE PERMIT CUP22-06, COASTAL DEVELOPMENT PERMIT
CDP21-004 AND TENTATIVE TRACK MAP TTM22-04 FOR NEW CONSTRUCTION
OF A MIXED-USE PROJECT IN THE MCR ZONING DISTRICT AND OVERLAY
AREA LOCATED AT 1140 ALLESANDRO STREET**

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

WHEREAS, the Planning Commission of the City of Morro Bay (the “City”) conducted a public hearing on August 1, 2023, conducted in a hybrid format with both an in-person meeting at the Morro Bay Veterans Memorial Building, 209 Surf Street, Morro Bay, CA 93442 as well as through virtual public participation provided telephonically through Zoom, for the purpose of considering the approval of the CUP22-06, CDP22-004 and TTM22-04 for a new mixed use project comprised of a 5 residential dwellings, two of which include live/work spaces to be located at 1140 Allesandro Street (the “project”); and

WHEREAS, the Planning Commission approved the project as submitted, with three additional conditions added to the resolution; and

WHEREAS, Ms. Betty Winholtz filed an appeal on August 11, 2023, of the Planning Commission decision approving the project; and

WHEREAS, the City Council of the City of Morro Bay conducted a public hearing on September 12, 2023, for the purpose of considering the appeal of the Planning Commission approval of the project; and

WHEREAS, notice of the public hearing was provided at the time and in the manner required by law; and

WHEREAS, despite ambiguities in the appeal’s objections, the City Council exercised due diligence to consider all evidence, including the testimony of the appellant, applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

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

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

California Environmental Quality Act (CEQA)

- A. Pursuant to the California Environmental Quality Act, the project meets the requirements for a Categorical Exemption under CEQA Guidelines Section 15303 Class 3b. This exemption applies to additions to urban areas creating up to 6 new

dwelling units. Additionally, none of the Categorical Exemption exceptions, noted under Section 15300.2, apply to the project.

Conditional Use Permit, Coastal Development Permit and Tentative Tract Map findings

- A. The City Council finds that the proposed development is consistent with the MCR/S.4 Zoning designation in providing an appropriate buffer project between zoning districts. The project will not have any substantial adverse impacts on the environment or coastal resources.
- B. The City Council finds that the project is in compliance with the General Plan and certified Local Coastal Program and will not be detrimental to the health, safety, and general welfare of persons residing or working in the surrounding neighborhood.
- C. The findings and conclusions herein are further supported by all findings of fact presented at the City Council hearing, including without limitation those facts stated in the accompanying staff report, exhibits, and public and appellant comments; all of which evidence is incorporated herein by this reference.
- D. The development was designed subject to the MCR/S.4 Zone Standards, and City design guidelines leading to a residential development that is appropriate in size to be compatible both with adjacent commercial development and with other residential structures in the vicinity.
- E. The architectural and general appearance of development is compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.
- F. The proposed vesting tentative map is consistent with the General Plan, Local Coastal Program and with the General Plan Land Use Plan and Morro Bay Municipal Code.
- G. The design of the development is compatible with nearby existing uses and will not be detrimental to the health, safety, morals, comfort and general welfare of persons living or working in the vicinity of the proposed project.
- H. The proposed vesting tentative map will not be detrimental to the orderly development of improvements in the surrounding area and will not be detrimental to the orderly and harmonious development of the City.
- I. The proposed vesting tentative map will not impair the desirability of investment or occupation in the neighborhood.

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Section 2: Action on Appeal. The City Council does hereby deny the appeal and uphold the Planning Commission decision to approve the Conditional Use Permit (CUP22-06), Coastal Development Permit (CDP22-004) and Tentative Tract Map (TTM22-04). To this end, it is found that:

1. The appeal's objection relating to "vacation of the 5-foot section of public right-of-way along Marengo Drive" is unsupported by the findings and evidence because the City Engineer has the authority to make decisions related to abandonment or vacation of City right-of-way.
2. The appeal's objection relating to "inconsistency with what the building is being called and what facilities are included in the 'drawing' plans" is unsupported by the findings and evidence because the project is an allowed use in the zoning district and meets the specific findings for the MCR Special Development Standards. The residential units can be described with the common term "attached residential units" or more commonly known as townhome units.
3. The appeal's objection relating to "setbacks" is unsupported by the findings and evidence because the Planning Commission has the discretion to approve reduced setbacks if it results in a better design (which the evidence shows is the case for this project), and this was approved in the recent hearing.
4. The appeal's objection relating to "building orientation" is unsupported by the findings and evidence because given the site shape and topography, as well as two differing zoning districts on each side of the site, the Planning Commission found that the placement of the building on the site as approved, meets several findings related to the MCR Special Development standards, such as landscaping buffers along the streets and placement of the project on the site to allow the commercial portion to be visually separate from the residential portion.
5. The appeal's objection relating to "impact to neighborhood" is unsupported by the findings and evidence because although this project will produce more vehicle trips than a vacant site, the hearing discussion also noted that the project will eliminate the current issues of illegal parking on the site and trespass, including overnight parking.
6. The appeal's objection relating to "lack of public improvements in a timely fashion" is unsupported by the findings and evidence because the project is subject to a condition that requires frontage improvements along both streets. However, the public frontage improvements along Marengo Drive are subject to a deferral agreement until such date as the adjacent properties on the North side of Marengo Drive redevelop triggering frontage improvements along the entire north side of Marengo Drive. The installation of frontage improvements can either be required at the time of project construction (such is the case with Allesandro frontage improvements) or deferred, as is the case for the public improvements along Marengo.
7. The appeal's requested relief or action seeking reexamination for compliance with the items mentioned in the appeal has been satisfied by virtue of the City Council appeal hearing on September 12, 2023.

8. The appeal's requested relief or action seeking a "requirement for a public benefit if public improvements are not timely" fails for lack of grounds and standing because, consistent with finding 6 above, there is no basis for further public improvement requirements in conjunction with the entitlements at issue.
9. All the above conclusions are further supported by all findings of fact presented at the City Council hearing, including without limitation those facts stated in the accompanying staff report, all of which evidence is incorporated herein by this reference.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 12th day of September 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST

DANA SWANSON, City Clerk

RECEIVED

AUG 1 1 2023

BY:



CITY OF MORRO BAY

APPEAL FORM

Community Development Department
Planning Division
955 Shasta Avenue
Morro Bay, CA 93442
(805) 772-6261

In CCC Appeals Jurisdiction?

YES - No Fee
 NO - Fee Paid: Yes No

\$326 CK# 2116 Rec. 8/11/23

Project Address being appealed: 1140 ALLESANDRO STREET (066-095-004)

Appeal from the decision or action of (governing body or City officer):
 Administrative Decision Planning Commission City Council

Appeal of action or specific condition of approval:
Approve Resolution 13-23 to approve the conditional use permit, the coastal development permit and the tentative tract map which includes a request for approval for a 5 foot vacation of a portion of public right of way together with conditions of approval.

Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision):
conditional use permit, the coastal development permit and the tentative tract map. No number is given in the staff report.

Date decision or action rendered: August 1, 2023

Grounds for the appeal (attach additional sheets as necessary):
My email is down and I cannot access my written statement. Basically, it has to do with vacation of the 5-foot right of way, what appears to be inconsistency with what the building is being called and what facilities are in the drawing plans, setbacks, building orientation, impacts to neighborhood, lack of public improvements in a timely fashion.

Requested relief or action:
A reexamination for compliance with items mentioned above, ^{Timely} Public improvements or public benefit if they can't be met.

Appellant (please print): Betty Winholtz Phone: (805)772-5912

Address: 405 Acacia

Appellant Signature: *Betty Winholtz* Date: August 11, 2023

FOR OFFICE USE ONLY

Accepted by: *Deather Sparker* Date appeal filed: *8/11/23*
 Appeal body: *City Council* Date of appeal hearing:

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AGENDA NO: B-1
MEETING DATE: August 1, 2023

Staff Report

TO: Planning Commissioners

DATE: August 1, 2023

FROM: Nancy Hubbard, Contract Planner

SUBJECT: Application for a Conditional Use Permit, Coastal Development Permit and Vesting Tentative Tract Map in the MCR/S.4 zoning district.

RECOMMENDATION:

Approve Resolution 13-23 to approve the conditional use permit, the coastal development permit and the tentative tract map which includes a request for approval for a 5 foot vacation of a portion of public right of way together with conditions of approval.

APPLICANT: Gerald & Erika Luhr
ADDRESS/APN: 1140 ALLESANDRO STREET (066-095-004)
ZONING: MCR/S.4 (Mixed use/Specific Plan Area)



PROJECT DESCRIPTION:

The project proposes new development of 5 residential units, two of which are live/work units. The site will be subdivided through a vesting tentative track map

creating 6 separate legal parcels, 5 parcels representing separate ownership of each residential unit, plus a 'common use' parcel that includes the guest parking, vehicular and pedestrian circulation areas, landscaping and common trash/recycling facilities.

Each of the 5 residential dwellings will have a 2-car garage on the lower level (vehicular access from Allesandro), with a full second level and partial third level of living space above the garage level. The Live-work units also have extra space at the garage level for a shop/studio workspace with a separate man-door access. The plan includes 3 guest parking spaces, including one ADA space. There is also available street parking for 6-8 cars.

The site has an extreme elevation change on the west side sloping up sharply to Marengo Drive. The design takes advantage of the topography to enhance the separation of the commercial/industrial uses to the east from the residential neighborhood to the west. The applicant is requesting a vacation of a 5 foot portion of the public ROW to resolve the existing building encroachment and to position the residential portion of the project at street level along Marengo Drive. From Marengo Drive, the garage/shop level is not visible, and the project appears to be a two story attached residential townhome project. The project will address the existing storm water drainage issues along Marengo Drive, as well as install most of the frontage improvements along Allesandro. The standard frontage improvements for Marengo will be deferred in accordance with the conditions of approval from Public Works. (See **EXCEPTIONS** below)

Summary of Planning Commission Conceptual Review Hearing (October 2021):

On October 19, 2021, the Planning Commission was presented with the conceptual review that included two options for the proposed project. Scheme A included 5-units of attached residential dwelling, two of which incorporated a live/work space. Option A also included larger units, which required a reduced setbacks (5 feet) along both street frontages together with the continued abandonment of a portion of right of way along the Marengo Drive frontage. The residential units in Scheme A, with the reduced setbacks, were preferred by the planning commission and the project under consideration today is an updated version of Scheme A.

Scheme B also incorporated 5 residential units, slightly smaller than the units in Scheme A to allow for greater setbacks along the Allesandro Street frontage (ranging from 10-15 feet). Both Scheme A and B had 5 foot setbacks along Marengo Drive and both designs required the additional abandonment of the public right of way to provide more depth in the parcel for parking and access as well as to place the residential entrances and a landscape buffer along and at the same grade as the Marengo Drive frontage.

Planning Commission asked expressed a preference for the Scheme A design, and provided a few additional design related comments for the applicant to address in the resubmittal for a PC decision:

1. Pull massing back by the kitchen in Unit B
2. The architecture is under-conceived, show more design features.
3. Show more articulation along the Marengo Dr. frontage.

4. Provide a landscape plan.
5. Provide an exterior material color and material plan sheet.

Public Improvements and Abandonment of a portion of Marengo:

The site has an extreme elevation change on the west side along Marengo Drive. In 1992, the city council approved a 4 foot abandonment of a portion of the Marengo right of way to resolve an existing building encroachment into the public right of way. However, the abandonment was never recorded, and it was later discovered that the building encroachment was greater than 4 feet, and public works staff, including the City Engineer, decided the project was an opportunity to correct an error and recommend approval of the 5 foot abandonment for the full site frontage along Marengo, as shown on the plans.

The applicant team and public works also discussed improvements required in the public right of way. Due to the configuration of the site (two long street frontages), the scope of full frontage improvements (curb, gutter, sidewalks) along both streets would be disproportionate to what is normal and customary for a parcel of this size. It was also recognized that the frontage improvements along Marengo would leave very little remaining depth for landscaping and street trees, both of which are important requirements for residential dwellings as well as meeting the criteria for landscaping in the MCR zoning district. Public Works was not willing to waive the frontage improvement requirement for Marengo, so both parties agreed to a deferral agreement.

The project will be required to continue the existing partial asphalt curb along Marengo Drive, from the existing curb continuing along the east side of the paved street area to the northly end of Marengo Drive. The project will also install drainage facilities on the site to better manage existing drainage issues along the Marengo frontage and retain water in a basin at the north end of the site for watering the landscaping. The standard frontage improvements will be installed along the frontage of Allesandro Ave together with the project construction. The north edge of the Allesandro improvements were adapted to allow the common space garden area. The Marengo Drive standard frontage Improvements are required, but deferred and the completion of the Allesandro frontage improvements around the end of the lot meeting up with the Marengo Drive frontage improvements will be completed together with the Marengo Drive frontage improvements.

The Project:

Five new attached residential units, each with a lower level 2-car garage (vehicular access from Allesandro). The housing above the garage will be two levels of living space with upper living level significantly smaller than the lower living level (37%-70% of the size of the lower floor), providing an articulated building facade on all four sides of the building. Two of the homes will have commercial shop space at the lower level, one of which is a reuse of the existing subterranean shop building on the site. Three common-use parking spaces including a van accessible space are provided to meet the commercial component parking requirement and provide for residential guest parking. The table below is a summary of each unit's living space and garage/shop space.

Project (total building area -15,869 sf)			
Unit	Living Area	Garage	Commercial/shop
Unit A (4 bd/4 bath)	2,235	583	786 (shop & bath)
Unit B (2 bd/2½ bath)	1,542	990	
Unit C (2 bd/2 bath)	1,345	882	
Unit D (4 bd/3 bath)	1,860	928	
Unit E (3 bd/5 bath)	2,767	767	1,184 ((e) shop & bath)
Total	9,749	4,150	1,970



GENERAL PLAN/COASTAL LAND USE PLAN/ZONING DISTRICT: The 2021 General Plan/Coastal Land Use Plan designates this area as General Light Industrial. The current zoning designation allows mixed use development, which is what this proposal includes. The MCR zoning district requires a Use Permit for all proposed new uses and a Coastal Development Permit for the overall project. The project also includes a Vesting Tentative Map, which subdivides the property into six lots while also addressing abandonment of a portion of the right of way.

The site is an unusual elongated triangular shape with public streets on the two long sides, terminating at the “Y” intersection of Allessandro and Marengo. The adjacent uses are commercial/light industrial uses to the east and south and a single family residential neighborhood to the north and west.

Affordable Housing Requirement: Pursuant to MBMC17.50.020 and Government Code Sections 65580—65589, projects with for-sale housing of five or more units must provide one affordable unit (deed restricted for a period of 55 years) The project has committed to provide one affordable unit. The project is conditioned to provide one affordable unit for sale or for rent at or below the low income level criteria. The affordable unit will be deed restricted to meet this affordability level for a period of 55 years.

Site Characteristics	
Site Area	10890 sf – Irregular shape (pie shaped) (11,335 if addition vacation of ROW is granted)
Existing Use	Construction yard with (e) 1200 sf shop building
Terrain	Mostly level with 10–12-foot elevation changes along Marengo frontage
Vegetation/Wildlife	Gravel, dirt, weeded
Archaeological Resources	None
Access	Allesandro Street

Adjacent Zoning			
North	MCR	East	MCR
South	MCR	West	R-1

	MCR/S4 Standards	Subject project (R-4 standards)
Front Setback (Narrow northerly corner)	R-4: 15 feet	15 feet to shop and living space (Unit A)
Exterior Side Yard (Allesandro and Marengo)	MCR Standards: Side set back shall be 5 feet. R-4: 10ft minimum	With granting of the abandonment: 5 feet all along Marengo and 5 feet on Allesandro for the shop portion of Unit A and garage for Unit E Other units range from 10 ft to 32 ft setback from Allesandro.
Rear (south)	R-4: 5 feet	5 feet for all new development. Existing shop building to be retained (subterranean) as part of Unit E, setback is 3ft - 4ft
Height (from ANG)	R-4: 30 Feet	Roof heights vary, but all are below 28 ft from ANG
Lot Coverage	60%	59.7%
Site Density allowed	1 dwelling per 1800 sf of land area (6 units)	5 units
Parking	10 spaces for residential units. Municipal Code has no parking standard for live-work spaces.	10 garage spaces, 3 guest/live-work spaces including one van accessible

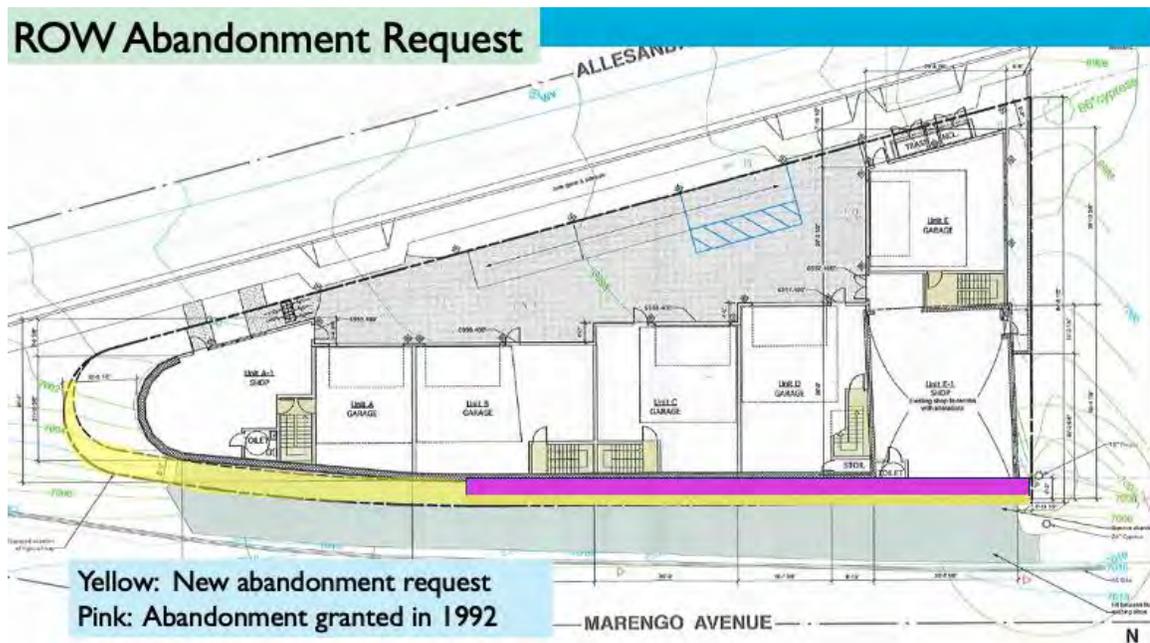
RESIDENTIAL DESIGN GUIDELINES AND NEIGHBORHOOD COMPATIBILITY:

The project meets the criterion in the 2015 Residential Design Guidelines as well as the Special Development Standards of the MCR zoning district MBMC Section 17.24.220 B.6.)

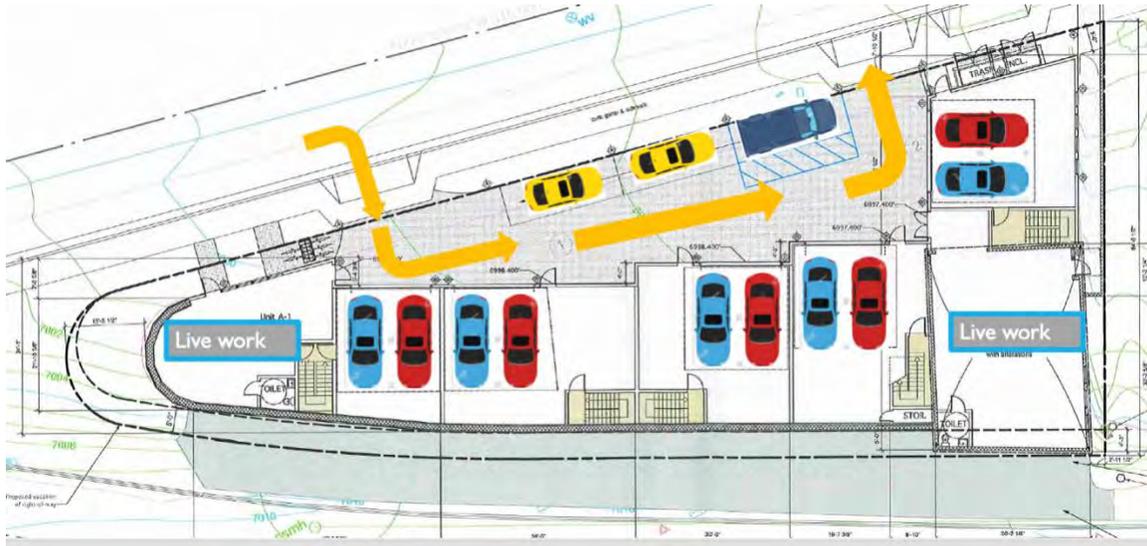
DESIGN STANDARDS	FEATURES INCLUDED IN PROJECT DESIGN
<p align="center">Scale and Mass</p> <p><i>The proportional relationship of a structure to the objects/structures in the immediate neighborhood</i></p>	<p>This site acts as a transitional buffer between light industrial uses and single family residential (west to east). The zoning district to the east and south is currently MCR, with light industrial existing uses and the zoning to the west and north west is single family residential uses. The proposed project presents as attached two story single family homes on the Marengo frontage and commercial/residential on the Allesandro frontage.</p>
<p align="center">Surface Articulation</p> <p><i>The architectural elements of the building design provide visual interest and necessary articulation.</i></p>	<p>The project includes visual interest and has four-sided articulation as well as roof pitch variations with a variety of roof heights.</p>
<p align="center">Building Orientation</p> <p><i>Visible entryway and building placement on the parcel like other homes on immediate block</i></p> <p align="center">MCR Special Development Standards:</p> <p><i>Development layout and design shall provide for compatibility of the uses – features such as parking and building entrances shall be differentiated to the extent practical between commercial and residential on the same site.</i></p>	<p>The project is placed on the westerly edge of the property to take advantage of the extreme slope up to Marengo Drive. This placement results in a very visible front doors and patios with a landscaped strip along the Marengo frontage.</p> <p>The building placement from the Allesandro frontage allows the driveway and vehicular circulation to buffer the residential units from the street. The project is designed to have the commercial portion only visible from the Allesandro side of the project and the only portion visible from the residential neighborhood along Marengo is the 2 story residential portion of the project. The two uses are clearly differentiated.</p>
<p align="center">Garage and Driveway Design</p> <p><i>Garage, carport and driveway should not dominate the frontage, primary focus should be the home, not parking areas</i></p>	<p>The two driveways and the drive-through circular access is appropriate for a narrow site with a long street frontage. The residential garages blend into the project to create a very residential look and appeal.</p>
<p align="center">Sustainable Design Features</p> <p><i>Dark-sky exterior lighting, non-reflective solar panels and other sustainable features shall be incorporated into the design when possible.</i></p>	<p>The home will include solar panels, and a water retention system for landscaping.</p>
<p align="center">Building Materials</p> <p><i>Exterior materials, including roofing and fencing shall be with a complementary pallet of colors and materials</i></p>	<p>Proposed materials are a variety of wood and stucco with green and brown tones.</p>
<p align="center">Architectural Elements</p> <p><i>Building fenestrations and architectural features should be balanced and appropriate to the architectural style, as well as considerate of adjacent properties</i></p>	<p>The attached homes are a blend of traditional and more modern elements which are reflected in the variety of architectural styles in the neighborhood along Marengo Dr.</p>
<p align="center">Landscaping</p> <p><i>Landscaping areas shall be maximized, especially along street frontages. Plant pallet needs to cover 90% of the bare earth areas within 5 years of growth. Plant selections should be through use of native, drought resistant plants in a variety of colors and heights</i></p> <p align="center">MCR Special Development Standards:</p> <p><i>Side and rear yard setbacks shall be 5 feet (larger setbacks may be required by planning commission). All setbacks shall be landscaped – a minimum of 5 feet of landscaping shall be provided in front of any building or parking lot faing a public street.</i></p>	<p>The fenced front patios in front of each residential unit and the frontage landscaping add a very pleasant residential feel, with a hint of a transition to a more efficient design that can provide a cluster of density in a smaller area allowing the new project to be surrounded by more landscaping and street trees.</p> <p>The project is designed with a 5 foot setback along Marengo, and includes a landscaped area for the entire frontage of Marengo, as well as the undeveloped tip of the site near the “Y” intersection of Marengo and Allesandro, and along Allesandro, other than at the driveway entrances.</p>

EXCEPTIONS: The site is in the MCR/S4 zoning district and overlay area. Residential uses are allowed in the MCR zoning district using the development standards for a R-4 zoned project. See discussions below on each of the areas where the development standards need special consideration to allow the project.

1. **Request for ROW abandonment:** In 1992, the city granted abandonment for ROW approximately 4 feet wide and 113 feet in length (pink area in image below) to accommodate an existing building that was encroaching over 4 feet into the public right of way (the abandonment was never recorded). The applicant is requesting an expansion of the existing approved vacation of ROW and continuation of the existing abandonment to the north corner of the site (yellow striped area in image), for a continuous width of 5 feet that diminishes in width on the northerly end of the site. This new area will create a continuous property line along the west side of the site and because of the extreme slope on the west property boundary, the additional area allows less earthwork and fill and results in residential frontage at street level along Marengo for all 5 proposed new residential dwellings.



2. **Reduced exterior street setback:** The site has a very unusual shape, with the two longer property lines along street frontages joining at the narrow northerly portion of the site. The technical frontage of the site is the curved northerly end. The requirements for the two-street side yard setback are 20% of the average width of the parcel (average width is about 43 feet X 20% = 8.5 feet), but the minimum setback limit is 10 feet. The proposed project has a setback on Marengo ranging from less than 1 foot (the original shop building on the ground level) to 5 feet for each residential frontage. This design allows the westerly walls of the ground floor garages and shop areas to provide support for the steep slope along Marengo, which allows placement of the residential floors with visible and functional pedestrian access to Marengo.



- 3. Parking:** Parking required is 2 covered and enclosed spaces for each residential unit, which is included in the proposed development. The zoning code does not include a parking standard for 'live/work' units, but in other California cities that do include a 'live-work' use designation, the parking requirements are generally one space per residential unit and one space for a non-resident employee. Section 17.44.020 allows the Community Development Director to determine the parking requirement based on parking requirements for the most similar use of equivalent intensity. The MBMC does not have any similar uses to use for comparison, so the Director and staff reviewed several parking standards from other California cities (Los Angeles, Santa Ana, Riverside, Southgate) that do include live/work in their parking standards and recommended the most commonly used standard for live-work spaces. Three of the above jurisdictions required one parking space per live/work space, but assumed smaller dwelling sizes. One required 2 spaces and one required one space for the dwelling and one space for a visitor and/or non-resident employee. The 10 garage parking spaces, plus the three parallel parking spaces appear adequate to cover parking requirements for the proposed use.

ENVIRONMENTAL DETERMINATION:

Environmental review was performed for this project and staff determined it meets the requirements for a Categorical Exemption under CEQA Guidelines Section 15303 Class 3b. This exemption applies to additions to urban areas creating up to 6 new dwelling units. Additionally, none of the Categorical Exemption exceptions, noted under Section 15300.2, apply to the project.

CONCLUSION:

The project works as a good buffer between residential and industrial uses. Although the recently adopted updated General Plan/Land Use Plan changed the designation on this site to general industrial, the current zoning code allows mixed use development. The project is a creative blend of commercial and residential uses and provides much needed additional housing units.

RECOMMENDATION:

Approve Resolution 13-23 to approve the conditional use permit, the coastal development permit and the vesting tentative tract map together with approval of the requested abandonment of a portion of right of way.

ATTACHMENTS:

Exhibit A – Resolution 13-23

Exhibit B - Plans

Link to concept review PC hearing (October 19, 2021)

<https://www.youtube.com/watch?v=PfDFZyvoAto>

RESOLUTION NO. PC 13-23

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION
APPROVING CONDITIONAL USE PERMIT CUP22-06, COASTAL
DEVELOPMENT PERMIT CDP22-004 AND VESTING TENTATIVE TRACT
MAP VTTM22-04 FOR A RESIDENTIAL- LIVE/WORK PROJECT AT 1140
ALLESANDRO STREET

WHEREAS, the Planning Commission of the City of Morro Bay (the “City”) conducted a public hearing on August 1, 2023, conducted in a hybrid format with both an in-person meeting at the Morro Bay Veterans Memorial Building, 209 Surf Street, Morro Bay, CA 93442 as well as through virtual public participation provided telephonically through Zoom, for the purpose of considering the approval of the CUP22-06, CDP22-004 and TTM22-04 for a new 5 unit attached residential project, 2 of which have live/work shop/studio spaces located at 1140 Allesandro Street; and

WHEREAS, notice of the public hearing was provided at the time and in the manner required by law; and

WHEREAS, the Planning Commission has duly considered all evidence, including the testimony of the appellant, applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Morro Bay as follows:

Section 1: Findings. Based upon all the evidence, the Commission makes the following findings:

California Environmental Quality Act (CEQA)

- A. Pursuant to the California Environmental Quality Act, the project meets the requirements for a Categorical Exemption under CEQA Guidelines Section 15303 Class 3b. The exemption applies to additions to urban areas creating up to 6 new dwelling units. Additionally, none of the Categorical Exemption exceptions, noted under Section 15300.2, apply to the project.

Conditional Use Permit, Coastal Development Permit and Vesting Tentative Tract
Map findings

- A. The proposed development is consistent with the MCR/S.4 Zoning designation in providing for a residential project with a commercial component in two of the units. The project will not have any substantial adverse impacts on the environment or coastal resources.
- B. The project is in compliance with the General Plan and certified Local Coastal Program and will not be detrimental to the health, safety, and general welfare of persons residing or working in the surrounding neighborhood.
- C. The development was designed subject to the MCR/S.4 Zone Standards,

and City design guidelines leading to a residential development that is appropriate in size so as to be compatible both adjacent commercial development and with other residential structures in the vicinity.

- D. The architectural and general appearance of development is compatible with the visual quality and character of the surrounding area and compatible with the immediate neighborhood.
- E. The proposed vesting tentative map is consistent with the General Plan, Local Coastal Program and with the General Plan Land Use Plan.
- F. The design of the development is compatible with nearby existing uses and will not be detrimental to the health, safety, morals, comfort and general welfare of persons living or working in the vicinity of the proposed project.
- G. The proposed vesting tentative map will not be detrimental to the orderly development of improvements in the surrounding area and will not be detrimental to the orderly and harmonious development of the City.
- H. The proposed vesting tentative map will not impair the desirability of investment or occupation in the neighborhood.

Mixed Commercial/Residential (MCR) District Standards:

Chapter 17.24.110 (6) states that in addition to the findings required by Chapter 17.60 (Use Permit Findings), the following findings must be met before approving a use permit for any use in the MCR District:

- a) Mixed Uses. In any use (i.e., commercial and residential), the project in terms of specific types of uses, their locations and the development layout and design shall provide for compatibility among the uses. Features such as building entrances and open parking shall be differentiated to the extent practical between residential and commercial uses on the same site. Adequate private and common open space generally in conformance with standards set forth in Chapter 17.49 of this title shall be provided for all residences.
- b) Side and Rear Yard Setbacks. The minimum side and rear yard setback shall be five feet. All setbacks shall be landscaped. Larger setbacks may be required by the planning commission if deemed necessary to provide an adequate buffer between uses.
- c) Landscaping in Front Yard and Street Side Yard. A minimum of five feet of landscaped area shall be provided in front of any building or parking lot facing a public street.

Special Design Criteria Overlay Zone (S.4):

Special design review is necessary to maintain and enhance the character and visual quality of these areas. Applications for development shall include architectural, landscaping, lighting, signage (if any) and viewshed plans for review and approval.

Section 2: Action. The Planning Commission does hereby approve Conditional Use Permit (CUP22-06), Coastal Development Permit (CDP22-004) and Vesting Tentative Tract Map (TTM22-04) subject to the following conditions:

STANDARD CONDITIONS:

1. Permit: Coastal Development Permit (CDP22-004), Conditional Use Permit (CUP22-06) and Vesting Tentative Tract Map (TTM22-04) to allow new development of 5 new residential units that will be the subject of a tract map to allow separate ownership of each residential unit. The project includes two live-work units. Each dwelling will have a 2-car garage on the lower level (vehicular access from Allesandro) with a full second level and partial third level of living space above. The Live-work units also have extra space at the garage level for a shop/studio workspace. The site has an extreme elevation change on the west near Marengo, and the project is requesting reduced setbacks and a vacation of a portion of public ROW in order to position the residential front doors at street level along Marengo Drive. The site is zoned MCR/S.4 and is not located in the Coastal Appeals Jurisdiction
2. Inaugurate Within Two Year: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Any minor change may be approved by the Community Development Director. Any substantial change will require the filing of an application for an amendment.
4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: Compliance with and execution of all conditions listed here on shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Community Development Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
8. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the Morro Bay Municipal Code and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.

PLANNING CONDITIONS:

9. Signage: Signage for the live/work units is not included in the approval of this permit. If any signage is needed, it will require submittal of a signage permit application and plans for an administrative processing and approval.
10. Exterior Lighting: All lights shall be directed, oriented, and shielded to prevent light trespass or glare onto adjacent properties. The light level at property lines shall not exceed 0.3 foot-candles. Parking area lighting is not included in this proposal.
11. Landscaping: Changes, if any, not reflected in the landscape plans that are part of this permit approval, shall be submitted for review and approval by the Community Development Director
12. ***Sculpture or artwork: A proposed sculpture or artwork proposed for installation within a public right of way will require submittal to the Community Development Director for review and approval. Condition added by Planning Commission August 1, 2023.***
13. HVAC/Mechanical Equipment: Equipment at ground level shall be installed to allow adequate clearance around the building for emergency personnel. Any mechanical equipment visible from the public right of way shall be screened to the satisfaction of the Community Development Director
14. Affordable Deed Restricted Residential Unit: One unit is required to be affordable to be deed restricted to the Low Income level or below and shall be sold or rented to an income qualified household. The unit selected will be deed restricted for resale or rental only to income qualified occupants for a period of 55 years. Deed restriction shall be signed and recorded prior to certificate of occupancy for the project.
15. Vesting Tentative Tract Map Processing: A final VTTM is required to be approved by the Engineering Department and presented to City Council for final approval prior to issuance of any building permits.
16. Abandonment of Public Right of Way: Approval of the abandonment request shall be documented on the final VTTM.

17. ***Recommendation to Public Works Department:*** *The public works department is encouraged to consider the feasibility of the creation of public parking spaces adjacent to the intersection of Allesandro and Marengo Drive at the time the Marengo Drive frontage improvements are implemented. The public works department is also encouraged to investigate the feasibility of installing a stop sign at the intersection of Allesandro and Marengo. Condition added by Planning Commission August 1, 2023.*

18. ***Final TTM Map CC&R's:*** *Final submittal of the TTM shall include a copy of the Covenants, Conditions and Restrictions for the subdivision. The CC&R's shall include a disclosure to future owners or residents of the property making them aware that the project is adjacent to a commercial/light industrial zoning district that in the normal course of business may produce noises or odors typical with commercial or industrial uses. Condition added by Planning Commission August 1, 2023.*

BUILDING DIVISION CONDITIONS

A. CONDITIONS PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.

2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.

3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.

4. The owner shall comply with the City Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.

5. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided. Alternatively, submit a completed City of Morro Bay soils report waiver request.
6. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.
7. **BUILDING PERMIT APPLICATION:** To apply for building permits, submit three (3) sets of construction plans, fire sprinkler plans, if applicable, and supplemental documents to the Building Division.
8. The Title sheet of the plans shall include, but not limited to:
 - Street address, lot, block, track, and Assessor Parcel Number
 - Occupancy Classification(s)
 - Construction Type
 - Maximum height of the building allowed and proposed.
 - Floor area of the building(s)
 - Fire sprinklers proposed or existing.
 - Minimum building setback allowed and proposed.

All construction will conform to the 2022 California Building Code (CBC), 2022 California Residential Code (CRC), 2022 California Fire Code (IFC), 2022 California Mechanical Code (CMC), 2022 California Plumbing Code (CPC), 2022 California Electrical Code (CEC), 2022 California Energy Code, 2022 California Green Building Code (CGBC), Title 14 and 17 of the Morro Bay Municipal Code.

(Code adoption dates are subject to change. The code adoption year is established by application date of plans submitted to the Building Division for plan review.)

B. CONDITIONS TO BE MET DURING CONSTRUCTION:

1. **SITE MAINTENANCE:** During construction, the site shall be maintained to not infringe on neighboring property, such as debris and dust. A storm water management plan shall be maintained through the duration of the project. The storm water management measures such as fiber rolls, silt fencing, etc. will be enforced by City staff by random site visits.
2. **ARCHAEOLOGICAL MATERIALS:** In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify to county coroner. If human remains are found to be of ancient age and of archaeological

and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.

3. **FOUNDATION SETBACK VERIFICATION:** Prior to the placement of concrete and upon completed form installation, a licensed surveyor is required to measure and record the distance from the proposed foundation walls to the established lot lines. The contractor shall submit these findings in letter format to the building inspector upon the request for a foundation inspection. Letter shall specify the findings of front, sides and rear yard setbacks as defined in Title 17 of the MBMC. The Building Official shall have discretion on a case-by-case basis for some lot types.
4. **BUILDING HEIGHT VERIFICATION:** Prior to roof sheathing or shear wall inspection, a licensed surveyor is required to measure and record the height of the structure. The contractor shall submit this finding in letter format to the building inspector upon the request for roof sheathing/shear wall inspection. Letter shall specify the recorded height of structure as defined in Title 17 of the MBMC. The Building Official shall have discretion on a case-by-case basis for some site-specific projects.

C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF THE CERTIFICATE OF OCCUPANCY:

1. Prior to building division final approval and request for final inspection, all required inspections from the other various divisions and departments must be completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card. This permit card shall then be turned into the building division for scheduling of the final building inspection.
2. Any as-built drawings that were required by the building inspector or plans examiner must be submitted for approval prior to the request for final inspection.
3. If structural observations were required, the final structural observation report shall be submitted to the building division prior to issuance of the certificate of occupancy or final inspection approval.
4. If special inspections were required, the final special inspection report shall be submitted to the building division prior to the issuance of the certificate of occupancy or final inspection approval.
5. Final soils summary report from the geotechnical representative indicating compliance with the required conditions set forth in the soils report.
6. Final T-24 energy reports (Certificates of Installation).

PUBLIC WORKS CONDITIONS:

The plans are conditionally approved and subject to the following conditions to be required at Building Permit submittal:

1. Stormwater Management: The City has adopted Low Impact Development (LID) and Post Construction requirements. All proposed projects must complete the "Performance Requirement Determination Form" to determine if any requirements should be submitted. The requirements can be found in the Stormwater management guidance manual on the City's website www.morrobay.ca.us/mainmanual. Provided determination form is for single-family residences only. (MBMC 14.48.140)
2. Frontage Improvements: The installation of frontage improvements is required. Show the installation of a sidewalk per city detail B-5, curb & gutter per city detail B1, driveway approach per city detail B-6, street per city detail A-1 and street tree (one per every 50'). Show and label 18" asphalt cutback at all portions of curb and gutter to be replaced. (MBMC 14.44.020)
3. Marengo Drive: Due to abandonment of Marengo Drive frontage as approved by City Council per Resolution No. 114-92 and City Municipal Code 14.44.020 that excludes all neighboring single-family residences to install curb, gutters and sidewalks, a deferral of frontage improvements can be submitted for the Marengo Drive frontage improvements. Complete frontage improvements on Allesandro Street are still required.
4. Sewer Lateral: Indicate and label private sewer lateral pipe. If the existing sewer lateral is proposed to remain in place, then perform a video inspection of the lateral (from the clean-out at structure to the connection at the sewer mainline pipe) and submit to Public Works via flash drive, prior to building permit plan approval. Requirements for the sewer video inspection can be located on the City's website at the following location: <https://www.morrobay.ca.us/DocumentCenter/View/13500/Private-Sewer-Line-Video-Requirements>
Lateral shall be upgraded, repaired or replaced as required to prohibit inflow/infiltration. All repairs or replacements identified from sewer video, shall be Page 2 of 3 noted on approved set of plans, prior to plan approval. (MBMC 14.07.030)
5. Sewer Backwater Valve: Indicate and label sewer backwater valve on plan. A backwater valve, extended to and accessible from grade for maintenance, shall be installed on every Building sewer. Exception: Installation of backwater valve shall not be required when, to the satisfaction of Building Official, it is determined that the intent and purpose of this section is otherwise met. (MBMC 14.07.010.C).
6. Erosion and Sediment Control Plan: For small projects less than 1/2 acre and less than 15% slope, provide a standard erosion and sediment control plan. Show on plans the control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. Guidelines for the control plan may be found on

the City's website at the following location:
<https://www.morrobayca.gov/documentcenter/view/462>

7. Water Meter: Indicate and label existing water meter on plans and include size of meter(s). (MBMC 13.04.010)
8. Water Backflow Prevention Device: Verify and label all new or existing water backflow preventers. Water backflow preventer devices are required for irrigation systems (on a dedicated water meter), systems which may change in character of use (commercial rentals, etc.), or any plumbing system which has cross-connections or the ability to allow water of deteriorated sanitary quality to enter the public water supply. Add note to plan that device is required to be an approved domestic water backflow prevention device. (MBMC 13.08.040)
9. Grading and Drainage: Indicate on plans the existing and updated contours, drainage patterns, spot elevations, finish floor elevation and all existing and proposed drainage pipes and structures. (CBC 107.2.1)
10. Utilities: Show all existing and proposed locations of the sewer lateral, water service, and water and sewer mains on the building plans. Include sizes where appropriate. Note the location of all overhead utilities and construction underground service entrances per the CBC 107.2.1. See attached utility maps.
11. Underground Utilities: Per MBMC 17.48.050, All utility service lines to all new development, except single-family residences, on vacant lands (including the demolition and replacement of individual structures), and to major redevelopment projects, shall be undergrounded.
12. Structures within City Right-of-way: All structures within the City's right-of-way require City approval. Refer to Per City Municipal Code, Encroachments on the Page 3 of 3 public right-of-way are not allowed without City approval. Proposed structures require a Special Encroachment Permit Agreement to be obtained. (MBMC 8.14.020)
13. Final Map: Indicate on Final Map plans the abandoned portion of the public right of way on Marengo Drive as approved by City Council per Resolution No. 114-92 and the minor extension to the end of the Marengo Drive frontage. (MBMC 8.14.020)

Add the following Notes to the Plans:

1. Any damage, as a result of construction operations for this project, to City facilities, i.e. curb/berm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay.
2. No work shall occur within (or use of) the City's Right of Way without an encroachment permit. Encroachment permit application and requirements are available on the City's website at the following location:

<https://www.morrobay.ca.us/197/Public-Works>.

- A standard encroachment permit shall be required for the proposed driveway; the driveway shall comply with B-9 (Driveway Ramps: Size & Location).
- A sewer encroachment permit shall be required for any repairs or installation of a sewer lateral within the City right-of-way or within a utility easement.
- If a construction dumpster is used, the dumpster location shall be on private property, unless allowed by a temporary encroachment permit within the City right-of-way

FIRE DEPARTMENT CONDITIONS:

1. Fire Safety during Construction and Demolition shall be in accordance with 2019 California Fire Code, Chapter 33. This chapter prescribes minimum safeguards for construction, alteration and demolition operations to provide reasonable safety to life and property from fire during such operations.
2. Automatic fire sprinklers. An automatic fire sprinkler system, in accordance with NFPA 13-D, California Fire Code (Section 903) and Morro Bay Municipal Code (Section 14.08.090). Applicant shall submit sprinkler plans to Morro Bay Community Development Department for review.
3. Fire Department access to equipment. Rooms or areas containing controls for Electrical, FAU, Alarm and Fire Sprinkler Systems shall be identified by approved and appropriate signage for Fire Department use.
4. Key box. Provide a flush-mounted Knox Box system no higher than 7' and appropriate keys for emergency Fire Department access. Obtain application from the Fire Prevention Office and the system installed prior to occupancy release.
5. Elevator Car to Accommodate Ambulance Stretcher. Where elevators are provided, at least one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate an ambulance stretched 24-inches by 84-inches with not less than 5-inch radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3-inches high and shall be placed inside on both sides of the hoist way door frame. (MBMC 14.08.090)
6. Carbon monoxide alarms in new dwellings and sleeping units. An approved carbon monoxide alarm shall be installed in dwellings having a fossil fuel-burning heater or appliance, fireplace or an attached garage. Carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions.
7. Hydrant location: Fire Hydrant Locations and Distribution shall be in accordance with 2019 California Fire Code.

8. Trash Enclosures: must comply with the 2019 California Fire Code. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings or combustible roof eave lines.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 1st day of August 2023 on the following vote :

AYES: Ingraffia, Rodriguez, King, Roschen

NOES: Meyer

ABSENT:

ABSTAIN:

Chairperson Roschen

ATTEST

Scot Graham, Planning Secretary

The foregoing resolution was passed and adopted on this 1st day of August 2023.

DATE: APR 26, 2023
 DRAWN BY: GAB M/S
 REVISIONS: NONE



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 120 Cerro Romauldo Avenue
 San Luis Obispo, CA 93405
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SECOND FLOOR PLAN

1140 Alessandro Avenue
 Morro Bay, CA 93442

MIXED-USE

PAGE NO.

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 OF 11

SHEET TITLE
 SECOND FLOOR PLAN

Legend

④ Light fixture mark 'A', and 'B'. Detailed information shown on Sheet A-2.

Drawing Notes

◇ Mechanical equipment will require screening from the street and placed in locations that illustrate the feasibility of meeting the air requirements.



Scale: 1/8" = 1'-0"

SECOND FLOOR PLAN

DATE: APR 26, 2022
 DRAWN BY: GAB
 REVISIONS: NONE



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THIRD FLOOR PLAN

1140 Allessandro Avenue
 Morro Bay, CA 93442

MIXED-USE

PAGE NO.

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 OF 11

SHEET TITLE
 THIRD FLOOR PLAN



THIRD FLOOR PLAN



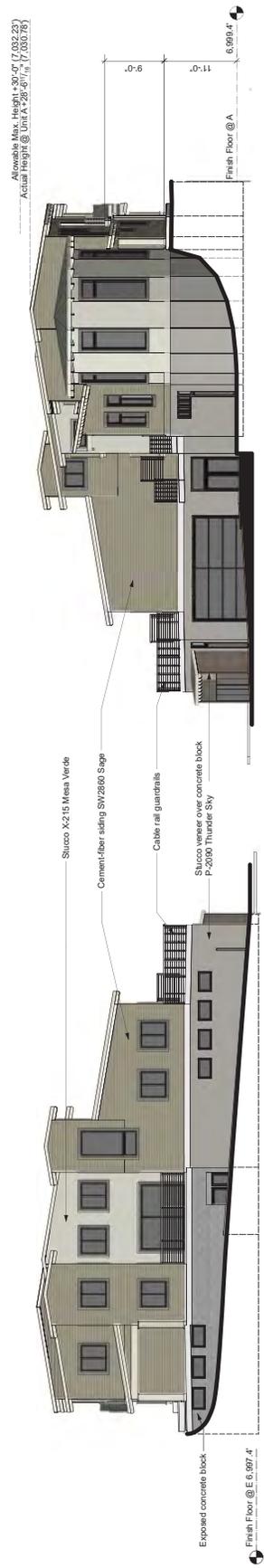
SOUTH ELEVATION

Scale: 1/8" = 1'-0"



NORTH ELEVATION

Scale: 1/8" = 1'-0"



EAST ELEVATION

Scale: 1/8" = 1'-0"

WEST ELEVATION

Scale: 1/8" = 1'-0"

DATE: APR 26, 2023
 DRAWING: M3G48
 REVISIONS: NONE



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ELEVATIONS

MIXED-USE
 1140 Alisandra Avenue
 Morro Bay, CA 93442

PAGE NO.
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 OF 11
 SHEET TITLE
 ELEVATIONS

DATE: APR 26, 2023
DRAWN BY: MS
REVISIONS: NONE



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ISOMETRIC VIEWS

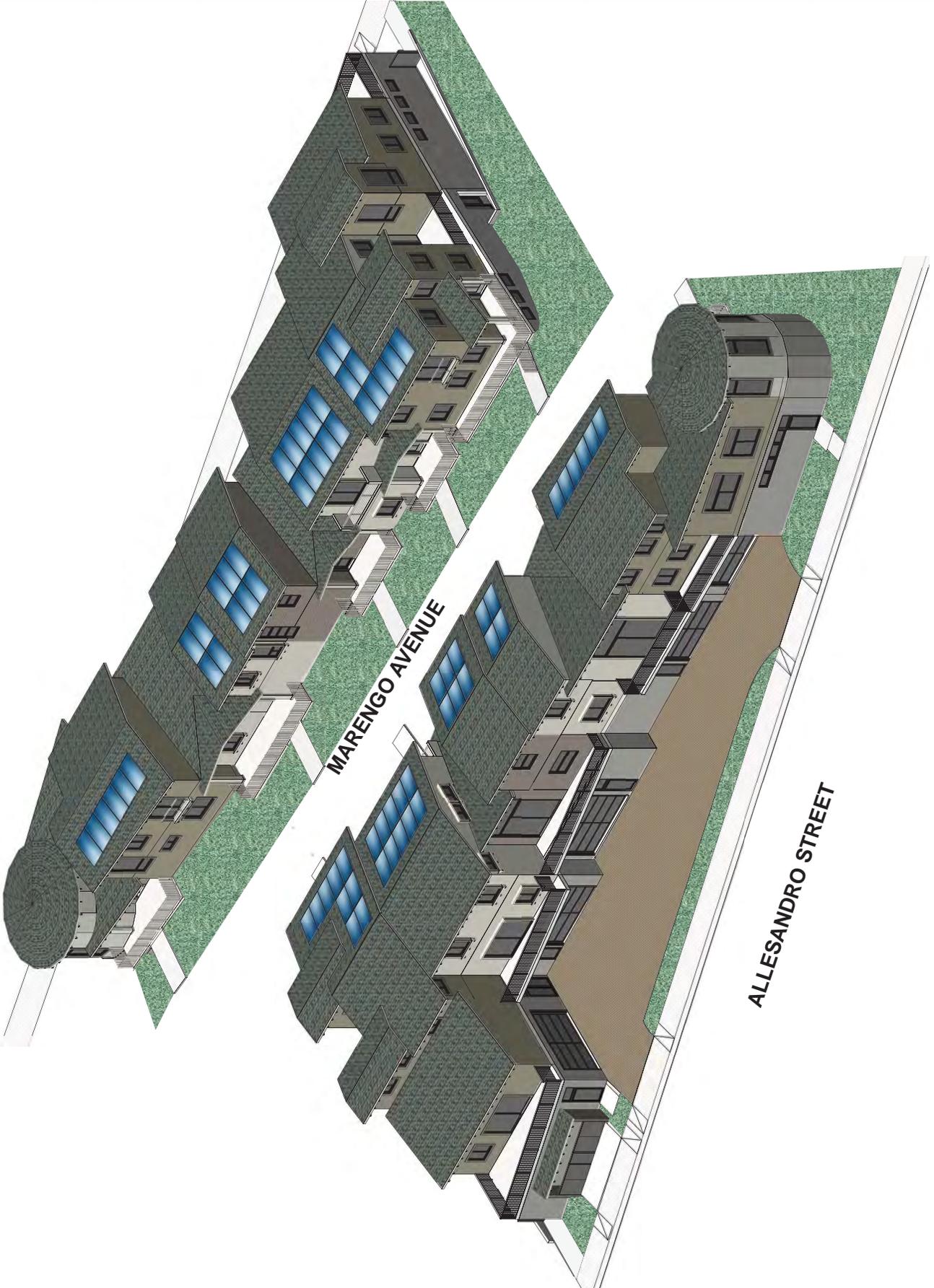
1140 Allesandro Avenue
Morro Bay, CA 93442

MIXED-USE

PAGE NO.

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OF 11

SHEET TITLE
ISOMETRIC VIEWS



DATE: APR 26, 2023
DRAWN BY: CAB
REVISIONS: NONE



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EXISTING SITE & VICINITY
SITE PLAN IN CONTEXT
EXISTING VIEW FROM NE
PERSPECTIVE A FROM NE

MIXED-USE
1140 Allessandro Street
Morro Bay, CA 93442

PAGE NO.

A-8
OF 11

SHEET TITLE
SITE PLAN IN CONTEXT
PERSPECTIVE A



PROPOSED SITE PLAN IN CONTEXT



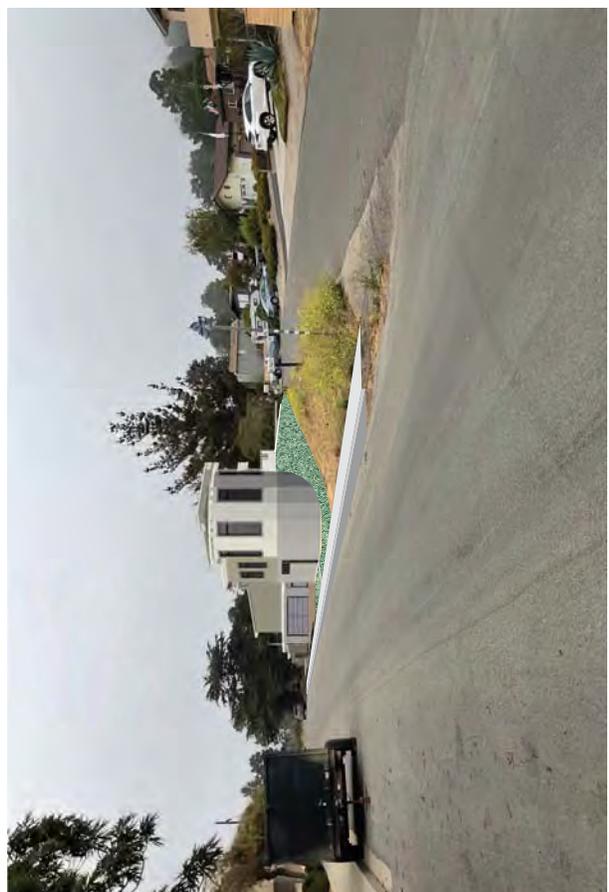
PERSPECTIVE A FROM NORTHEAST



EXISTING SITE AND VICINITY



EXISTING VIEW FROM NORTHEAST



PERSPECTIVE B FROM NORTHWEST



EXISTING VIEW FROM NORTHWEST

DATE: APR 26, 2023
 DRAWN BY: CAB
 REVISIONS: NONE



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**EXISTING VIEW FROM NW
 PERSPECTIVE B FROM NW**

MIXED-USE
 1140 Allessandro Street
 Morro Bay, CA 93442

PAGE NO.
A-9
 OF 11
 SHEET TITLE
 VIEW FROM NORTHWEST
 PERSPECTIVE B



EXISTING VIEW FROM SOUTHWEST



PERSPECTIVE C FROM SOUTHWEST



PERSPECTIVE C FROM SOUTHWEST (Trees Omitted)

DATE: APR 26, 2023
 DRAWN BY: CAB
 REVISIONS: NONE



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**EXISTING VIEW FROM SW
 PERSPECTIVE C FROM SW
 (Trees Omitted)**

MIXED-USE
 1140 Allessandro Street
 Morro Bay, CA 93442

PAGE NO.

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SHEET TITLE
 VIEW FROM SOUTHWEST
 PERSPECTIVE C (Trees Omitted)



EXISTING VIEW FROM SOUTHEAST



PERSPECTIVE D FROM SOUTHEAST



PERSPECTIVE D FROM SOUTHEAST (Trees Omitted)

DATE: APR 26, 2023
 DRAWN BY: CAB
 REVISIONS: NONE



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EXISTING VIEW FROM SE
 PERSPECTIVE D FROM SE
 (Trees Omitted)

MIXED-USE
 1140 Alessandro Street
 Morro Bay, CA 93442

PAGE NO.

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SHEET TITLE
 VIEW FROM SOUTHEAST
 PERSPECTIVE D (Trees Omitted)

Revisions	Date

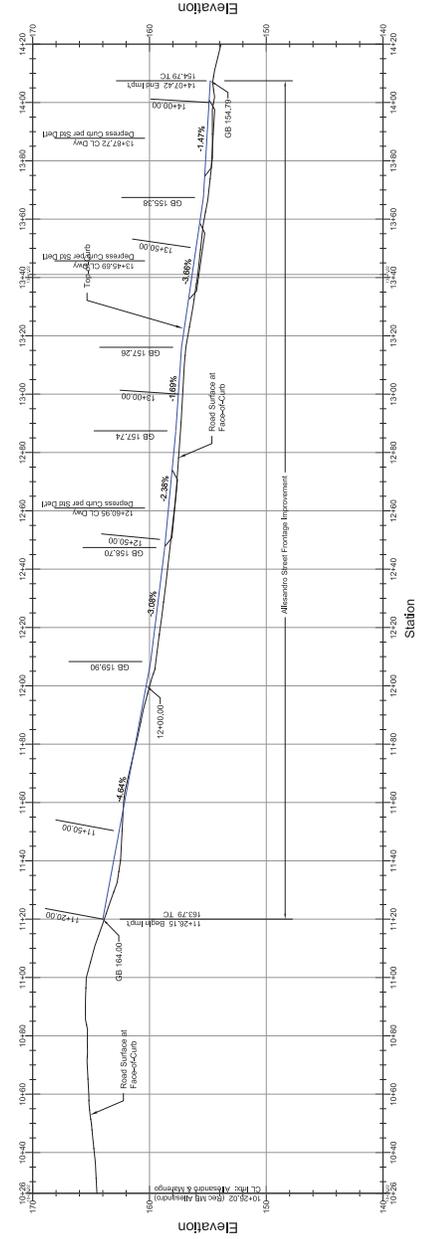
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Alliandro & Marenco Streets
Morro Bay

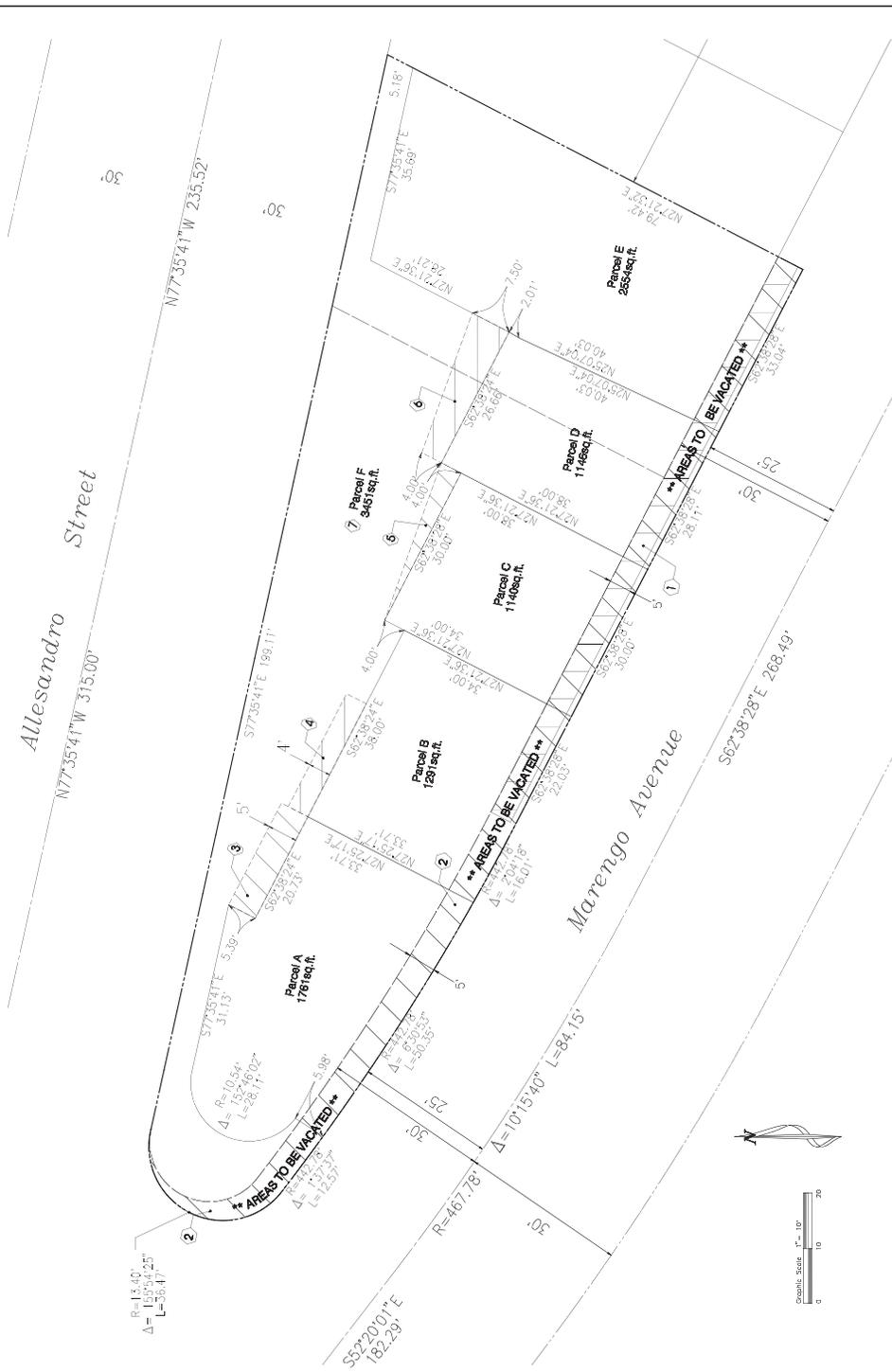
LHR Alliandro
Proposed Off-Site Plan

Date: May 2023
Scale: as shown
Drawn: bel & p
Job No.: 48462

Sheet
C2 of 6



Profile: Allisandro Street Improvements
SCALE: 1:20
View looking northerly

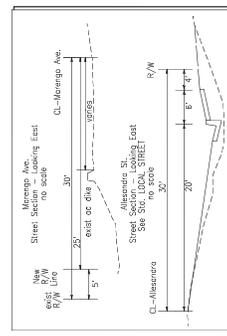


VESTING TENTATIVE TRACT MAP
Tract 22-04
A Subdivision of Lot 1
and a Portion of Lot 2
of Morro Bay Vista No. 1
3 MB 57

In the
 City of Morro Bay
 County of San Luis Obispo
 California

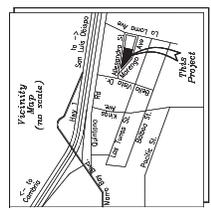
PROPOSED LOT CONFIGURATION

**** NOTE REGARDING PROPOSED VACATIONS ****
 THE FOLLOWING ITEMS ARE PROPOSED TO BE VACATED WITH THE RECORDATION OF THESE PORTIONS OF MARENGO AVENUE AND OF ALEXANDRO AVENUE SLOTTAS ** AREAS TO BE VACATED **



LEGEND

- center line
- lot lines
- easement lines
- contours
- new contours
- water course
- drainage direction
- water main
- sewer
- all other
- utility
- dipline (approx.)



Subdivider:
 Gerald Lutz
 2335 Nunez Ave
 Morro Bay, CA 94042
 Doc. # 1992-057993 O.R.
 864695-004
Current Zoning & Land Use:
 MCRS-1 - Commercial/Industrial
 MCRS-1 - Mixed
MAP PREPARED:
 Robert J. Reese, LS6208

COORDINATE DATA - CONTROL POINTS

Point No.	North (N)	East (E)	Height (H)	Description
102	4864.20	8944.67	169.26	MORRO BAY
103	4864.20	8944.67	169.26	MORRO BAY
104	4902.31	5943.75	189.53	MORRO BAY
105	4885.52	6242.90	153.14	MORRO BAY
106	5007.36	5968.02	162.37	STATION

NOTE: (nadir, ortho, cap & base point water
 sum = arbitrary spher. correction)

- PROPOSED LOT AREAS, VESTINGS, EASEMENTS**
- Parcel A - 1781 sq. ft. - Private ownership
 - Parcel B - 1281 sq. ft. - Private ownership
 - Parcel C - 1148 sq. ft. - Private ownership
 - Parcel D - 1148 sq. ft. - Private ownership
 - Parcel E - 2654 sq. ft. - Private ownership
 - Parcel F - 3451 sq. ft. - Private ownership
- DETAIL KEY**
- The existing 4' wide Street Vacation per unrecorded
 - City Resolution 11462 is hereby accepted by the City of Morro Bay.
 - A 6' wide Street Vacation hereby accepted by the City of Morro Bay.
 - Diect Easement 118 sq. ft. across Parcel F & A217' in favor of Parcel A.
 - Diect Easement 80 sq. ft. across Parcel F & A227' in favor of Parcel B.
 - Diect Easement 61 sq. ft. across Parcel F & A19267' in favor of Parcel C.
 - Diect Easement 138 sq. ft. across Parcel F & A17227' in favor of Parcel D.
 - An easement for public utilities, through Utilities, Egress, Easement, Maintenance, Encroachment, easement or easement.

Drawn by: JF	File name: 11462.dwg
Checked by: JF	Scale: 1" = 10' as noted
Plot no. 2204	Contract = 1
Plot date: 2023.03.30	Sheet 2 of 2

REESE Water & Land SURVEYING SERVICES
 800 Los Osos Valley Road, Ste. B
 Los Osos, CA 94026
 805.492.2741

G. Lutz
 2335 Nunez Ave
 Morro Bay, CA 94042

Client: **VESTING TENTATIVE TRACT 22-04 PROPOSED LOT CONFIGURATION**
 Project: **VESTING TENTATIVE TRACT 22-04 A Subdivision of Lot 1 and a Portion of Lot 2 of Morro Bay Vista No. 1, 3 MB 57, in the City of Morro Bay, County of San Luis Obispo, CA**

Drawings: **SEE VESTINGS OF MARENGO STREET VACATIONS; PLEASE WORKING ON STREET SECTION**



Window Trim Type 1 Detail

Scale: 1/2" = 1'-0"

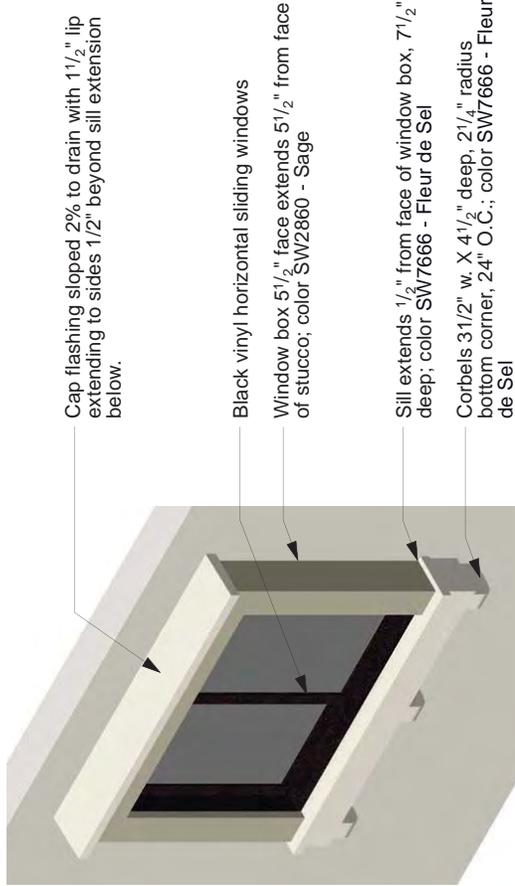
MIXED-USE

1140 Alessandro Avenue
 Morro Bay, CA 93442
 Gerald & Erika Luhr
 (805) 440-9537

WINDOW TRIM TYPE 1 DETAIL

Greg Allen Barker, AIA
 120 Cerro Romauldo Avenue
 San Luis Obispo, CA 93405
 (805) 704-8613
 Architect License C17215

Date: Apr. 26, 2023
 Sheet **D-1**
 of 7



Window Trim Type 2 Detail

Scale: 1/2" = 1'-0"

MIXED-USE

1140 Alessandro Avenue
 Morro Bay, CA 93442
 Gerald & Erika Luhr
 (805) 440-9537

WINDOW TRIM TYPE 2 DETAIL

Greg Allen Barker, AIA

120 Cerro Romauldo Avenue
 San Luis Obispo, CA 93405
 (805) 704-8613
 Architect License C17215

Date: Apr. 26, 2023

Sheet

D-2
 of 7



Black vinyl awning window with transom
(additional fixed panels at rotunda and select stairwells)

Terminate siding flush to frame in casing bead
at head, jambs, and sill

Window Trim Type 3 Detail

Scale: 1/2" = 1'-0"

MIXED-USE

1140 Alessandro Avenue
Morro Bay, CA 93442
Gerald & Erika Luhr
(805) 440-9537

**WINDOW TRIM TYPE 3
DETAIL**

Greg Allen Barker, AIA

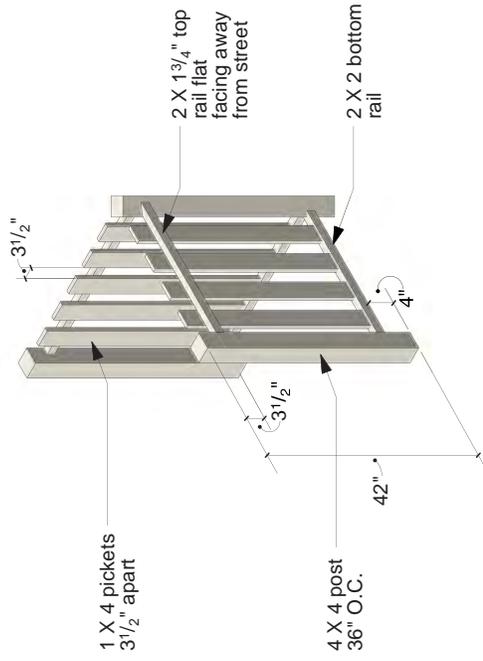
120 Cerro Romauldo Avenue
San Luis Obispo, CA 93405
(805) 704-8613
Architect License C17215

Date: Apr. 26, 2023

Sheet

D-3

of 7



Fence Detail

Scale: 1/2" = 1'-0"

MIXED-USE
 1140 Alessandro Avenue
 Morro Bay, CA 93442
 Gerald & Erika Luhr
 (805) 440-9537

FENCE DETAIL

Greg Allen Barker, AIA
 120 Cerro Romauldo Avenue
 San Luis Obispo, CA 93405
 (805) 704-8613
 Architect License C17215

Date: Apr. 26, 2023
 Sheet **D-4**
 of 7

	<p>Asphalt Shingle Roofing GAF Timberline HDZ Slate</p> <p>Painted Exterior Wood Sherwin Williams SW7666 - Fleur de Sel</p> <p>Painted Exterior Door & Window Trim Sherwin Williams SW7067 - Cityscape</p> <p>Exterior Stucco La Habra X-215 - Mesa Verde</p> <p>Painted Exterior Cement-fiber Horizontal Siding Sherwin Williams SW2860 - Sage</p> <p>Exterior Stucco Veneer La Habra P-2090 - Thunder Sky</p> <p>Door & Window Frames Black Vinyl</p>	<p>MIXED-USE 1140 Alessandro Avenue Morro Bay, CA 93442 Gerald & Erika Luhr (805) 440-9537</p> <p>Color & Material Board</p> <p>Greg Allen Barker, AIA 120 Cerro Romauldo Avenue San Luis Obispo, CA 93405 (805) 704-8613 Architect License C17215</p> <p>Date: Apr. 26, 2023 Sheet D-5 of 7</p>
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SHELTER PATH

SHELTER LED PATH LIGHT

1547BK-LL

Hinkley Path Lights add impeccable style and safety to walkways and outdoor living environments to create sophisticated curb appeal.

FINISH: Black

GLASS: Clear Seedy

WIDTH: 4.8"

HEIGHT: 22.5"

DEPTH: 4.5"

LIGHT SOURCE: LED Lamp

WATTAGE: 1-1.50w T5 LED *Included

TRANSFORMER REQUIRED: Yes

HINKLEY

HINKLEY
33000 Pin Oak Parkway
Avon Lake, OH 44012

PHONE: (440) 653-5500
Toll Free: 1 (800) 448-5539
hinkley.com

MIXED-USE

1140 Alessandro Avenue
Morro Bay, CA 93442
Gerald & Erika Luhr
(805) 440-9537



Pathway Light

Greg Allen Barker, AIA

120 Cerro Romauldo Avenue
San Luis Obispo, CA 93405
(805) 704-8613
Architect License C17215

Date: Apr. 26, 2023

Sheet **D-6**
of 7

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AGENDA NO: C-1

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 6, 2023

FROM: Yvonne Kimball, City Manager
Dana Swanson, City Clerk

SUBJECT: **Certify Results of Citizens Initiative Petition entitled “Initiative Measure to Amend City of Morro Bay’s General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City” and then: 1) Order a Report on the Effects of the Proposed Initiative; 2) Adopt the Ordinance without alteration; or, 3) Submit the Ordinance without alternation to the Qualified Voters of the City as a Proposed Measure at a Regular Municipal Election**

RECOMMENDATION

Staff recommends the City Council receive the staff report, discuss the options provided by Elections Code section 9215 and described in this report, and then pursuant to statutory duties under Election Code section 9215 take one of the following actions:

1. **Order a Report on the Effects of the Proposed Ordinance.** Pursuant to Election Code section 9215, Council may order a report from City staff pursuant to Election Code section 9212. Staff requests that if Council orders a report, that Council (consistent with Election Code section 9212 options, see below) provide direction on the desired contents of the report. The public report would potentially help Council to decide whether to choose between Option 2 or Option 3 below and would also be available to the voters if Council should decide to send the measure to the voters rather than adopt the ordinance. This comprehensive report needs to be available within 30 days (i.e., by the October 10 regular Council meeting). When the report is presented to the Council, the Council shall then either adopt the ordinance (at that meeting or within 10 days) or order an election be held on the ordinance; **or**
2. **Adopt the Ordinance.** Adopt, without alteration, by title only, with further reading waived, Ordinance No. 659(a), adopting “Initiative Measure to Amend City of Morro Bay’s General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on certain designated parcels within the City”; **or**
3. **Order an Election on the Proposed Ordinance.** Call for an election on the ordinance by adopting Resolution No. 61-23 calling for a General Municipal Election to be held on

Prepared By: DS/CFN

Dept Review:

City Manager Review: YK

City Attorney Review: CFN

Tuesday, November 5, 2024, for the submission of Ordinance No. 659(b) to the qualified voters of the City as a proposed measure, and adopt Resolution No. 62-23 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 63-23 providing for the filing of rebuttal arguments..

****Election Code section 9282 provides that "For measures placed on the ballot by petition, the persons filing an initiative petition pursuant to this article may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance." If Council desires pursuant to Election Code section 9282 to submit an argument against the proposed measure, then one or two members should be appointed for the task as provided for in section 2 of Resolution No. 62-23, as discussed further in this report. Otherwise, Council should not approve section 2 of Resolution No. 62-23.****

ALTERNATIVE(S)

No alternatives are recommended.

FISCAL IMPACT

Should the Council submit the ordinance to the qualified voters of the City as a proposed ballot measure at the November 2024 General Election, the estimated cost is \$4,000 - \$5,000.

BACKGROUND

On May 1, 2023, pursuant to authority provided by the California Constitution and the State Elections Code, an initiative petition was presented for filing entitled "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City." The Notice of Intent to Circulate an Initiative Petition is provided as Attachment 1, and the Ballot Title and Summary prepared by the City Attorney for the proposed initiative measure is provided as Attachment 2.

Elections Code (EC) Section [9215](#) provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city." As of the February 10, 2023, voter registration report to the Secretary of State, there were 8,141 registered voters in the City of Morro Bay. Pursuant to EC section [9210](#), the initiative petition was examined by the City Clerk and it was determined the number of signatures prima facie, was in excess of 10% (815) of the registered voters of the City and the petition was accepted for filing. The City Clerk's office coordinated with the County Registrar of Voters' to examine signatures and, in accordance with EC Sections [9114](#), the initiative petition was determined to contain 1,327 valid signatures and deemed sufficient on August 31, 2023. The results of the petition signature verification are being certified to the Council as presented in Attachment 3.

EC Section 9215 also provides in part that when a city council is presented with a qualified petition, the Council shall either:

(a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or,

(b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405; or,

(c) Order a report pursuant to EC Section [9212](#) at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body

shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b). (EC Section 9212(b) further provides the report shall be presented to the Council no later than 30 days after the elections official certifies to the Council the sufficiency of the petition.)

EC Section [1405](#) provides the election for a qualified initiative petition shall be held either at the next regular election occurring not less than 88 days after the date of the order of the election, or the governing body may call a special election to be held not less than 88 days nor more than 103 days after the order of the election.

DISCUSSION

Plan Morro Bay serves as the General Plan and Local Coastal Program/Coastal Land Use Plan for the City of Morro Bay (“City”). Plan Morro Bay was adopted by the City Council on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021 (“Approval Date”).

The measure prohibits, unless otherwise approved by a majority of City of Morro Bay voters, any change to the land use designations under Plan Morro Bay, of Visitor-Serving Commercial and/or Commercial/Recreational Fishing, in effect on the Approval Date, for approximately 103 acres of real property (“Subject Property”). The Subject Property is located east of Morro Rock by the Morro Bay harbor and includes certain parcels situated both on each side of Embarcadero Road (from Beach Street to Atascadero Road) as well as on Coleman Drive. The Subject Property includes restaurants, commercial/recreational fishing oriented uses, certain parking lots, Coleman park, the Harbor Department, the U.S. Coast Guard, City property, Morro Dunes RV Park and approximately 63 acres of the former Morro Bay Power Plant property.

Visitor-Serving Commercial has a land use designation defined under Plan Morro Bay as “Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices” with 1.25 floor area ratio (“FAR”). Commercial/Recreational Fishing has a land use designation defined under Plan Morro Bay as “Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only” with 0.5 FAR.

The measure directs the City to take all appropriate actions needed to implement the measure and provides that any provisions of local code, ordinance or resolution inconsistent with the measure shall not be applied or enforced. Any inconsistency between the measure, and any amendment or update to Plan Morro Bay adopted after May 1, 2023, shall be amended to ensure consistency with the measure. The measure directs the City to make necessary amendments to Plan Morro Bay, the City’s Zoning Code, and other City plans, ordinances and policies to ensure consistency with the measure’s provisions. The City Council is authorized to adopt implementing ordinances, guidelines, rules and/or regulations to further the purposes of the measure.

The measure applies to any City planning application, not approved as of the effective date of the measure, which seeks Subject Property to be re-designated from a Visitor-Serving Commercial land use designation. The measure provides that the City Council shall take all steps reasonably necessary to enforce the measure and to defend the measure against any challenge to its validity.

Requesting a Report on Effect of Proposed Initiative

EC Section 9212 provides the City Council (rather than adopt the ordinance or call for an election)

may request a report **on any or all of** the following that must be presented to the Council within 30 days (and then when the report is presented, Council shall adopt the initiative or call for an election):

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under [Section 65008 of the Government Code](#) and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with [Section 65915\) of Division 1 of Title 7 of the Government Code](#).
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the legislative body requests to be in the report.

Staff requests, if Council orders a report be prepared, the Council provide direction to the City Manager on analysis requested in a report to evaluate the impacts of the initiative measure on a Citywide basis and prepare a report to be brought back to Council at the October 10, 2023, Regular Meeting. At that time the Council may consider the information provided and either: (a) adopt the ordinance without alteration within 10 days, or (b) submit the ordinance to the voters at the next regular election.

Adopt the Ordinance

The Council may adopt the ordinance without alteration at the September 12th meeting (or within 10 calendar days), by adopting, with further reading waived, Ordinance No. 659, adopting "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on certain designated parcels within the City" (See Attachment No. 4). "No ordinance that is... proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters... shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance." (Election Code section 9217.)

Submit the Ordinance to the Voters at the November General Municipal Election

The Council may send the ordinance to the voters for approval at the next regular municipal election to be held in not less than 88 days (Morro Bay's next regular municipal election is November 5, 2024).

To send Ordinance No. 659 to the voters at the general municipal election on November 5, 2024, three election resolutions are presented for consideration by the City Council.

The first resolution orders the submission of the ordinance to the voters at the November 5, 2024, General Municipal Election and requests from the County a consolidation of that election with the Statewide General Election scheduled for the same date. (See Attachment No. 5)

Ballot Label. The first resolution includes a “ballot label” which describes the proposed ordinance and which is the question actually presented to the voters. Ballot labels are limited to 75 words or less. The Council may revise the language used for the ballot label within the following state law restrictions: “The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” (Election Code section 13119(c).)

The second resolution is concerned with written arguments (both pro and con) about the initiative measure, as well as directing the City Attorney to prepare an impartial analysis of the initiative measure. (See Attachment No. 6.) The second resolution establishes priorities under state law for choosing among multiple arguments. In consultation with the City Clerk the second resolution sets a deadline for written arguments (pro and con) of Friday, July 19, 2024, at the close of business.

Argument Authorization. Pursuant to Election Code section 9282, for measures placed on the ballot by petition, the persons filing an initiative petition may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance. The second resolution authorizes - if Council so desires - one or two councilmembers to write an argument against the ballot measure. If three or more Councilmembers jointly write a ballot argument then the Brown Act will require the collaboration to occur at a noticed public meeting. As such, staff suggests, if Council desires to submit an argument against the ordinance, the Council appoint one or two councilmembers to write an authorized argument.

*****If Council desires to appoint one or two Councilmembers to write an argument against the ballot measure, then Section 2 in the second resolution should have name(s) added to it for the drafter(s). If Council does not desire to submit an argument against the measure, then Section 2 in the second resolution should be taken out of the resolution before approval.**

The third resolution provides for the filing of rebuttal arguments to the primary written arguments. (See Attachment No. 7.) The rebuttal arguments are prepared by the opposite authors of the primary written arguments. In consultation with the City Clerk the third resolution sets a deadline for rebuttals of Friday, August 2, 2024, at the close of business. Rebuttal arguments are optional under state law and are allowed at the discretion of the City Council. Disallowing rebuttal arguments will result in lowering the total cost for placing the initiative measure on the ballot (as extra pages in the voter books cost more money). The exact amount of cost savings is unknown at the present. If the City Council does not desire to authorize rebuttal arguments, then Council should not approve this third election resolution.

March 2024 Primary vs. November 2024 General Election vs. Some Other Date

Community members have inquired as to whether the initiative can be placed on the March 2024 statewide primary election. Election Code section 1405 provides in part that:

“(a) ... The election for a municipal or district initiative that qualifies pursuant to Section 9215 or 9310 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election.

(b) The governing body of a county, city, or district **may call a special election** for the purpose of submitting an initiative measure to the voters before the date on which the initiative measure would appear on the ballot pursuant to subdivision (a). If the governing body calls a special election pursuant to this subdivision, **the election shall be held not less than 88 days nor more than 103 days after the order of the election.**” (Emphasis added.)

Per Morro Bay Municipal Code ([MBMC Section 2.09.010](#)), the City’s regular general municipal election is on the same day as the statewide general election in November of each even-numbered year. Any other established election date, including the March 2024 statewide primary, would be considered a special election. In order for the Council to consider placing this initiative on the March 2024 ballot, the election must be called between November 23 – December 8, 2023 (i.e., 88-103 days before that election date). This is because pursuant to Election Code section 1405(b) as cited above, a special election for the initiative “shall be held not less than 88 days nor more than 103 days after the order of the election.” Given the City Council’s schedule for regular meetings and required statutory timelines established by EC sections 9114, 9215 and 9212, if Council requests a report under EC 9212 (see above), then a decision as to whether to adopt the ordinance as presented or submit the ordinance to the voters must be made at or within 10 days of the October 10, 2023 Regular Meeting. That timeframe does not fall within the 88 – 103 day range established by Elections Code Section 1405(b) that would allow for the option to place the item on the ballot for the March Special Election. If Council decided to not request an EC section 9212 report and decided to submit the ordinance to the voters at this meeting, then the timeline is even farther out.

Note that even if this was an option to send the ballot measure to voters in March 2024, the cost to consolidate a ballot measure on a special election already being held by the County is substantially more than adding a ballot measure to the general election. The SLO County Clerk-Recorder’s office estimated the cost to add this ballot measure to the March 2024 primary would be \$39,000.

Because the City would not be able to consolidate a special election with the March 2024 election run by the County, the remaining statutory option (other than sending the ballot measure to the voters in November 2024) is for the City to run its own stand-alone election independent of the County. That special election would need to be held no less than 88 days and no more than 103 days from the date of the meeting when the certification of the ballot measure occurs; therefore, a special election called on September 12, 2023 would need to be held between December 9 and December 24, 2023. (Election Code sections 1405, 1003.)

Staff does not recommend the Council pursue this alternative as the prohibitive cost for the City to run a special election that is not consolidated with the County is estimated to be \$140,000 - \$160,000 for professional elections management services; supplemental staffing; production of voter information guides, ballots, envelopes, and other supplies; rental of scanning and ballot tabulation services; and first class postage out and back with “track my mail” service. (As noted in the Fiscal Impact section, the cost for printing to add a ballot measure to the November 2024 general election is \$4,000 - \$5,000.) That cost assumes that the City could even retain an election consultant to run a special election – which is not guaranteed. Additionally, City staff does not have the in-house resources to successfully run and staff an independent stand-alone election in this short timeframe. For comparison, the County’s deadlines for initiative measures begins 140 days prior to the election date with arguments, impartial analysis and rebuttal arguments due no later than 98 days prior to the election. Because of the prohibitive cost of holding an independent stand-alone election, as well as the uncertainty of whether a consultant could even be retained to successfully run an independent

stand-alone special election, staff does not consider holding a stand-alone special election sometime between December 9 - December 24, 2023 if ordered on September 12, 2023, or January 6 – January 21, 2024 if ordered October 10, 2023, as a viable option. As such, resolutions have not been prepared to call such an election.

CONCLUSION

Staff recommends the City Council receive the report, discuss the alternatives provided by Elections Code section 9215 and described in this report, and then pursuant to Election Code section 9215 either adopt the ordinance, send the ordinance to the voters, or order a report be prepared for Council to consider at the October 10, 2023 regular Council meeting (at which time Council shall either adopt the ordinance or send the ordinance to the voters).

ATTACHMENTS

1. May 1, 2023 Notice of Intent to Circulate a Petition
2. May 16, 2023 Ballot Title and Summary for proposed Initiative Measure
3. August 31, 2023 Certificate of Sufficiency of Petition
4. Ordinance No. 659(a)
5. Resolution No. 61-23 Calling for a General Municipal Election for the Submission of Ordinance No. 659(b) to the Qualified Voters of the City
6. Resolution No. 62-23 Setting Priorities for Filing Written Argument(s) and Directing the City Attorney to Prepare an Impartial Analysis regarding Ordinance No. 659
7. Resolution No. 63-23 Providing for the Filing of Rebuttal Arguments Regarding Ordinance No. 659

MAY - 1 2023

City Clerk

May 1, 2023

Dana Swanson
City Clerk
City of Morro Bay
595 Harbor Avenue
Morro Bay, CA 93442

Dear Ms. Swanson:

As the elections official for the City of Morro Bay, please find attached a Notice of Intent to Circulate Petition, the full text of the Measure, and declarations regarding the use of signatures.

Pursuant to Elections Code section 9203(a), this letter shall serve as formal written request that a ballot title and summary of the measure be prepared by the City Attorney. Please transmit these materials immediately as required by Elections Code section 9203(a).

The address you may use to furnish us a copy of the ballot title and summary prepared by the City attorney is Barry Branin, P.O. Box 540, Morro Bay, CA 93443.

Sincerely,



Barry F. Branin
[REDACTED]



Jefferson Eckles
[REDACTED]



Janice Peters
[REDACTED]

Notice of Intent to Circulate Petition

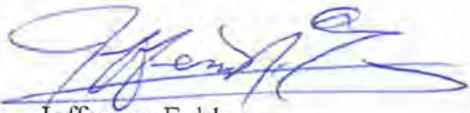
Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Morro Bay, CA for the purpose of reaffirming the current "Visitor-Serving Commercial" and "Commercial/Recreational Fishing" land use designations for certain parcels along Embarcadero Road and Coleman Drive. A statement of the reasons for the proposed action as contemplated in the petition is as follows:

1. To protect the natural beauty, sensitivity, and intrinsic value of Morro Bay's waterfront and the Embarcadero;
2. To prevent the visual and physical degradation of Morro Bay's natural environment
3. To promote the health and safety of Morro Bay's residents, tourists, boaters, and wildlife habitat;
4. To maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor and surrounding beaches;
5. To preserve Morro Bay as a world-renown tourist destination.

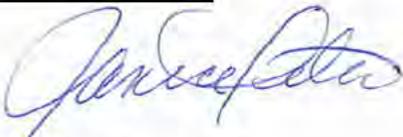
Proponents:


Barry F. Branin




Jefferson Eckles




Janice Peters



9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

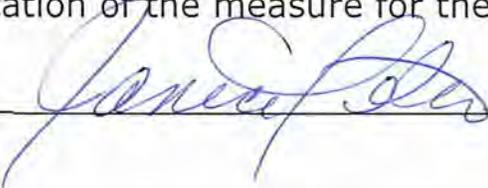
I, Barry F. Branin, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) 
Dated this 1 day of May, 2023

I, Jefferson Eckes, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) 
Dated this 1 day of May, 2023

I, Janice Peters, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) 
Dated this 1 day of May, 2023

The People of the City of Morro Bay do ordain as follows:

SECTION 1: PURPOSES, EFFECT, AND FINDINGS.

A. Purposes: The purposes of this Initiative are to: (1) protect the natural beauty, sensitivity, and intrinsic value of Morro Bay’s waterfront and Embarcadero; (2) prevent the visual and physical degradation of Morro Bay’s natural environment; (3) promote the health and safety of Morro Bay’s residents, tourists, boaters, and wildlife habitat; (4) maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor, and surrounding beaches; and (5) preserve Morro Bay as a world-renowned tourist destination.

B. Effect: This Initiative amends *Plan Morro Bay*, the City of Morro Bay’s General Plan, adopted in May, 2021 to readopt and reaffirm the existing “Visitor-Serving Commercial” and “Commercial/Recreational Fishing” land use designations for certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and Coleman Drive including Morro Rock parking lots, such that these parcels, even if subdivided, may only be amended or re-designated by a majority of Morro Bay voters at a regular or special election.

C. Findings: The People of the City of Morro Bay (“City”) find that this Initiative promotes and protects the safety, welfare, and quality of life of Morro Bay residents, based upon the following findings, any one of which would be sufficient to support adoption of this Initiative:

1. *Plan Morro Bay* serves as the City of Morro Bay’s General Plan, prepared in accordance with Government Code section 65300 and following sections, and as the City’s Local Coastal Program (LUP) Land Use Plan, prepared in accordance with the California Coastal Act, Public Resources Code section 30000 and following sections. The City Council adopted *Plan Morro Bay* on May 25, 2021, and the California Coastal Commission certified it on August 12, 2021. *Plan Morro Bay* governs and regulates land use and development policies and decisions in Morro Bay, in addition to serving other functions. This Initiative refers to this document either as *Plan Morro Bay* or the *Plan Morro Bay* General Plan.

2. *Plan Morro Bay* affirms the critical importance of visitor-serving and commercial fishing uses as “Coastal Priority Uses,” stating the following on pages 3-28 and 3-29:

Coastal Priority Uses

The Coastal Act requires the City to prioritize uses that serve important needs for the community and visitors, such as recreation, coastal access, open space, and visitor-serving and coastal-dependent uses. Nearly all of Morro Bay is in the coastal zone. Coastal priority uses range from visitor-serving recreation and services to coastal dependent businesses such as aquaculture and commercial fishing.

3. *Plan Morro Bay* defines and describes “Visitor-Serving Commercial” land uses as follows, permitting them at a floor-area ratio of up to 1.25:

Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices.

4. The Morro Bay Zoning Code correspondingly defines “Visitor-serving facility” as follows:

“Visitor serving facility” means those stores, shops, businesses, recreational facilities (both public and private), parks and natural preserves which are regularly utilized by the traveling public.

5. Consistent with the *Plan Morro Bay* General Plan’s Visitor-Serving Commercial designation, the City’s Zoning Code currently allows for a wide variety of tourism-oriented businesses in Morro Bay’s Visitor-Serving Commercial (C-VS) Zoning District, including but not limited to restaurants, coffee shops, specialty retail boutiques, travel agents, retail establishments selling boat and marine supplies, souvenirs, antiques, art galleries and studios, museums, hotels and motels, bars and taverns, boat rentals, fishing supplies, service stations, parking lots, and parks and open space.

6. *Plan Morro Bay* describes “Commercial/Recreational Fishing” land uses as follows, permitting them at a floor-area ratio of up to 0.5:

[This designation] Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only.

7. Consistent with the *Plan Morro Bay* General Plan’s Commercial/Recreational Fishing designation, the City’s Zoning Code currently allows for fishing-oriented businesses and uses in Morro Bay’s Commercial/Recreational Fishing (CF) Zoning District, and expressly prohibits the City from granting any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or if clearly incidental thereto.

8. *Plan Morro Bay* Figure LU-4, Land Use Map, depicts those parcels of land within the City that are currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing. See **Exhibit A**. Included among these are certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road designated for Visitor-Serving Commercial uses, and on both sides of Coleman Drive including Morro Rock for Commercial/Recreational uses, referred to as the “Measure D Area,” and further shown on **Exhibit B**.

9. *Plan Morro Bay* currently includes POLICY LU-4.2:

Measure D/Commercial/Recreational Fishing Uses: Ensure commercial fishing activity is prioritized in the Measure D area.

10. *Plan Morro Bay* currently includes POLICY LU-4.6: Development Priority, which states:

Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

11. *Plan Morro Bay*’s Visitor-Serving Commercial and Commercial/Recreational Fishing land use designations are critical to maintaining Morro Bay’s economic vitality, quality of life, status as a tourist destination, recreational resources, and natural environment.

12. Any change in *Plan Morro Bay*’s Visitor-Serving Commercial and/or Commercial/Recreational Fishing land use designations to allow industrial or other non-commercial uses will have a deleterious impact on Morro Bay’s citizens, its economy, environment, reputation, and overall quality life.

13. This Initiative is therefore necessary to ensure that future land uses that are incompatible with, or that would adversely impact, existing and future Visitor-Serving Commercial and Commercial/Recreational Fishing uses are not permitted to operate on those parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and

Coleman Drive including Morro Rock parking lots, unless a majority of Morro Bay voters approve of such other uses.

SECTION 2: PLAN MORRO BAY GENERAL PLAN AMENDMENTS.

A. This Initiative hereby amends the *Plan Morro Bay* General Plan as adopted by the City of Morro Bay on May 25, 2021, and as approved by the California Coastal Commission on August 12, 2021. Text to be inserted in the Plan is indicated in ***bold italic*** type. Text in standard type currently appears in the *Plan Morro Bay* General Plan and is not changed or readopted by this Initiative. The amendments to the *Plan Morro Bay* General Plan made in this SECTION 2 may be changed only by a majority vote of the people at a regular or special election, except where expressly stated otherwise.

B. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-28 and 3-29:

Visitor-Serving Uses

Visitors come to Morro Bay year-round to enjoy the beautiful scenery, the beach, and an eclectic and laid-back vibe. The diverse array of shops, restaurants, and recreation opportunities are an important part of both the economy and personality of Morro Bay, and these uses need to be protected for the enjoyment of visitors and locals alike. The Coastal Act also requires that visitor-serving uses be prioritized over most other uses in the coastal zone.

Approximately 145 acres of land are designated for visitor-serving uses, primarily located in the Embarcadero, downtown, and State Park areas. These uses include hotels and other lodging, restaurants, parking facilities, shopping, and entertainment options. Because of their location near the coastline, the businesses and recreation areas are vulnerable to both development pressure and increasing flood risk due to sea level rise. The Land Use Map and policies work together to protect visitor-serving uses from encroachment of all kinds.

The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in Figure LU-4.1 below, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

Figure LU-4.1 depicts those parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with the Initiative.

C. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-30, immediately above the heading titled “Energy and Industrial Uses” and below the text describing Figure LU-5, as follows:

Figure LU-5 identifies fishing and boating facilities in Morro Bay, differentiating between administrative, commercial, and recreational services:

The voters of Morro Bay have adopted an initiative to maintain visitor-serving and commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

D. *Plan Morro Bay, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-4.6.1 on page 3-35 and 3-36, immediately following existing POLICY LU-4.6:*

POLICY LU-4.6: Development Priority. Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

POLICY LU-4.6.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, and as referenced herein and amended hereby, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

E. *Plan Morro Bay, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-5.1.1 on page 3-37, immediately following existing POLICY LU-5.1:*

POLICY LU-5.1: Use Conflicts. Reduce potential conflicts between commercial fishing and coastal recreational uses.

POLICY LU-5.1.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

F. *Plan Morro Bay, Chapter 3B “Land Use,” is hereby amended to insert this measure’s Exhibit B, as Figure LU-4.1 following page 3-31.*

SECTION 3. IMPLEMENTATION.

A. **Effective Date:** “Effective Date” means the date that this Initiative became effective pursuant to state law. Upon the Effective Date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to,

taking any administrative steps necessary to update any and all City maps, figures, and any other documents maintained by the City so they conform to the legislative policies set forth in this Initiative.

B. *Plan Morro Bay General Plan:* Upon the Effective Date of this Initiative, the provisions of SECTION 2 of the Initiative are hereby inserted into the *Plan Morro Bay General Plan*, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the *Plan Morro Bay General Plan* on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the Morro Bay Municipal Code or of any other City of Morro Bay ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be applied or enforced in a manner inconsistent with this Initiative.

C. *Interim Amendments:* The date that the notice of intention to circulate this Initiative was submitted to the City of Morro Bay elections official is referenced herein as the "Submittal Date." The *Plan Morro Bay General Plan* in effect on the Submittal Date as amended by this Initiative is required by state law to comprise an integrated, internally consistent, and compatible statement of policies for the City. In order to ensure that nothing in this Initiative measure would prevent the *Plan Morro Bay General Plan* from being an integrated, internally consistent, and compatible statement of the policies of the city, as required by state law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the *Plan Morro Bay General Plan* that is adopted between the Submittal Date and the date that the *Plan Morro Bay General Plan* is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the *Plan Morro Bay General Plan* provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the *Plan Morro Bay General Plan*.

D. *Other City Plans, Ordinances, and Policies:* The City of Morro Bay is hereby authorized and directed to amend the *Plan Morro Bay General Plan*, and other City of Morro Bay plans thereafter, as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the *Plan Morro Bay General Plan*, the Morro Bay Zoning Code, and any other City of Morro Bay plans, ordinances, and policies. Such amendments include any zoning designations of any lands designated by the *Plan Morro Bay General Plan* as Visitor-Serving Commercial, so that the underlying zoning of the properties is consistent with the properties' land use designation as enacted and/or affirmed by SECTION 2 of this Initiative.

E. *Reorganization:* The *Plan Morro Bay General Plan* may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the *Plan Morro Bay General Plan* in accordance with state law, provided that the provisions of SECTION 2 of this Initiative shall remain in the General Plan unless repealed or amended by vote of the people of the City of Morro Bay.

F. *Implementing Ordinances:* The City Council is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.

G. *Enforcement and Defense of Initiative:* The City Council shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity. The proponents of this Initiative, the committee sponsoring this Initiative, or any other elector of the City, have standing to seek a writ of mandate to enforce the provisions of this Initiative.

I. *Applications in the Planning Process:* This Initiative shall apply to any City of Morro Bay planning application that seeks to re-designate lands with a Visitor-Serving Commercial designation as of the Effective Date of this Initiative, and where the application has not been approved as of the Effective Date.

J. Exemptions: The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitutions or laws of the United States or the state of California. Should any application of the Initiative effect a taking of private property under the constitutions or laws of the United States or the state of California, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid such a taking. Any such exemption requires a finding by the City Council, based on substantial evidence, that the application of the Initiative would constitute an unconstitutional taking of property and that the exemption is applied only to the extent necessary to avoid an unconstitutional taking. Likewise, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid infringing a vested right obtained pursuant to state law as of the Effective Date.

SECTION 4: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

By voting for this Initiative, the voters expressly declare their intent that any other City of Morro Bay measure that appears on the same ballot as this Initiative and addresses voter approval for designation or re-designation of lands designated Visitor-Serving Commercial, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire policy scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other City of Morro Bay measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this SECTION 4, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

SECTION 5: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the City of Morro Bay in a manner that facilitates the purposes set forth in this Initiative. This Initiative shall be interpreted so as to be consistent with all applicable Federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, it is the will of the voters that such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of Morro Bay indicate our strong desire that: (1) the City Council use its best efforts to sustain and re-enact that portion; and (2) the City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

SECTION 6: AMENDMENT AND REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by a vote of the people of the City of Morro Bay.

SECTION 7: EXHIBITS

Exhibit A: *Plan Morro Bay* (2021) Figure LU-4, Land Use Map, annotated to show area affected by this Initiative.

Exhibit B (to be inserted into *Plan Morro Bay* as Figure LU-4.1): Detail of *Plan Morro Bay* (2021) Figure LU-4, Land Use Map, delineating parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with this Initiative.



EXHIBIT A Plan Morro Bay Land Use Map

FIGURE LU-4
Land Use Map

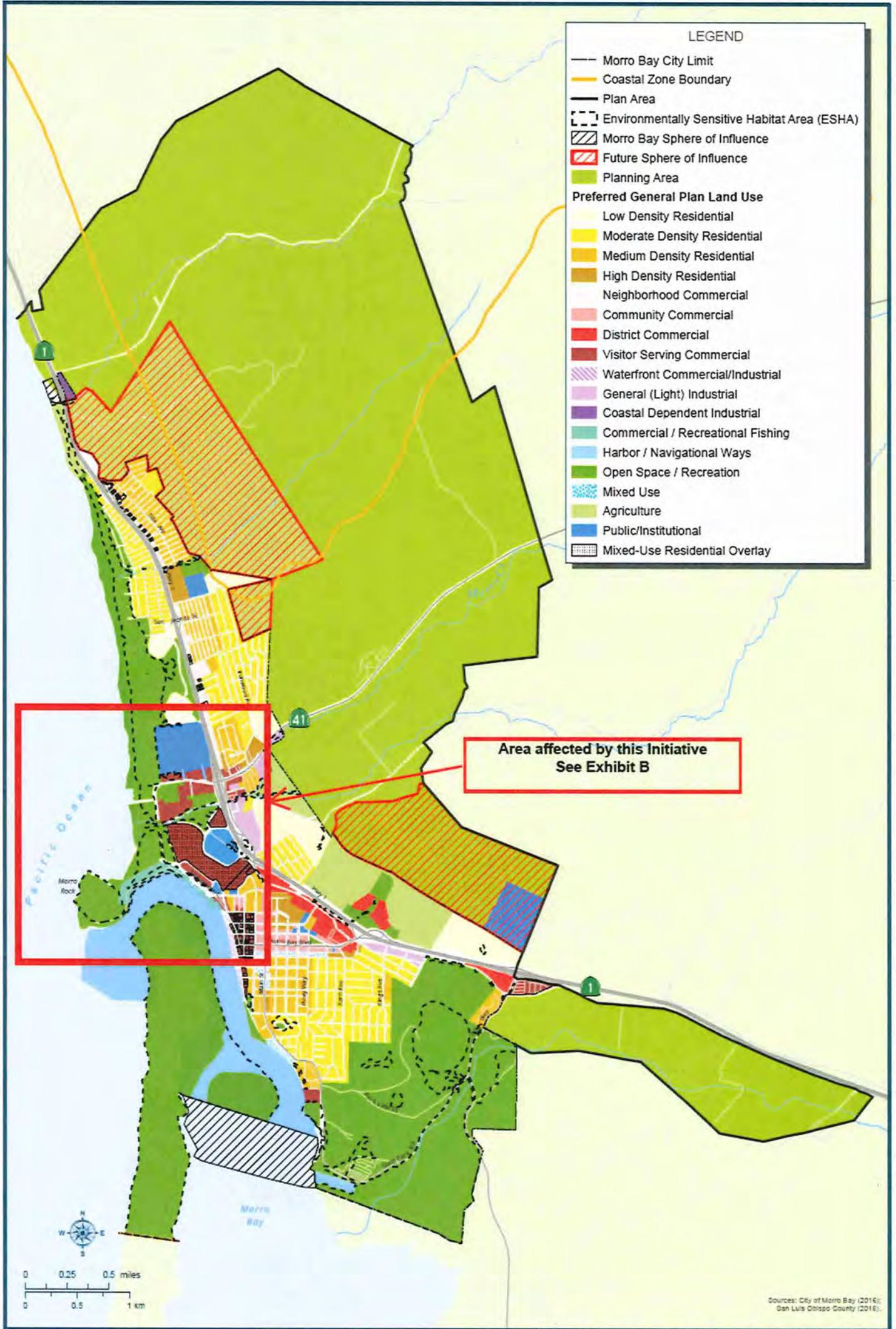


EXHIBIT B PARCELS/AREAS AFFECTED BY THIS INITIATIVE



- Visitor Serving Commercial
- Commercial / Recreational Fishing
- Mixed-Use Residential Overlay

Areas affected by this Initiative



CITY OF MORRO BAY

CITY HALL
595 Harbor Street
Morro Bay, CA 93442

VIA EMAIL & FIRST CLASS MAIL

May 16, 2023

Barry Branin
P.O. Box 540
Morro Bay, CA 93443

Subject: Ballot Title and Summary for Proposed Initiative Measure

Dear Barry,

The City Attorney has prepared the following title and summary pursuant to State law, including Election Code section 9203, for the proposed measure submitted to my office:

BALLOT TITLE

INITIATIVE MEASURE TO AMEND CITY OF MORRO BAY'S GENERAL PLAN (PLAN MORRO BAY), ADOPTED BY CITY COUNCIL ON MAY 25, 2021, TO PROHIBIT, UNLESS APPROVED BY MORRO BAY VOTERS, ANY CHANGE TO LAND USE DESIGNATIONS OF VISITOR-SERVING COMMERCIAL OR COMMERCIAL/RECREATIONAL FISHING, ON CERTAIN DESIGNATED PARCELS WITHIN THE CITY

SUMMARY

Plan Morro Bay serves as the General Plan and Local Coastal Program/Coastal Land Use Plan for the City of Morro Bay ("City"). Plan Morro Bay was adopted by the City Council on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021 ("Approval Date").

The measure prohibits, unless otherwise approved by a majority of City of Morro Bay voters, any change to the land use designations under Plan Morro Bay, of Visitor-Serving Commercial and/or Commercial/Recreational Fishing, in effect on the Approval Date, for approximately 103 acres of real property ("Subject Property"). The Subject Property is located east of Morro Rock by the Morro Bay harbor and includes certain parcels situated both on each side of Embarcadero Road (from Beach Street to Atascadero Road) as well as on Coleman Drive. The Subject Property includes restaurants, commercial/recreational fishing oriented uses, certain parking lots, Coleman park, the Harbor Department, the U.S. Coast Guard, City property, Morro Dunes RV Park and approximately 63 acres of the former Morro Bay Power Plant property.

Visitor-Serving Commercial has a land use designation defined under Plan Morro Bay as "Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants

and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices” with 1.25 floor area ratio (“FAR”). Commercial/Recreational Fishing has a land use designation defined under Plan Morro Bay as “Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only” with 0.5 FAR.

The measure directs the City to take all appropriate actions needed to implement the measure and provides that any provisions of local code, ordinance or resolution inconsistent with the measure shall not be applied or enforced. Any inconsistency between the measure, and any amendment or update to Plan Morro Bay adopted after May 1, 2023, shall be amended to ensure consistency with the measure. The measure directs the City to make necessary amendments to Plan Morro Bay, the City’s Zoning Code, and other City plans, ordinances and policies to ensure consistency with the measure’s provisions. The City Council is authorized to adopt implementing ordinances, guidelines, rules and/or regulations to further the purposes of the measure.

The measure applies to any City planning application, not approved as of the effective date of the measure, which seeks Subject Property to be re-designated from a Visitor-Serving Commercial land use designation. The measure provides that the City Council shall take all steps reasonably necessary to enforce the measure and to defend the measure against any challenge to its validity.

As proponents of the initiative measure, I encourage you to carefully review California Elections Code Chapter 3, Article 1, to educate yourselves with the legal requirements of circulating an initiative measure. **This letter is being provided consistent with the requirements of State law and is not intended to provide legal advice. I strongly encourage you to seek legal counsel as needed.**

Elections Code section 9203(b) provides:

“The elections official shall furnish a copy of the ballot title and summary to the person filing the proposed measure. The person proposing the measures shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman type not smaller than 11 point, the ballot title prepared by the city attorney. The text of the measure shall be printed in type not smaller than 8 point. The heading of the proposed measure shall be in a boldface type in substantially the following form:

INITIATIVE MEASURE TO BE DIRECTLY SUBMITTED TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the city attorney. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)”

Elections Code section 9205 provides:

“A notice of intention and the title and summary of the proposed measure shall be published or posted or both as follows:

(a) If there is a newspaper of general circulation, as described in Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code, adjudicated as such, the notice, title, and summary shall be published therein at least once.

(b) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, the notice, title, and summary shall be published at least once, in a newspaper circulated within the city and adjudicated as being of general circulation within the county in which the city is located and the notice, title, and summary shall be posted in three (3) public places within the city, which public places shall be those utilized for the purpose of posting ordinances as required in Section 36933 of the Government Code.

(c) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, and there is no newspaper of general circulation adjudicated as such within the county, circulated within the city, then the notice, title, and summary shall be posted in the manner described in subdivision (b).

This section does not require the publication or posting of the text of the proposed measure.”

Elections Code section 9206 provides:

“Within 10 days after the date of publication or posting, or both, of the notice of intention and title and summary, the proponents shall file a copy of the notice and title and summary as published or posted together with an affidavit made by a representative of the newspaper in which the notice was published or, if the notice was posted, by a voter of the city, certifying to the fact of publication or posting.

If the notice and title and summary are both published and posted pursuant to subdivision (b) of Section 9205, the proponents shall file affidavits as required by this section made by a representative of the newspaper in which the notice was published certifying to the fact that the notice was published and by a voter of the city certifying to the fact that the notice was posted.

These affidavits, together with a copy of the notice of intention and title and summary, shall be filed with the elections official of the legislative body of the city in his or her office during normal office hours as posted.”

Elections Code section 9207 provides:

“The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication or posting, or both, as

required by Section 9205, of the title and summary prepared by the city attorney. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney.”

If you have any questions, please feel free to contact me.

Sincerely,



Dana Swanson
City Clerk

Enc. Notice of Intent to Circulate Petition

MAY - 1 2023

City Clerk

May 1, 2023

Dana Swanson
City Clerk
City of Morro Bay
595 Harbor Avenue
Morro Bay, CA 93442

Dear Ms. Swanson:

As the elections official for the City of Morro Bay, please find attached a Notice of Intent to Circulate Petition, the full text of the Measure, and declarations regarding the use of signatures.

Pursuant to Elections Code section 9203(a), this letter shall serve as formal written request that a ballot title and summary of the measure be prepared by the City Attorney. Please transmit these materials immediately as required by Elections Code section 9203(a).

The address you may use to furnish us a copy of the ballot title and summary prepared by the City attorney is Barry Branin, P.O. Box 540, Morro Bay, CA 93443.

Sincerely,



Barry F. Branin
3290 Beachcomber Drive



Jefferson Eckles
490 Avalon Street



Janice Peters
635 Kern Avenue

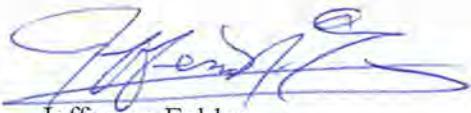
Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Morro Bay, CA for the purpose of reaffirming the current "Visitor-Serving Commercial" and "Commercial/Recreational Fishing" land use designations for certain parcels along Embarcadero Road and Coleman Drive. A statement of the reasons for the proposed action as contemplated in the petition is as follows:

1. To protect the natural beauty, sensitivity, and intrinsic value of Morro Bay's waterfront and the Embarcadero;
2. To prevent the visual and physical degradation of Morro Bay's natural environment
3. To promote the health and safety of Morro Bay's residents, tourists, boaters, and wildlife habitat;
4. To maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor and surrounding beaches;
5. To preserve Morro Bay as a world-renown tourist destination.

Proponents:


Barry F. Branin
3290 Beachcomber Drive


Jefferson Eckles
490 Avalon Street


Janice Peters
635 Kern Avenue

9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, Barry F. Branin, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) Barry Branin
Dated this 1 day of May, 2023

I, Jefferson Eckes, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) Jefferson Eckes
Dated this 1 day of May, 2023

I, Janice Peters, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent) Janice Peters
Dated this 1 day of May, 2023

The People of the City of Morro Bay do ordain as follows:

SECTION 1: PURPOSES, EFFECT, AND FINDINGS.

A. Purposes: The purposes of this Initiative are to: (1) protect the natural beauty, sensitivity, and intrinsic value of Morro Bay’s waterfront and Embarcadero; (2) prevent the visual and physical degradation of Morro Bay’s natural environment; (3) promote the health and safety of Morro Bay’s residents, tourists, boaters, and wildlife habitat; (4) maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor, and surrounding beaches; and (5) preserve Morro Bay as a world-renowned tourist destination.

B. Effect: This Initiative amends *Plan Morro Bay*, the City of Morro Bay’s General Plan, adopted in May, 2021 to readopt and reaffirm the existing “Visitor-Serving Commercial” and “Commercial/Recreational Fishing” land use designations for certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and Coleman Drive including Morro Rock parking lots, such that these parcels, even if subdivided, may only be amended or re-designated by a majority of Morro Bay voters at a regular or special election.

C. Findings: The People of the City of Morro Bay (“City”) find that this Initiative promotes and protects the safety, welfare, and quality of life of Morro Bay residents, based upon the following findings, any one of which would be sufficient to support adoption of this Initiative:

1. *Plan Morro Bay* serves as the City of Morro Bay’s General Plan, prepared in accordance with Government Code section 65300 and following sections, and as the City’s Local Coastal Program (LUP) Land Use Plan, prepared in accordance with the California Coastal Act, Public Resources Code section 30000 and following sections. The City Council adopted *Plan Morro Bay* on May 25, 2021, and the California Coastal Commission certified it on August 12, 2021. *Plan Morro Bay* governs and regulates land use and development policies and decisions in Morro Bay, in addition to serving other functions. This Initiative refers to this document either as *Plan Morro Bay* or the *Plan Morro Bay* General Plan.

2. *Plan Morro Bay* affirms the critical importance of visitor-serving and commercial fishing uses as “Coastal Priority Uses,” stating the following on pages 3-28 and 3-29:

Coastal Priority Uses

The Coastal Act requires the City to prioritize uses that serve important needs for the community and visitors, such as recreation, coastal access, open space, and visitor-serving and coastal-dependent uses. Nearly all of Morro Bay is in the coastal zone. Coastal priority uses range from visitor-serving recreation and services to coastal dependent businesses such as aquaculture and commercial fishing.

3. *Plan Morro Bay* defines and describes “Visitor-Serving Commercial” land uses as follows, permitting them at a floor-area ratio of up to 1.25:

Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices.

4. The Morro Bay Zoning Code correspondingly defines “Visitor-serving facility” as follows:

“Visitor serving facility” means those stores, shops, businesses, recreational facilities (both public and private), parks and natural preserves which are regularly utilized by the traveling public.

5. Consistent with the *Plan Morro Bay* General Plan’s Visitor-Serving Commercial designation, the City’s Zoning Code currently allows for a wide variety of tourism-oriented businesses in Morro Bay’s Visitor-Serving Commercial (C-VS) Zoning District, including but not limited to restaurants, coffee shops, specialty retail boutiques, travel agents, retail establishments selling boat and marine supplies, souvenirs, antiques, art galleries and studios, museums, hotels and motels, bars and taverns, boat rentals, fishing supplies, service stations, parking lots, and parks and open space.

6. *Plan Morro Bay* describes “Commercial/Recreational Fishing” land uses as follows, permitting them at a floor-area ratio of up to 0.5:

[This designation] Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only.

7. Consistent with the *Plan Morro Bay* General Plan’s Commercial/Recreational Fishing designation, the City’s Zoning Code currently allows for fishing-oriented businesses and uses in Morro Bay’s Commercial/Recreational Fishing (CF) Zoning District, and expressly prohibits the City from granting any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or if clearly incidental thereto.

8. *Plan Morro Bay* Figure LU-4, Land Use Map, depicts those parcels of land within the City that are currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing. See **Exhibit A**. Included among these are certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road designated for Visitor-Serving Commercial uses, and on both sides of Coleman Drive including Morro Rock for Commercial/Recreational uses, referred to as the “Measure D Area,” and further shown on **Exhibit B**.

9. *Plan Morro Bay* currently includes POLICY LU-4.2:

Measure D/Commercial/Recreational Fishing Uses: Ensure commercial fishing activity is prioritized in the Measure D area.

10. *Plan Morro Bay* currently includes POLICY LU-4.6: Development Priority, which states:

Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

11. *Plan Morro Bay’s* Visitor-Serving Commercial and Commercial/Recreational Fishing land use designations are critical to maintaining Morro Bay’s economic vitality, quality of life, status as a tourist destination, recreational resources, and natural environment.

12. Any change in *Plan Morro Bay’s* Visitor-Serving Commercial and/or Commercial/Recreational Fishing land use designations to allow industrial or other non-commercial uses will have a deleterious impact on Morro Bay’s citizens, its economy, environment, reputation, and overall quality life.

13. This Initiative is therefore necessary to ensure that future land uses that are incompatible with, or that would adversely impact, existing and future Visitor-Serving Commercial and Commercial/Recreational Fishing uses are not permitted to operate on those parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and

Coleman Drive including Morro Rock parking lots, unless a majority of Morro Bay voters approve of such other uses.

SECTION 2: PLAN MORRO BAY GENERAL PLAN AMENDMENTS.

A. This Initiative hereby amends the *Plan Morro Bay* General Plan as adopted by the City of Morro Bay on May 25, 2021, and as approved by the California Coastal Commission on August 12, 2021. Text to be inserted in the Plan is indicated in ***bold italic*** type. Text in standard type currently appears in the *Plan Morro Bay* General Plan and is not changed or readopted by this Initiative. The amendments to the *Plan Morro Bay* General Plan made in this SECTION 2 may be changed only by a majority vote of the people at a regular or special election, except where expressly stated otherwise.

B. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-28 and 3-29:

Visitor-Serving Uses

Visitors come to Morro Bay year-round to enjoy the beautiful scenery, the beach, and an eclectic and laid-back vibe. The diverse array of shops, restaurants, and recreation opportunities are an important part of both the economy and personality of Morro Bay, and these uses need to be protected for the enjoyment of visitors and locals alike. The Coastal Act also requires that visitor-serving uses be prioritized over most other uses in the coastal zone.

Approximately 145 acres of land are designated for visitor-serving uses, primarily located in the Embarcadero, downtown, and State Park areas. These uses include hotels and other lodging, restaurants, parking facilities, shopping, and entertainment options. Because of their location near the coastline, the businesses and recreation areas are vulnerable to both development pressure and increasing flood risk due to sea level rise. The Land Use Map and policies work together to protect visitor-serving uses from encroachment of all kinds.

The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in Figure LU-4.1 below, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

Figure LU-4.1 depicts those parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with the Initiative.

C. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-30, immediately above the heading titled “Energy and Industrial Uses” and below the text describing Figure LU-5, as follows:

Figure LU-5 identifies fishing and boating facilities in Morro Bay, differentiating between administrative, commercial, and recreational services:

The voters of Morro Bay have adopted an initiative to maintain visitor-serving and commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

D. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-4.6.1 on page 3-35 and 3-36, immediately following existing POLICY LU-4.6:

POLICY LU-4.6: Development Priority. Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

POLICY LU-4.6.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, and as referenced herein and amended hereby, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

E. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-5.1.1 on page 3-37, immediately following existing POLICY LU-5.1:

POLICY LU-5.1: Use Conflicts. Reduce potential conflicts between commercial fishing and coastal recreational uses.

POLICY LU-5.1.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

F. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert this measure’s Exhibit B, as Figure LU-4.1 following page 3-31.

SECTION 3. IMPLEMENTATION.

A. **Effective Date:** “Effective Date” means the date that this Initiative became effective pursuant to state law. Upon the Effective Date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to,

taking any administrative steps necessary to update any and all City maps, figures, and any other documents maintained by the City so they conform to the legislative policies set forth in this Initiative.

B. *Plan Morro Bay General Plan:* Upon the Effective Date of this Initiative, the provisions of SECTION 2 of the Initiative are hereby inserted into the *Plan Morro Bay* General Plan, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the *Plan Morro Bay* General Plan on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the Morro Bay Municipal Code or of any other City of Morro Bay ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be applied or enforced in a manner inconsistent with this Initiative.

C. *Interim Amendments:* The date that the notice of intention to circulate this Initiative was submitted to the City of Morro Bay elections official is referenced herein as the "Submittal Date." The *Plan Morro Bay* General Plan in effect on the Submittal Date as amended by this Initiative is required by state law to comprise an integrated, internally consistent, and compatible statement of policies for the City. In order to ensure that nothing in this Initiative measure would prevent the *Plan Morro Bay* General Plan from being an integrated, internally consistent, and compatible statement of the policies of the city, as required by state law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the *Plan Morro Bay* General Plan that is adopted between the Submittal Date and the date that the *Plan Morro Bay* General Plan is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the *Plan Morro Bay* General Plan provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the *Plan Morro Bay* General Plan.

D. *Other City Plans, Ordinances, and Policies:* The City of Morro Bay is hereby authorized and directed to amend the *Plan Morro Bay* General Plan, and other City of Morro Bay plans thereafter, as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the *Plan Morro Bay* General Plan, the Morro Bay Zoning Code, and any other City of Morro Bay plans, ordinances, and policies. Such amendments include any zoning designations of any lands designated by the *Plan Morro Bay* General Plan as Visitor-Serving Commercial, so that the underlying zoning of the properties is consistent with the properties' land use designation as enacted and/or affirmed by SECTION 2 of this Initiative.

E. *Reorganization:* The *Plan Morro Bay* General Plan may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the *Plan Morro Bay* General Plan in accordance with state law, provided that the provisions of SECTION 2 of this Initiative shall remain in the General Plan unless repealed or amended by vote of the people of the City of Morro Bay.

F. *Implementing Ordinances:* The City Council is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.

G. *Enforcement and Defense of Initiative:* The City Council shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity. The proponents of this Initiative, the committee sponsoring this Initiative, or any other elector of the City, have standing to seek a writ of mandate to enforce the provisions of this Initiative.

I. *Applications in the Planning Process:* This Initiative shall apply to any City of Morro Bay planning application that seeks to re-designate lands with a Visitor-Serving Commercial designation as of the Effective Date of this Initiative, and where the application has not been approved as of the Effective Date.

J. Exemptions: The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitutions or laws of the United States or the state of California. Should any application of the Initiative effect a taking of private property under the constitutions or laws of the United States or the state of California, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid such a taking. Any such exemption requires a finding by the City Council, based on substantial evidence, that the application of the Initiative would constitute an unconstitutional taking of property and that the exemption is applied only to the extent necessary to avoid an unconstitutional taking. Likewise, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid infringing a vested right obtained pursuant to state law as of the Effective Date.

SECTION 4: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

By voting for this Initiative, the voters expressly declare their intent that any other City of Morro Bay measure that appears on the same ballot as this Initiative and addresses voter approval for designation or re-designation of lands designated Visitor-Serving Commercial, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire policy scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other City of Morro Bay measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this SECTION 4, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

SECTION 5: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the City of Morro Bay in a manner that facilitates the purposes set forth in this Initiative. This Initiative shall be interpreted so as to be consistent with all applicable Federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, it is the will of the voters that such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of Morro Bay indicate our strong desire that: (1) the City Council use its best efforts to sustain and re-enact that portion; and (2) the City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

SECTION 6: AMENDMENT AND REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by a vote of the people of the City of Morro Bay.

SECTION 7: EXHIBITS

Exhibit A: *Plan Morro Bay* (2021) Figure LU-4, Land Use Map, annotated to show area affected by this Initiative.

Exhibit B (to be inserted into *Plan Morro Bay* as Figure LU-4.1): Detail of *Plan Morro Bay* (2021) Figure LU-4, Land Use Map, delineating parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with this Initiative.



EXHIBIT A

Plan Morro Bay Land Use Map

FIGURE LU-4
Land Use Map

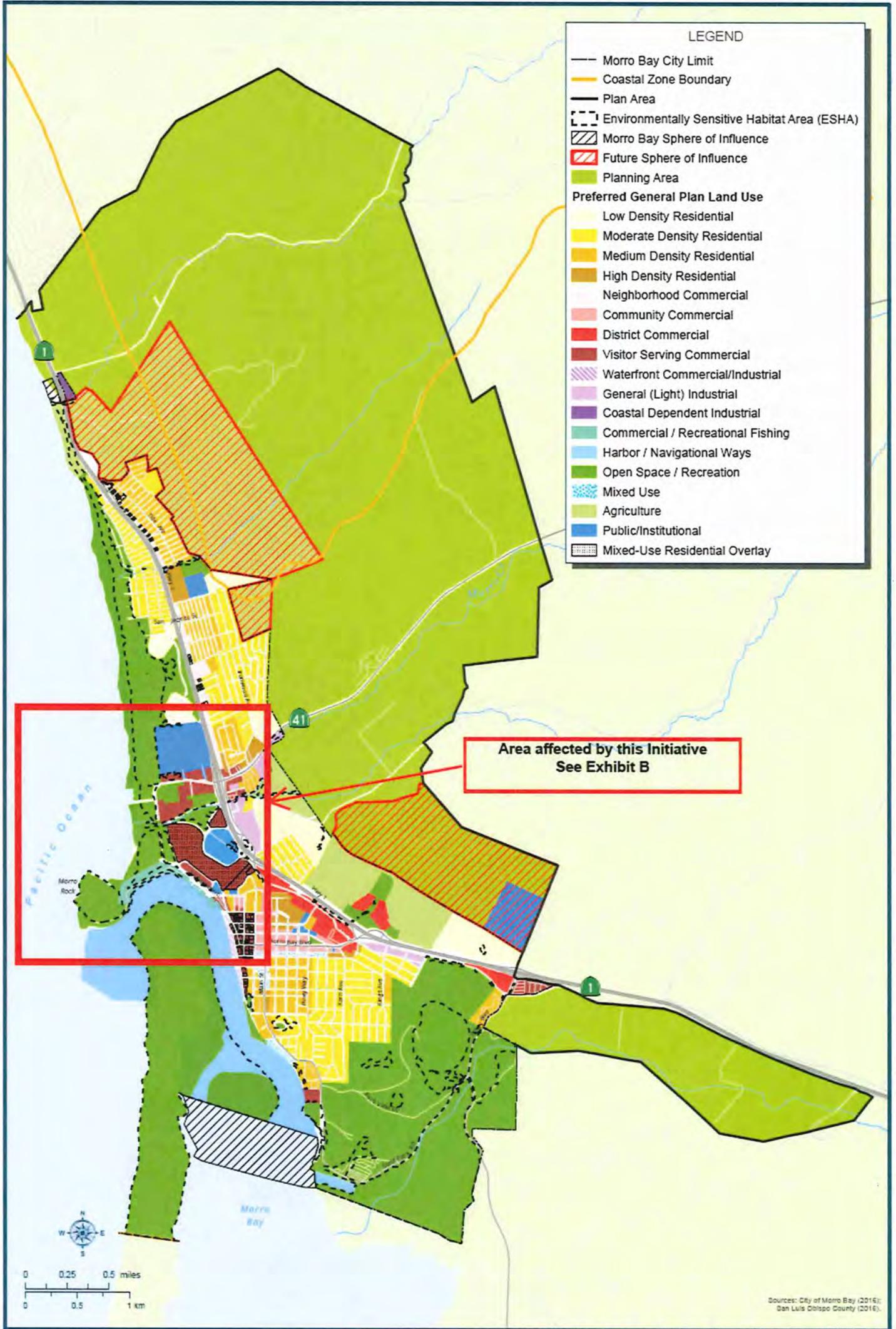


EXHIBIT B PARCELS/AREAS AFFECTED BY THIS INITIATIVE



- Visitor Serving Commercial
- Commercial / Recreational Fishing
- Mixed-Use Residential Overlay

 Areas affected by this Initiative



CITY OF MORRO BAY

CITY HALL
595 Harbor Street
Morro Bay, CA 93442

August 31, 2023

I, Dana Swanson, City Clerk of the City of Morro Bay, County of San Luis Obispo, State of California, hereby certify:

That the petition entitled "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain Designated Parcels Within the City" was filed with the City Clerk's office on August 9, 2023;

That said petition consists of 134 sections;

That each section contains signatures purporting to be signatures of qualified electors of the City of Morro Bay, California;

That said petition, at the time it was filed, included affidavits purporting to be affidavits of the persons who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

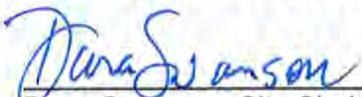
That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after proponents filed this petition, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate, and in compliance with the California Elections Code, I have determined the following facts regarding this petition:

1. Total number of signatures filed by proponent raw count: 1,486
2. Total number of signatures verified as sufficient: 1,327
3. Number of signatures found insufficient (non-duplicate): 129
4. Number of signatures found insufficient because of duplication: 30
5. Total number of signatures required to qualify (10% of 8,141 registered voters): 815

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Morro Bay this 31st day of August 2023.



Dana Swanson, City Clerk
City of Morro Bay

ORDINANCE NO. 659(A)

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ADOPTING A CITIZEN SPONSORED INITIATIVE MEASURE PURSUANT TO THE
PROVISIONS OF ELECTIONS CODE 9215 ENTITLED "INITIATIVE MEASURE TO AMEND
CITY OF MORRO BAY'S GENERAL PLAN (PLAN MORRO BAY), ADOPTED BY CITY
COUNCIL ON MAY 25, 2021, TO PROHIBIT, UNLESS APPROVED BY MORRO BAY
VOTERS, ANY CHANGE TO LAND USE DESIGNATIONS OF VISITOR-SERVING
COMMERCIAL OR COMMERCIAL/RECREATIONAL FISHING, ON CERTAIN DESIGNATED
PARCELS WITHIN THE CITY"**

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

WHEREAS, On May 1, 2023, pursuant to authority provided by the California Constitution and the State Elections Code, a citizens' initiative petition was presented for filing to the City of Morro Bay ("City") entitled "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City"; and

WHEREAS, Elections Code section 9215 provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city." On September 12, 2023, the City Council of the City of Morro Bay (City) accepted the Certificate of Sufficiency of the signatures gathered in support of the Measure; and

WHEREAS, Elections Code section 9215 provides, in part, when a city council is presented with a qualified petition, the Council shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or, (b) Submit the ordinance, without alteration, to the voters pursuant to Election Code section 1405; or, (c) Order a report pursuant to Election Code section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to it, the city council shall either adopt the ordinance within 10 days or order an election pursuant to option (b) above; and

WHEREAS, on September 12, 2023, the City Council took public input with regard to the options available to the City with regard to the Measure; and

WHEREAS, The California Supreme Court has held that initiative measures circulated by citizens and submitted with sufficient signatures to compel the City to either call an election on a measure or adopt a measure may be adopted as presented without further review including review under the California Environmental Quality Act (*Tuolumne Jobs & Small Business Alliance v. Superior Court*, (2014) 59 Cal. 4th 1029); and

WHEREAS, consistent with the law requires the City Council to choose one of the options provided by Election Code section 9215, the City Council decided to "adopt the ordinance, without alteration," which does not require further review under the California Environmental Quality Act, rather than either submit the ordinance, without alteration, to the voters, or order a report pursuant to Election Code section 9212.

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

SECTION 1. RECITALS. The City Council hereby finds that the recitals set forth above are all true and correct and are hereby incorporated herein by this reference.

SECTION 2. ADOPTION. Pursuant to Elections Code section 9215, subsection (a), the City Council of the City of Morro Bay, California, hereby adopts, without alteration, the “Initiative Measure to Amend City of Morro Bay’s General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City,” as attached hereto as Exhibit 1 in its entirety and fully incorporated herein by this reference.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

SECTION 4. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance by the City Council, and shall cause the same to be posted and codified in the manner required by law. Upon adoption, this ordinance shall be immediately submitted to the California Coastal Commission for certification as an amendment to the Land Use Plan of the Local Coastal Program contained in the General Plan for the City.

SECTION 5. AMENDMENT OR REPEAL ONLY BY VOTERS. As provided for by California Elections Code section 9217, “No ordinance that is either proposed by initiative petition and adopted by the vote of the [city council] of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.”

INTRODUCED at a regular meeting of the City Council held on the ____ day of _____ 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the _____ day of _____, 2023, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRISTOPHER F. NEUMEYER, City Attorney
STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)

CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 659 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2023, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk

EXHIBIT 1 - ORDINANCE NO. 659(A)
CITY OF MORRO BAY

The People of the City of Morro Bay do ordain as follows:

SECTION 1: PURPOSES, EFFECT, AND FINDINGS.

A. Purposes: The purposes of this Initiative are to: (1) protect the natural beauty, sensitivity, and intrinsic value of Morro Bay's waterfront and Embarcadero; (2) prevent the visual and physical degradation of Morro Bay's natural environment; (3) promote the health and safety of Morro Bay's residents, tourists, boaters, and wildlife habitat; (4) maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor, and surrounding beaches; and (5) preserve Morro Bay as a world-renowned tourist destination.

B. Effect: This Initiative amends *Plan Morro Bay*, the City of Morro Bay's General Plan, adopted in May, 2021 to readopt and reaffirm the existing "Visitor-Serving Commercial" and "Commercial/Recreational Fishing" land use designations for certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and Coleman Drive including Morro Rock parking lots, such that these parcels, even if subdivided, may only be amended or re-designated by a majority of Morro Bay voters at a regular or special election.

C. Findings: The People of the City of Morro Bay ("City") find that this Initiative promotes and protects the safety, welfare, and quality of life of Morro Bay residents, based upon the following findings, any one of which would be sufficient to support adoption of this Initiative:

1. *Plan Morro Bay* serves as the City of Morro Bay's General Plan, prepared in accordance with Government Code section 65300 and following sections, and as the City's Local Coastal Program (LUP) Land Use Plan, prepared in accordance with the California Coastal Act, Public Resources Code section 30000 and following sections. The City Council adopted *Plan Morro Bay* on May 25, 2021, and the California Coastal Commission certified it on August 12, 2021. *Plan Morro Bay* governs and regulates land use and development policies and decisions in Morro Bay, in addition to serving other functions. This Initiative refers to this document either as *Plan Morro Bay* or the *Plan Morro Bay* General Plan.

2. *Plan Morro Bay* affirms the critical importance of visitor-serving and commercial fishing uses as "Coastal Priority Uses," stating the following on pages 3-28 and 3-29:

Coastal Priority Uses

The Coastal Act requires the City to prioritize uses that serve important needs for the community and visitors, such as recreation, coastal access, open space, and visitor-serving and coastal-dependent uses. Nearly all of Morro Bay is in the coastal zone. Coastal priority uses range from visitor-serving recreation and services to coastal dependent businesses such as aquaculture and commercial fishing.

3. *Plan Morro Bay* defines and describes "Visitor-Serving Commercial" land uses as follows, permitting them at a floor-area ratio of up to 1.25:

Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices.

4. The Morro Bay Zoning Code correspondingly defines "Visitor-serving facility" as follows:

"Visitor serving facility" means those stores, shops, businesses, recreational facilities (both public and private), parks and natural preserves which are regularly utilized by the traveling public.

5. Consistent with the *Plan Morro Bay* General Plan's Visitor-Serving Commercial designation, the City's Zoning Code currently allows for a wide variety of tourism-oriented businesses in Morro Bay's Visitor-Serving Commercial (C-VS) Zoning District, including but not limited to restaurants, coffee shops, specialty retail boutiques, travel agents, retail establishments selling boat and marine supplies, souvenirs, antiques, art galleries and studios, museums, hotels and motels, bars and taverns, boat rentals, fishing supplies, service stations, parking lots, and parks and open space.

6. *Plan Morro Bay* describes "Commercial/Recreational Fishing" land uses as follows, permitting them at a floor-area ratio of up to 0.5:

[This designation] Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only.

7. Consistent with the *Plan Morro Bay* General Plan's Commercial/Recreational Fishing designation, the City's Zoning Code currently allows for fishing-oriented businesses and uses in Morro Bay's Commercial/Recreational Fishing (CF) Zoning District, and expressly prohibits the City from granting any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or if clearly incidental thereto.

8. *Plan Morro Bay* Figure LU-4, Land Use Map, depicts those parcels of land within the City that are currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing. See **Exhibit A**. Included among these are certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road designated for Visitor-Serving Commercial uses, and on both sides of Coleman Drive including Morro Rock for Commercial/Recreational uses, referred to as the "Measure D Area," and further shown on **Exhibit B**.

9. *Plan Morro Bay* currently includes POLICY LU-4.2:

Measure D/Commercial/Recreational Fishing Uses: Ensure commercial fishing activity is prioritized in the Measure D area.

10. *Plan Morro Bay* currently includes POLICY LU-4.6: Development Priority, which states:

Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

11. *Plan Morro Bay's* Visitor-Serving Commercial and Commercial/Recreational Fishing land use designations are critical to maintaining Morro Bay's economic vitality, quality of life, status as a tourist destination, recreational resources, and natural environment.

12. Any change in *Plan Morro Bay's* Visitor-Serving Commercial and/or Commercial/Recreational Fishing land use designations to allow industrial or other non-commercial uses will have a deleterious impact on Morro Bay's citizens, its economy, environment, reputation, and overall quality life.

13. This Initiative is therefore necessary to ensure that future land uses that are incompatible with, or that would adversely impact, existing and future Visitor-Serving Commercial and Commercial/Recreational Fishing uses are not permitted to operate on those parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and

Coleman Drive including Morro Rock parking lots, unless a majority of Morro Bay voters approve of such other uses.

SECTION 2: PLAN MORRO BAY GENERAL PLAN AMENDMENTS.

A. This Initiative hereby amends the *Plan Morro Bay* General Plan as adopted by the City of Morro Bay on May 25, 2021, and as approved by the California Coastal Commission on August 12, 2021. Text to be inserted in the Plan is indicated in ***bold italic*** type. Text in standard type currently appears in the *Plan Morro Bay* General Plan and is not changed or readopted by this Initiative. The amendments to the *Plan Morro Bay* General Plan made in this SECTION 2 may be changed only by a majority vote of the people at a regular or special election, except where expressly stated otherwise.

B. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-28 and 3-29:

Visitor-Serving Uses

Visitors come to Morro Bay year-round to enjoy the beautiful scenery, the beach, and an eclectic and laid-back vibe. The diverse array of shops, restaurants, and recreation opportunities are an important part of both the economy and personality of Morro Bay, and these uses need to be protected for the enjoyment of visitors and locals alike. The Coastal Act also requires that visitor-serving uses be prioritized over most other uses in the coastal zone.

Approximately 145 acres of land are designated for visitor-serving uses, primarily located in the Embarcadero, downtown, and State Park areas. These uses include hotels and other lodging, restaurants, parking facilities, shopping, and entertainment options. Because of their location near the coastline, the businesses and recreation areas are vulnerable to both development pressure and increasing flood risk due to sea level rise. The Land Use Map and policies work together to protect visitor-serving uses from encroachment of all kinds.

The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in Figure LU-4.1 below, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

Figure LU-4.1 depicts those parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with the Initiative.

C. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-30, immediately above the heading titled “Energy and Industrial Uses” and below the text describing Figure LU-5, as follows:

Figure LU-5 identifies fishing and boating facilities in Morro Bay, differentiating between administrative, commercial, and recreational services:

The voters of Morro Bay have adopted an initiative to maintain visitor-serving and commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

D. *Plan Morro Bay, Chapter 3B "Land Use," is hereby amended to insert the following new POLICY LU-4.6.1 on page 3-35 and 3-36, immediately following existing POLICY LU-4.6:*

POLICY LU-4.6: Development Priority. Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

POLICY LU-4.6.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, and as referenced herein and amended hereby, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

E. *Plan Morro Bay, Chapter 3B "Land Use," is hereby amended to insert the following new POLICY LU-5.1.1 on page 3-37, immediately following existing POLICY LU-5.1:*

POLICY LU-5.1: Use Conflicts. Reduce potential conflicts between commercial fishing and coastal recreational uses.

POLICY LU-5.1.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

F. *Plan Morro Bay, Chapter 3B "Land Use," is hereby amended to insert this measure's Exhibit B, as Figure LU-4.1 following page 3-31.*

SECTION 3. IMPLEMENTATION.

A. **Effective Date:** "Effective Date" means the date that this Initiative became effective pursuant to state law. Upon the Effective Date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to,

taking any administrative steps necessary to update any and all City maps, figures, and any other documents maintained by the City so they conform to the legislative policies set forth in this Initiative.

B. *Plan Morro Bay General Plan:* Upon the Effective Date of this Initiative, the provisions of SECTION 2 of the Initiative are hereby inserted into the *Plan Morro Bay General Plan*, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the *Plan Morro Bay General Plan* on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the Morro Bay Municipal Code or of any other City of Morro Bay ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be applied or enforced in a manner inconsistent with this Initiative.

C. *Interim Amendments:* The date that the notice of intention to circulate this Initiative was submitted to the City of Morro Bay elections official is referenced herein as the "Submittal Date." The *Plan Morro Bay General Plan* in effect on the Submittal Date as amended by this Initiative is required by state law to comprise an integrated, internally consistent, and compatible statement of policies for the City. In order to ensure that nothing in this Initiative measure would prevent the *Plan Morro Bay General Plan* from being an integrated, internally consistent, and compatible statement of the policies of the city, as required by state law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the *Plan Morro Bay General Plan* that is adopted between the Submittal Date and the date that the *Plan Morro Bay General Plan* is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the *Plan Morro Bay General Plan* provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the *Plan Morro Bay General Plan*.

D. *Other City Plans, Ordinances, and Policies:* The City of Morro Bay is hereby authorized and directed to amend the *Plan Morro Bay General Plan*, and other City of Morro Bay plans thereafter, as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the *Plan Morro Bay General Plan*, the Morro Bay Zoning Code, and any other City of Morro Bay plans, ordinances, and policies. Such amendments include any zoning designations of any lands designated by the *Plan Morro Bay General Plan* as Visitor-Serving Commercial, so that the underlying zoning of the properties is consistent with the properties' land use designation as enacted and/or affirmed by SECTION 2 of this Initiative.

E. *Reorganization:* The *Plan Morro Bay General Plan* may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the *Plan Morro Bay General Plan* in accordance with state law, provided that the provisions of SECTION 2 of this Initiative shall remain in the General Plan unless repealed or amended by vote of the people of the City of Morro Bay.

F. *Implementing Ordinances:* The City Council is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.

G. *Enforcement and Defense of Initiative:* The City Council shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity. The proponents of this Initiative, the committee sponsoring this Initiative, or any other elector of the City, have standing to seek a writ of mandate to enforce the provisions of this Initiative.

I. *Applications in the Planning Process:* This Initiative shall apply to any City of Morro Bay planning application that seeks to re-designate lands with a Visitor-Serving Commercial designation as of the Effective Date of this Initiative, and where the application has not been approved as of the Effective Date.

J. Exemptions: The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitutions or laws of the United States or the state of California. Should any application of the Initiative effect a taking of private property under the constitutions or laws of the United States or the state of California, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid such a taking. Any such exemption requires a finding by the City Council, based on substantial evidence, that the application of the Initiative would constitute an unconstitutional taking of property and that the exemption is applied only to the extent necessary to avoid an unconstitutional taking. Likewise, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid infringing a vested right obtained pursuant to state law as of the Effective Date.

SECTION 4: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

By voting for this Initiative, the voters expressly declare their intent that any other City of Morro Bay measure that appears on the same ballot as this Initiative and addresses voter approval for designation or re-designation of lands designated Visitor-Serving Commercial, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire policy scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other City of Morro Bay measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this SECTION 4, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

SECTION 5: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the City of Morro Bay in a manner that facilitates the purposes set forth in this Initiative. This Initiative shall be interpreted so as to be consistent with all applicable Federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, it is the will of the voters that such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of Morro Bay indicate our strong desire that: (1) the City Council use its best efforts to sustain and re-enact that portion; and (2) the City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

SECTION 6: AMENDMENT AND REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by a vote of the people of the City of Morro Bay.

SECTION 7: EXHIBITS

Exhibit A: *Plan Morro Bay (2021) Figure LU-4, Land Use Map, annotated to show area affected by this Initiative.*

Exhibit B (to be inserted into *Plan Morro Bay* as Figure LU-4.1): *Detail of Plan Morro Bay (2021) Figure LU-4, Land Use Map, delineating parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with this Initiative.*

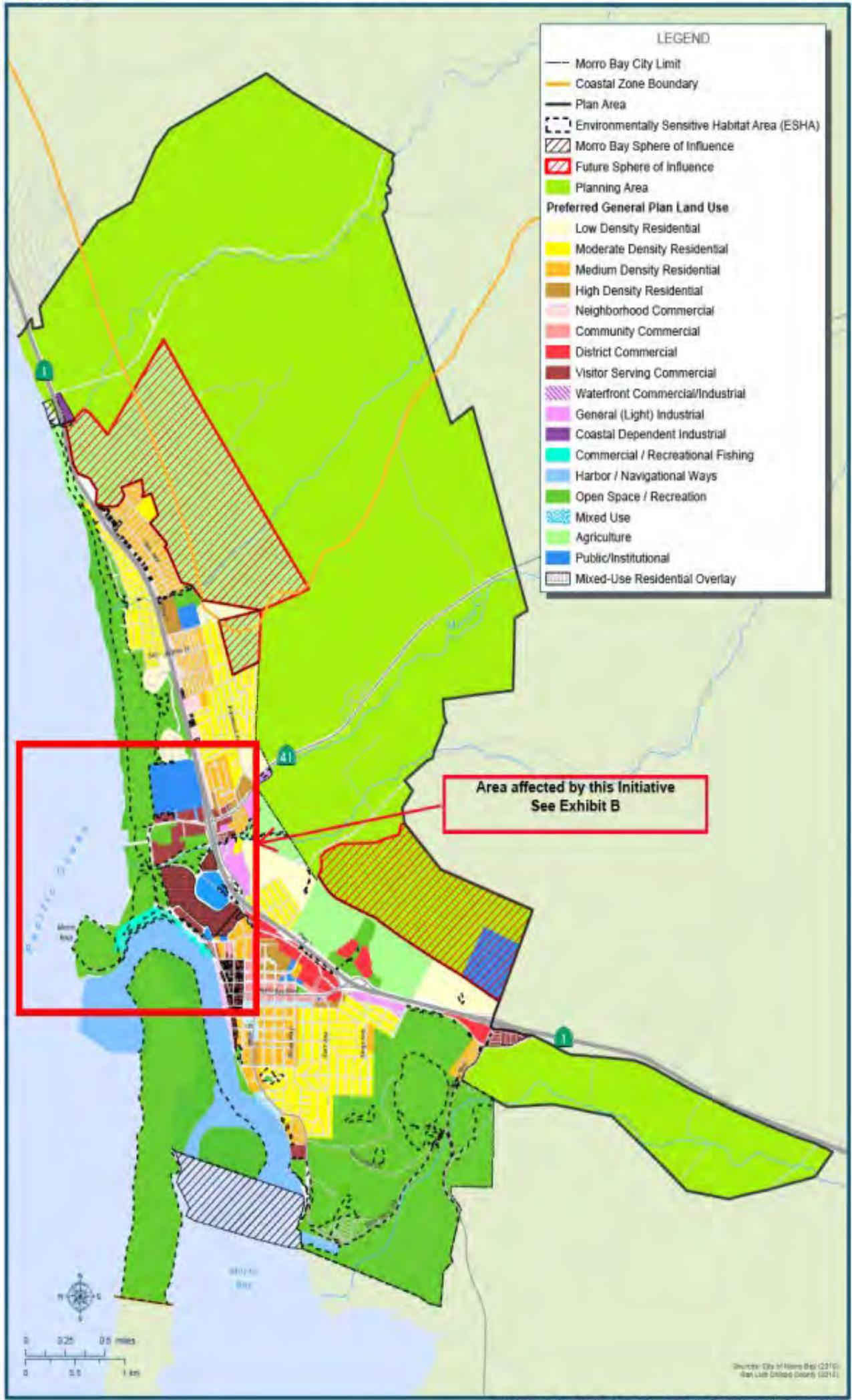


EXHIBIT B PARCELS/AREAS AFFECTED BY THIS INITIATIVE



- Visitor Serving Commercial
- Commercial / Recreational Fishing
- Mixed-Use Residential Overlay

 Areas affected by this Initiative

RESOLUTION NO. 61-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION
TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, FOR THE SUBMISSION OF ORDINANCE
NO 659(B) TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE; AND,
REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY TO
CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE
HELD IN THE COUNTY ON TUESDAY, NOVEMBER 5, 2024 PURSUANT TO SECTION
10403 OF THE ELECTION CODE; AND, OTHER ELECTION MATTERS AS REQUIRED BY
LAW**

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

WHEREAS, the City Council of the City of Morro Bay, under the provisions of the laws related to general law cities in the State of California, has called for the holding of a General Municipal Election to be held on November 5, 2024 to consider a ballot measure concerning Ordinance No. 659(B), and further desires that this election be consolidated with the Statewide General Election to be held on the same date; and

WHEREAS, pursuant to authority provided by the California Constitution and the State Elections Code, on May 1, 2023, an initiative petition was presented for filing entitled, "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City"; and

WHEREAS, Election Code Section 9215 provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city,"; and

WHEREAS, in accordance with Election Code Section 9210, it was determined that the County Clerk's last official report of City of Morro Bay voter registration to the Secretary of State was 8,141 registered voters and that 10% of said registration would require 815 valid signatures to qualify the initiative petition; and

WHEREAS, on August 9, 2023, pursuant to the provisions of Election Code section 9210, the initiative petition was examined by the City's Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City's Elections Official accepted the petition for filing; and

WHEREAS, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the initiative petition was determined to contain 1,327 valid signatures and deemed to be sufficient on August 31, 2023; and

WHEREAS, in accordance with Election Code Section 9215, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on September 12, 2023; and

WHEREAS, Election Code Section 9215 provides in part that when a city council is presented with a qualified initiative petition, the City Council “shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification was presented. (b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405. (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented.”; and

WHEREAS, because the City Council has not voted in favor of the adoption of the ordinance, the City Council is authorized and directed by statute to submit the ordinance to the voters; and

WHEREAS, the City Council desires to have the voters consider this measure at the next statewide general election to be held on November 5, 2024; and

WHEREAS, it is desirable that said General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City of Morro Bay the precincts, polling places and election officers of the two elections be the same, and that the County Election Department of the County of San Luis Obispo canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, including California Elections Code Sections 306, 9222 and 1301, there is called and ordered to be held in the City of Morro Bay, California, on Tuesday, November 5, 2024, a General Municipal Election for the purpose of submitting to the voters of the City of Morro Bay a ballot measure. Pursuant to Elections Code Section 9222, it is the intent of the City Council the measure be submitted to the voters of Morro Bay at the aforementioned General Election. As required by Elections Code Section 13247, the abbreviated form of the measure to appear on the ballot is specified below in Section 2. The City Clerk is hereby authorized and directed to make any changes to the text of the proposition or this resolution as required to conform to any requirements of the San Luis Obispo County Registrar of Voters.

SECTION 2. That the City Council hereby orders the following measure be submitted to the voters at the aforementioned General Election:

Shall the measure, to amend Plan Morro Bay (General Plan / Local Coastal Program) in order to prohibit, unless approved by voters, any changes to land use designations of Visitor-Serving Commercial and/or Commercial/Recreational Fishing, for approximately 103 acres of real property (including by the harbor east of Morro Rock, 63 acres of former power plant, portions along sides of Embarcadero Road from Beach Street to Atascadero Road, and along Coleman Drive), be adopted?	YES
	NO

SECTION 3. That the text of Ordinance No. 659(b) to be submitted to the voters as a proposed measure is attached as Exhibit “A” to this resolution.

SECTION 4. That the ordinance shall not take effect unless and until the ordinance receives the approval of a majority of the votes cast by the qualified voters of the City voting upon the ballot measure on the proposed ordinance at the November 5, 2024 General Municipal Election.

SECTION 5. That the vote requirement for the ballot measure to pass is a majority (50% + 1) of the votes cast.

SECTION 6. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 7. That the City Clerk is authorized, instructed and directed to coordinate with the County of San Luis Obispo Clerk-Recorder to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 8. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code Section 10242, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 9. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding a General Municipal Election consolidated with a Statewide General Election.

SECTION 10. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 11. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Luis Obispo is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 5, 2024, for the purpose of submitting to the voters a ballot measure concerning City of Morro Bay Ordinance No. 659(B).

SECTION 12. That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 13. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 14. That the City of Morro Bay recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs incurred by reason of this consolidation.

SECTION 15. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of San Luis Obispo.

SECTION 16. That the City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 17. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

SECTION 18. That this Resolution is effective on the day of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the ___ day of September 2023 following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

ORDINANCE NO. 659(B)

AN ORDINANCE OF THE PEOPLE
OF THE CITY OF MORRO BAY, CALIFORNIA,
ADOPTING AN INITIATIVE MEASURE ENTITLED "INITIATIVE MEASURE TO AMEND CITY OF
MORRO BAY'S GENERAL PLAN (PLAN MORRO BAY), ADOPTED BY CITY COUNCIL ON MAY 25,
2021, TO PROHIBIT, UNLESS APPROVED BY MORRO BAY VOTERS, ANY CHANGE TO LAND USE
DESIGNATIONS OF VISITOR-SERVING COMMERCIAL OR COMMERCIAL/RECREATIONAL FISHING,
ON CERTAIN DESIGNATED PARCELS WITHIN THE CITY "

City of Morro Bay, California

The People of the City of Morro Bay do ordain as follows:

SECTION 1: PURPOSES, EFFECT, AND FINDINGS.

A. Purposes: The purposes of this Initiative are to: (1) protect the natural beauty, sensitivity, and intrinsic value of Morro Bay's waterfront and Embarcadero; (2) prevent the visual and physical degradation of Morro Bay's natural environment; (3) promote the health and safety of Morro Bay's residents, tourists, boaters, and wildlife habitat; (4) maintain present levels of coastal access to our California Historic Landmark, Morro Rock, as well as to the Harbor, and surrounding beaches; and (5) preserve Morro Bay as a world-renowned tourist destination.

B. Effect: This Initiative amends *Plan Morro Bay*, the City of Morro Bay's General Plan, adopted in May, 2021 to readopt and reaffirm the existing "Visitor-Serving Commercial" and "Commercial/Recreational Fishing" land use designations for certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and Coleman Drive including Morro Rock parking lots, such that these parcels, even if subdivided, may only be amended or re-designated by a majority of Morro Bay voters at a regular or special election.

C. Findings: The People of the City of Morro Bay ("City") find that this Initiative promotes and protects the safety, welfare, and quality of life of Morro Bay residents, based upon the following findings, any one of which would be sufficient to support adoption of this Initiative:

1. *Plan Morro Bay* serves as the City of Morro Bay's General Plan, prepared in accordance with Government Code section 65300 and following sections, and as the City's Local Coastal Program (LUP) Land Use Plan, prepared in accordance with the California Coastal Act, Public Resources Code section 30000 and following sections. The City Council adopted *Plan Morro Bay* on May 25, 2021, and the California Coastal Commission certified it on August 12, 2021. *Plan Morro Bay* governs and regulates land use and development policies and decisions in Morro Bay, in addition to serving other functions. This Initiative refers to this document either as *Plan Morro Bay* or the *Plan Morro Bay* General Plan.

2. *Plan Morro Bay* affirms the critical importance of visitor-serving and commercial fishing uses as "Coastal Priority Uses," stating the following on pages 3-28 and 3-29:

Coastal Priority Uses

The Coastal Act requires the City to prioritize uses that serve important needs for the community and visitors, such as recreation, coastal access, open space, and visitor-serving and coastal-dependent uses. Nearly all of Morro Bay is in the coastal zone. Coastal priority uses range from visitor-serving recreation and services to coastal dependent businesses such as aquaculture and commercial fishing.

3. *Plan Morro Bay* defines and describes "Visitor-Serving Commercial" land uses as follows, permitting them at a floor-area ratio of up to 1.25:

Visitor-oriented services and uses located at easily accessible locations and tourist destinations within the coastal zone. In general, ground-floor development should be reserved for retail shops, restaurants and bars, and visitor accommodations, with the upper floors reserved for additional visitor accommodations and offices.

4. The Morro Bay Zoning Code correspondingly defines "Visitor-serving facility" as follows:

"Visitor serving facility" means those stores, shops, businesses, recreational facilities (both public and private), parks and natural preserves which are regularly utilized by the traveling public.

5. Consistent with the *Plan Morro Bay* General Plan's Visitor-Serving Commercial designation, the City's Zoning Code currently allows for a wide variety of tourism-oriented businesses in Morro Bay's Visitor-Serving Commercial (C-VS) Zoning District, including but not limited to restaurants, coffee shops, specialty retail boutiques, travel agents, retail establishments selling boat and marine supplies, souvenirs, antiques, art galleries and studios, museums, hotels and motels, bars and taverns, boat rentals, fishing supplies, service stations, parking lots, and parks and open space.

6. *Plan Morro Bay* describes "Commercial/Recreational Fishing" land uses as follows, permitting them at a floor-area ratio of up to 0.5:

[This designation] Implements Measure D, which protects the tidelands area between Beach Street and Target Rock. Development and use permits are limited to fishing activities only.

7. Consistent with the *Plan Morro Bay* General Plan's Commercial/Recreational Fishing designation, the City's Zoning Code currently allows for fishing-oriented businesses and uses in Morro Bay's Commercial/Recreational Fishing (CF) Zoning District, and expressly prohibits the City from granting any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or if clearly incidental thereto.

8. *Plan Morro Bay* Figure LU-4, Land Use Map, depicts those parcels of land within the City that are currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing. See **Exhibit A**. Included among these are certain parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road designated for Visitor-Serving Commercial uses, and on both sides of Coleman Drive including Morro Rock for Commercial/Recreational uses, referred to as the "Measure D Area," and further shown on **Exhibit B**.

9. *Plan Morro Bay* currently includes POLICY LU-4.2:

Measure D/Commercial/Recreational Fishing Uses: Ensure commercial fishing activity is prioritized in the Measure D area.

10. *Plan Morro Bay* currently includes POLICY LU-4.6: Development Priority, which states:

Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

11. *Plan Morro Bay's* Visitor-Serving Commercial and Commercial/Recreational Fishing land use designations are critical to maintaining Morro Bay's economic vitality, quality of life, status as a tourist destination, recreational resources, and natural environment.

12. Any change in *Plan Morro Bay's* Visitor-Serving Commercial and/or Commercial/Recreational Fishing land use designations to allow industrial or other non-commercial uses will have a deleterious impact on Morro Bay's citizens, its economy, environment, reputation, and overall quality life.

13. This Initiative is therefore necessary to ensure that future land uses that are incompatible with, or that would adversely impact, existing and future Visitor-Serving Commercial and Commercial/Recreational Fishing uses are not permitted to operate on those parcels situated on both sides of Embarcadero Road from Beach Street to Atascadero Road, and

Coleman Drive including Morro Rock parking lots, unless a majority of Morro Bay voters approve of such other uses.

SECTION 2: PLAN MORRO BAY GENERAL PLAN AMENDMENTS.

A. This Initiative hereby amends the *Plan Morro Bay* General Plan as adopted by the City of Morro Bay on May 25, 2021, and as approved by the California Coastal Commission on August 12, 2021. Text to be inserted in the Plan is indicated in ***bold italic*** type. Text in standard type currently appears in the *Plan Morro Bay* General Plan and is not changed or readopted by this Initiative. The amendments to the *Plan Morro Bay* General Plan made in this SECTION 2 may be changed only by a majority vote of the people at a regular or special election, except where expressly stated otherwise.

B. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-28 and 3-29:

Visitor-Serving Uses

Visitors come to Morro Bay year-round to enjoy the beautiful scenery, the beach, and an eclectic and laid-back vibe. The diverse array of shops, restaurants, and recreation opportunities are an important part of both the economy and personality of Morro Bay, and these uses need to be protected for the enjoyment of visitors and locals alike. The Coastal Act also requires that visitor-serving uses be prioritized over most other uses in the coastal zone.

Approximately 145 acres of land are designated for visitor-serving uses, primarily located in the Embarcadero, downtown, and State Park areas. These uses include hotels and other lodging, restaurants, parking facilities, shopping, and entertainment options. Because of their location near the coastline, the businesses and recreation areas are vulnerable to both development pressure and increasing flood risk due to sea level rise. The Land Use Map and policies work together to protect visitor-serving uses from encroachment of all kinds.

The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in Figure LU-4.1 below, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

Figure LU-4.1 depicts those parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with the Initiative.

C. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following text on page 3-30, immediately above the heading titled “Energy and Industrial Uses” and below the text describing Figure LU-5, as follows:

Figure LU-5 identifies fishing and boating facilities in Morro Bay, differentiating between administrative, commercial, and recreational services:

The voters of Morro Bay have adopted an initiative to maintain visitor-serving and commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, referenced herein and amended hereby, for those parcels shown in shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

D. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-4.6.1 on page 3-35 and 3-36, immediately following existing POLICY LU-4.6:

POLICY LU-4.6: Development Priority. Using private lands suitable for visitor-serving commercial recreational facilities shall have priority over using such lands for private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

POLICY LU-4.6.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain visitor-serving uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Visitor-Serving Commercial in Plan Morro Bay as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, and as referenced herein and amended hereby, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

E. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert the following new POLICY LU-5.1.1 on page 3-37, immediately following existing POLICY LU-5.1:

POLICY LU-5.1: Use Conflicts. Reduce potential conflicts between commercial fishing and coastal recreational uses.

POLICY LU-5.1.1: Amendment only by vote of the People. The voters of Morro Bay have adopted an initiative to maintain commercial/recreational fishing uses on certain designated parcels. Pursuant to the provisions of the Initiative, the following shall obtain:

The provisions setting forth the land use designations for Commercial/Recreational Fishing in Plan Morro as adopted by the City of Morro Bay on May 25, 2021 and certified by the California Coastal Commission on August 12, 2021, for those parcels shown in Figure LU-4.1, shall not be further amended, even if subdivided, except as set forth herein, unless such amendment is approved by a vote of the people of the City of Morro Bay.

F. *Plan Morro Bay*, Chapter 3B “Land Use,” is hereby amended to insert this measure’s Exhibit B, as Figure LU-4.1 following page 3-31.

SECTION 3. IMPLEMENTATION.

A. **Effective Date:** “Effective Date” means the date that this Initiative became effective pursuant to state law. Upon the Effective Date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to,

taking any administrative steps necessary to update any and all City maps, figures, and any other documents maintained by the City so they conform to the legislative policies set forth in this Initiative.

B. *Plan Morro Bay General Plan:* Upon the Effective Date of this Initiative, the provisions of SECTION 2 of the Initiative are hereby inserted into the *Plan Morro Bay General Plan*, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the *Plan Morro Bay General Plan* on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the Morro Bay Municipal Code or of any other City of Morro Bay ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be applied or enforced in a manner inconsistent with this Initiative.

C. *Interim Amendments:* The date that the notice of intention to circulate this Initiative was submitted to the City of Morro Bay elections official is referenced herein as the "Submittal Date." The *Plan Morro Bay General Plan* in effect on the Submittal Date as amended by this Initiative is required by state law to comprise an integrated, internally consistent, and compatible statement of policies for the City. In order to ensure that nothing in this Initiative measure would prevent the *Plan Morro Bay General Plan* from being an integrated, internally consistent, and compatible statement of the policies of the city, as required by state law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the *Plan Morro Bay General Plan* that is adopted between the Submittal Date and the date that the *Plan Morro Bay General Plan* is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the *Plan Morro Bay General Plan* provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the *Plan Morro Bay General Plan*.

D. *Other City Plans, Ordinances, and Policies:* The City of Morro Bay is hereby authorized and directed to amend the *Plan Morro Bay General Plan*, and other City of Morro Bay plans thereafter, as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the *Plan Morro Bay General Plan*, the Morro Bay Zoning Code, and any other City of Morro Bay plans, ordinances, and policies. Such amendments include any zoning designations of any lands designated by the *Plan Morro Bay General Plan* as Visitor-Serving Commercial, so that the underlying zoning of the properties is consistent with the properties' land use designation as enacted and/or affirmed by SECTION 2 of this Initiative.

E. *Reorganization:* The *Plan Morro Bay General Plan* may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the *Plan Morro Bay General Plan* in accordance with state law, provided that the provisions of SECTION 2 of this Initiative shall remain in the General Plan unless repealed or amended by vote of the people of the City of Morro Bay.

F. *Implementing Ordinances:* The City Council is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.

G. *Enforcement and Defense of Initiative:* The City Council shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity. The proponents of this Initiative, the committee sponsoring this Initiative, or any other elector of the City, have standing to seek a writ of mandate to enforce the provisions of this Initiative.

I. *Applications in the Planning Process:* This Initiative shall apply to any City of Morro Bay planning application that seeks to re-designate lands with a Visitor-Serving Commercial designation as of the Effective Date of this Initiative, and where the application has not been approved as of the Effective Date.

J. Exemptions: The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitutions or laws of the United States or the state of California. Should any application of the Initiative effect a taking of private property under the constitutions or laws of the United States or the state of California, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid such a taking. Any such exemption requires a finding by the City Council, based on substantial evidence, that the application of the Initiative would constitute an unconstitutional taking of property and that the exemption is applied only to the extent necessary to avoid an unconstitutional taking. Likewise, an exemption to the Initiative's application is permitted to the minimum extent necessary to avoid infringing a vested right obtained pursuant to state law as of the Effective Date.

SECTION 4: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

By voting for this Initiative, the voters expressly declare their intent that any other City of Morro Bay measure that appears on the same ballot as this Initiative and addresses voter approval for designation or re-designation of lands designated Visitor-Serving Commercial, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire policy scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other City of Morro Bay measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this SECTION 4, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

SECTION 5: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the City of Morro Bay in a manner that facilitates the purposes set forth in this Initiative. This Initiative shall be interpreted so as to be consistent with all applicable Federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, it is the will of the voters that such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of Morro Bay indicate our strong desire that: (1) the City Council use its best efforts to sustain and re-enact that portion; and (2) the City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

SECTION 6: AMENDMENT AND REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by a vote of the people of the City of Morro Bay.

SECTION 7: EXHIBITS

Exhibit A: *Plan Morro Bay (2021) Figure LU-4, Land Use Map, annotated to show area affected by this Initiative.*

Exhibit B (to be inserted into *Plan Morro Bay* as Figure LU-4.1): *Detail of Plan Morro Bay (2021) Figure LU-4, Land Use Map, delineating parcels currently designated Visitor-Serving Commercial and Commercial/Recreational Fishing that may not be redesignated unless by a vote of the people in accordance with this Initiative.*

EXHIBIT A

Plan Morro Bay Land Use Map

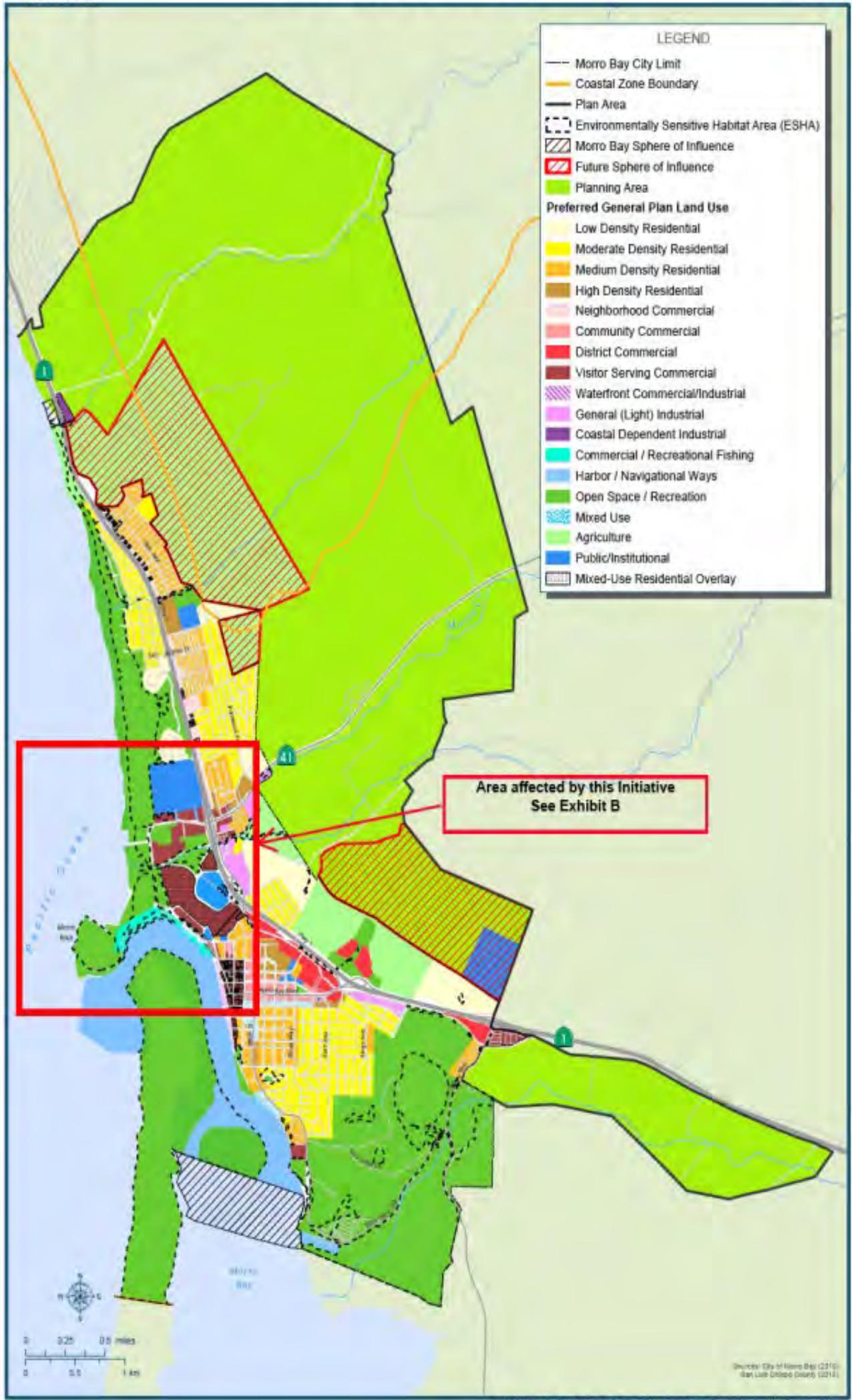


EXHIBIT B PARCELS/AREAS AFFECTED BY THIS INITIATIVE



■ Visitor Serving Commercial ■ Commercial / Recreational Fishing
■ Mixed-Use Residential Overlay

▭ Areas affected by this Initiative

RESOLUTION NO. 62-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
SETTING PRIORITIES FOR FILING WRITTEN ARGUMENT(S) AND DIRECTING
THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, REGARDING
THE SUBMISSION OF ORDINANCE NO. 659(B) TO THE QUALIFIED VOTERS
OF THE CITY AS A PROPOSED MEASURE**

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

WHEREAS, a General Municipal Election is to be held in the City of Morro Bay, California, on November 5, 2024, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No. 659(B) prohibiting, unless approved by Morro Bay voters, any change to land use designations of visitor-serving commercial or commercial/recreational fishing, on certain specified parcels within the City of Morro Bay.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to Elections Code § 9282, for measures placed on the ballot by petition, the persons filing the initiative petition may file a written argument in favor of the ordinance.

Section 2. That pursuant to Elections Code § 9282, for measures placed on the ballot by petition, the City Council may submit an argument against the proposed ordinance, and the City Council hereby authorizes the following Councilmember(s) to prepare a written argument against the foregoing measure:

1. Council Member
2. Council Member

Section 3. That in the event that more than one argument for or against the foregoing measure is timely submitted, then consistent with Elections Code § 9282, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, and second, to individual voters, or bona fide associations of citizens, or a combination thereof, in the order set forth at California Elections Code § 9287.

Section 4. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City's elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. **All written arguments may be changed or withdrawn until and including the date fixed by the City's elections official,**

being the close of business on Friday, July 19, 2024, after which time no arguments for or against the foregoing measure may be submitted to the elections official.

Section 5. That the City Council hereby directs the City's elections official to transmit a copy of the foregoing measure to the City Attorney. In accordance with California Elections Code § 9280, the City Attorney is hereby directed to prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure ____ (letter to be determined by the County Clerk Recorder). If you desire a copy of the ordinance or measure, please call the elections official's office at (805) 772-6205 and a copy will be mailed at no cost to you." The impartial analysis shall be filed by the date set by the City's elections official for the filing of primary arguments.

Section 6. That the City's elections official shall cause the City Attorney's Impartial Analysis, and duly selected arguments, to be printed and distributed to voters in accordance with State law regarding same.

Section 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the _____ day of September 2023.

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

ATTEST:

CARLA WIXOM, Mayor

DANA SWANSON, City Clerk

RESOLUTION NO. 63-23

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS REGARDING
THE SUBMISSION OF ORDINANCE NO. 659(B) TO THE QUALIFIED VOTERS
OF THE CITY AS A PROPOSED MEASURE**

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

WHEREAS, a General Municipal Election is to be held in the City of Morro Bay, California, on November 5, 2024, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No. 659(b) entitled, "Initiative Measure to Amend City of Morro Bay's General Plan (Plan Morro Bay), adopted by City Council on May 25, 2021, to prohibit, unless approved by Morro Bay Voters, any change to Land Use Designations of Visitor-Serving Commercial or Commercial/Recreational Fishing, on Certain designated Parcels within the City"; and

WHEREAS, California Elections Code § 9285 authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments regarding city measures submitted at municipal election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to Elections Code § 9285, when the City's elections official has selected the arguments for and against the foregoing measure which will be printed and distributed to the voters, the City's elections official shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The author or a majority of the authors of an argument relating to the foregoing city measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. The final date for filing direct arguments is July 19, 2024, and as **such rebuttal arguments shall be filed with the City Clerk no later than the close of business on Friday, August 2, 2024.** The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Section 2. That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

Section 3. That the provisions of Section 1 of this Resolution shall apply only to the General Municipal Election to be held on November 5, 2024, and shall then be repealed.

Section 4. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the _____ day of September 2023.

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

ATTEST:

CARLA WIXOM, Mayor

DANA SWANSON, City Clerk



AGENDA NO: C-2

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: September 5, 2023

FROM: Yvonne Kimball, City Manager
Chris Neumeyer, City Attorney
Sarah Johnson-Rios, Assistant City Manager/Admin Services Director

SUBJECT: Introduction and First Reading of Ordinance No. 660 Amending Section 3.24.100, and Repealing and Replacing Section 3.24.110, of Chapter 3.24 of the Morro Bay Municipal Code, Updating the Transient Occupancy Tax Appeals Process

RECOMMENDATION

Staff recommends the City Council introduce for first reading by title only, with further reading waived, Ordinance No. 660 Amending Section 3.24.100, and Repealing and Replacing Section 3.24.110, of Chapter 3.24 of the Morro Bay Municipal Code, Updating the Transient Occupancy Tax Appeals Process.

ALTERNATIVES

1. The Council may choose to take no action and keep the existing Transient Occupancy Tax (TOT) appeals process in place. It is a two-step process that is based on an outdated code, requiring the City Clerk and City Council to both hear appeals. The current appeal process utilizes more public resources than the proposed appeal process, is a more costly option for the City, and does not provide for a professional independent hearing officer.
2. The Council may suggest modifications to the proposed amendments, providing specific alternative direction to staff.

FISCAL IMPACT

The recommended action would result in less use of public resources than the current two-step appeals process, and greater cost recovery born by appellants seeking reductions in the amount of TOT owed.

BACKGROUND

Chapter 3.24 (TOT Ordinance) of the Morro Bay Municipal Code (MBMC) provides for the collection of a transient occupancy tax (TOT) for the City of Morro Bay. Section 3.24.100 ("Failure to collect and report tax – Determination of tax") and Section 3.24.110 ("Appeal") of the TOT Ordinance provide for a two-step appeal process of final TOT assessments issued by the City for failure to collect and/or make TOT payments to the City, whereby first the City Clerk (as the designated Tax Administrator) hears appeals on such assessments, and then second the City Council hears appeals on such assessments.

Prepared By: <u>_SJR_</u>	Dept Review: _____
City Manager Review: <u>_YK_</u>	City Attorney Review: <u>_CFN_</u>

This section of the Code has never been updated since the City's incorporation and adoption of the original Code in 1965. Since that time, best practices have changed significantly.

DISCUSSION

Updated codes and best practices include providing that an independent and appointed professional hearing officer, rather than the City Clerk and the City Council, hear appeals on final TOT assessments by the City for failure to collect and/or make TOT payments to the City.

The proposed ordinance amendments make that key change, clarify procedural steps for conducting such appeals, and allow the City to recover, for unsuccessful appeals of such TOT final assessments, the full, rather than discounted, current fiscal year cost recovery fee published in the City's adopted fee schedule for appeals of non-land use City administrative decisions. Finally, the amendment provides for procedural cleanup revisions including affirmation the tax administrator may utilize a designee.

ATTACHMENT(S)

1. Ordinance No. 660 – Proposed Code Amendment

ORDINANCE NO. 660

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING SECTION 3.24.100, AND REPEALING AND
REPLACING SECTION 3.24.110, OF CHAPTER 3.24 OF THE
MORRO BAY MUNICIPAL CODE**

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

WHEREAS, Chapter 3.24 (TOT Ordinance) of the Morro Bay Municipal Code (MBMC) provides for the collection of a transient occupancy tax (TOT) for the City of Morro Bay; and

WHEREAS, Section 3.24.100 (“Failure to collect and report tax – Determination of tax”) and Section 3.24.110 (“Appeal”) of the TOT Ordinance provide for a two-step appeal process of final TOT assessments issued by the City for failure to collect and/or make TOT payments to the City, whereby first the City Clerk hears appeals on such assessments, and then second the City Council hears appeals on such assessments; and

WHEREAS, the City Council desires: i) an independent and appointed professional hearing officer, rather than the City Clerk and the City Council, hear such appeals, submitted pursuant to requirements of the MBMC, on final TOT assessments by the City for failure to collect and/or make TOT payments to the City; ii) to clarify procedural steps for conducting such appeals; iii) to recover, for unsuccessful appeals of such TOT final assessments, the full, rather than discounted, current fiscal year cost recovery fee published in the City’s adopted fee schedule for appeals of non-land use City administrative decisions; and, iv) provide for procedural cleanup revisions including affirmation the tax administrator may utilize a designee; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. RECITALS. The City Council hereby finds that the recitals set forth above are all true and correct and are incorporated herein by this reference.

SECTION 2. CODE AMENDMENT.

A. Sections 3.24.100 (“Failure to Collect or Report Tax”) of the Morro Bay Municipal Code is hereby amended to read as follows (new text in *bold italics*, removed text in ~~strikethrough~~):

“3.24.100 Failure to Collect or Report Tax

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator (*or designee*) shall proceed in such manner as *she/he* may deem best to obtain facts and information on which to base *her/his* estimate of the tax due. As soon as the tax administrator (*or designee*) shall procure such facts and information as *she/he* is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by

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any operator who has failed or refused to collect the same and to make such report and remittance, **she/he** shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator (**or designee**) shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at **her/his** last known place of address. **If the operator fails to file, pursuant to Section 3.24.110 below, a timely appeal (in part or in whole) of that assessment, then the assessed tax, interest and/or penalties not appealed shall become final and conclusive and immediately due and payable.** ~~The operator may within ten days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for the hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount specified therein should not be fixed for such tax, interest and penalties. At the hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After the hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.24.110.~~

B. Section 3.24.110 of the Morro Bay Municipal Code is hereby repealed in its entirety and is replaced in its entirety with new Section 3.24.110 as follows:

“3.24.110 – Appeal

- A. An operator may within fifteen (15) days after the service or mailing of a final determination from the tax administrator (or designee), sent pursuant to Section 3.24.100 above, submit a notice of appeal to the tax administrator.
- B. An appeal must be submitted in writing to the tax administrator signed by the person making the appeal or their legal representative. The appeal must be accompanied by an appeal fee in accordance with below Section 3.24.110(C). Any appeal submitted to the City based upon this chapter shall be supported by evidence and contain the following:
 - 1. Name, address and telephone number of operator/appellant;
 - 2. Specify the decision(s), action(s), or particular part(s) of the assessment that are the subject of the appeal;
 - 3. Whether all or only specified tax, interest and/or penalties are being appealed;
 - 4. Include a true and correct copy of the notice issued by the tax administrator (or designee) for which the operator is appealing;
 - 5. State with specificity the reasons and grounds for making the appeal, including, but not limited to, both:
 - a. why the assessment (in whole or part) should be revoked, modified, or otherwise set aside; and
 - b. a statement of facts upon which the appeal is based in sufficient detail to enable the hearing officer to understand the nature of the controversy, basis of the appeal and relief requested;

6. All documents or other evidence pertinent to the appeal that the appellant requests the hearing officer consider at the hearing (documents and evidence not presented at the time of filing the appeal shall not be considered at the hearing except upon a showing of good cause);
 7. A statement that all of the matters alleged in the appeal are true, followed by the signature(s) of each appellant(s), and one official mailing address (if different than address in No. 1 above) for the appellant(s) to receive further notices from City relating to the appeal.
- C. The appeal fee for filing an appeal based upon this chapter is the full amount (i.e., full cost recovery) of the current fiscal year non-discounted fee provided for in the City's adopted fee schedule for appeals for non-land use administrative decisions. The appeal fee is refundable in its entirety if the appeal prevails in its entirety. The appeal fee is refundable in part, if the appeal prevails on some of its claims, on a pro rata basis calculated by the amount of the assessment reduction compared to the assessment amount appealed. The City Manager may provide an appeal fee hardship waiver, in whole or in part, for good cause.
- D. Operators who file a timely written notice of appeal in compliance with this chapter will be entitled to an administrative hearing before an appointed independent hearing officer. The City Manager shall designate the hearing officer for the administrative hearing. The hearing officer shall not be a City of Morro Bay employee. Compensation for the hearing officer shall not be determined by the outcome of the appeal. The tax administrator shall forward all timely filed appeals to the hearing officer who shall schedule a hearing within ninety (90) days of the filing of the appeal. For good cause the hearing date may be reasonably postponed. The operator/appellant listed in the notice of appeal shall be notified in writing of the date, time and location of the hearing at least ten (10) days before the date of the hearing.
- E. The appeal hearing is informal and formal rules of evidence and discovery do not apply. The hearing officer may consider all relevant evidence, and may exclude repetitive or irrelevant evidence. However, rules of privilege shall be applicable to the extent they are permitted and/or required by law. The hearing officer may accept and consider late evidence or documents not presented at the time of filing the appeal only upon a showing of good cause. The hearing officer shall determine on a case-by-case basis whether good cause exists for acceptance and consideration of any evidence or documents submitted late.
- F. The appellant bears the burden of proof at the hearing to establish by a preponderance of the evidence that the appealed assessment of tax, interest and/or penalties as set forth in the final determination from the tax administrator (or designee) is not due and payable.
- G. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording or video recording. If the appellant requests from the City that a court reporter, stenographer or videographer be used, appellant shall bear the cost of the same and shall deposit such fees prior to commencement of the administrative hearing.
- H. If the appellant, or their legal representative, fails to appear at the appeal hearing, the hearing officer may cancel the appeal hearing and send notice thereof to the appellant by certified, first class mail to the address stated on the notice of appeal. A cancellation of a hearing due to a non-appearance of the appellant, or legal representative, shall constitute the appellant's waiver of the right to appeal and failure to exhaust administrative remedies.

- I. After consideration of all testimony and evidence submitted, the hearing officer shall issue a written decision to uphold or cancel the appealed assessment of tax, penalties and/or interest (in part or in whole) within twenty (20) days specifying the reasons for the decision. The written decision of the hearing officer is final and conclusive and subject to the time limits set forth in California Code of Civil Procedure §§ 1094.5 and 1094.6 for judicial review. A copy of the written decision shall be served by certified, first class mail on the appellant. Any tax, penalty and/or interest determined to be owed and payable by the hearing officer's decision is immediately due and payable."

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

SECTION 5. CERTIFICATION. The City Clerk shall certify as to the passage and adoption of this ordinance, and the City Clerk shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the ____ day of _____ 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the ____ day of _____, 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

01181.0001/919892.7

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 660 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2023, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk



AGENDA NO: C-3

MEETING DATE: September 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: August 28, 2023

**FROM: Scot Graham, Community Development Director
Cindy Jacinth, Planning Manager**

SUBJECT: Discussion of Waterfront Master Plan Update and Authorization to Submit a Grant Application for California Coastal Commission LCP Local Assistant Grant Program Funding

RECOMMENDATION

Adopt Resolution No. 64-23 authorizing staff to submit a grant application for California Coastal Commission (CCC) LCP Local Assistance Grant Program to fund the update of the City’s 1996 Waterfront Master Plan in the amount of \$500,000 according to the scope outlined in this staff report.

ALTERNATIVES

1. Direct staff to discontinue application for the Coastal Commission Grant.
2. Decrease amount of grant request or provide other direction to staff regarding funding strategy.

FISCAL IMPACT

Should the City be successful in obtaining grant funding, the funds received would pay for consultant services, with staff time spent working on the Waterfront Master Plan (WMP) update to be paid from the City’s General Fund portion of the budget. No cash match is required in order to apply for the grant.

BACKGROUND/DISCUSSION

The California Coastal Commission (CCC) has announced grant funding availability under the LCP Local Assistance Grant Program. This is rolling, non-competitive grant funding available to local governments to assist with either development of or amendments to Local Coastal Programs (LCP). Application funding is limited to a maximum of up to \$500,000. Funds may be used for projects that are designed to assist local governments in assessing impacts and planning for coastal resiliency, including adapting to the impacts of climate change and sea level rise.

The City was previously successful in obtaining approximately \$600,000 of CCC grant funding to update the City’s General Plan/LCP Land Use Plan known as Plan Morro Bay, which was adopted by the City Council in 2021 and certified by the CCC also in 2021. Policy LU-8.1 of the LCP states “Update the 1996 Waterfront Master Plan with a focus on addressing issues of sea level rise and

Prepared By: <u> CJ/SG </u>	Dept Review: <u> SG </u>
City Manager Review: <u> YK </u>	City Attorney Review: <u> LNL </u>

future planning for Morro Rock.” Applying for this grant funding would enable implementation of this policy.

CCC staff has offered assistance and guidance to City staff in submitting an application that would meet the eligibility criteria related to coastal resilience and sea level rise adaptation planning. Staff discussed with CCCC staff the Waterfront Master Plan update as an application. Coastal staff confirmed this update would be an eligible project and encouraged the City to apply.

The LCP grant funding opportunity was made available to local governments as a result of the State’s Budget Act of 2021 which appropriated \$31 million to the CCC to support this program. Upon submittal of an application, funding decisions are made by CCC within 30 days of application. The funding program allows grants to be stacked, which means that the City could seek out additional funding sources to supplement the cost of the Waterfront Master Plan Update project.

GRANT DIRECTION FROM COUNCIL

In addition to Council authorization for the grant application, staff is seeking direction from Council on the scope of the grant application and for the update of the Waterfront Master Plan as a whole. Staff intends to expand the area covered by the Waterfront Master Plan to include at least the east (inland) side of the Embarcadero out to the pedestrian bridge and extending across to the old wastewater treatment plant site. Other items for Council to consider incorporating into the Waterfront Master Plan update include:

- Offshore wind uses
- Expansion of the Master Plan to extend across the pedestrian bridge over to the old wastewater treatment plant site
- Possible formation of an ad hoc committee to assist with the Master Plan RFP and development of the Master Plan itself. An ad hoc committee could include Councilmembers, Planning Commissioners, Harbor Advisory Board members, and possibly representatives from the Embarcadero Master Lease Holder group, commercial fishing industry, and maritime museum.

GRANT APPLICATION

Upon authorization by Council, staff will submit an application for grant funding to the CCC. A Request for Proposal (RFP) will be developed after grant funding is received. The RFP contents would be to seek professional planning consulting services similar to the consulting services utilized for the Plan Morro Bay update project. The scope of services in the RFP would be dependent on Council direction. The current Waterfront Master Plan chapters cover identification of planning areas, transportation and harbor improvements, proposals for each planning area, and waterfront design guidelines. The current WMP boundary planning areas cover from the north Morro Rock/Coleman Park area (including sandspit to PG&E plant intake and Little Morro Creek) and extends all the way south to Tidelands Park. Because the grant funding requires a sea level rise adaptation planning component, the WMP update would also include an additional chapter to address these grant funding components, as well as update the existing document. This is consistent with multiple LCP Policies including LU-8.2, which addresses planning for Morro Rock and to incorporate sea level rise projections and an updated coastal hazard vulnerability assessment; Policy LU-8.7, which requires relocation of underdeck utilities, decks, piers, etc. in the Embarcadero area to a location above the sea level rise zone; and Policy LU-8.12, which requires the City to continue to gather information the effects of sea level rise and other coastal hazards on Morro Bay’s shoreline.

CONCLUSION

The newly available grant funding program from the CCC and support by Coastal staff presents an excellent opportunity to apply for needed funding to update the 1996 Waterfront Master Plan, which

would not only incorporate coastal resilience and sea level rise adaptation planning but also provide an opportunity to update other portions of the WMP including waterfront Design Guidelines. Staff recommends the Council adopt Resolution No. 64-23 authorizing staff to submit a grant application in the amount of \$500,000 to the CCC in support of the update for the City's 1996 Waterfront Master Plan to be developed and adopted as a future amendment to the City's LCP.

ATTACHMENT(S)

1. Resolution No. 64-23

RESOLUTION NO. 64-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE GRANT APPLICATION FOR THE COASTAL
COMMISSION LCP LOCAL ASSISTANCE GRANT PROGRAM**

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

WHEREAS, the Budget Act of 2021 provides up to \$31 million to support the Coastal Commission's LCP Local Assistance Grant Program which awards grants to local governments to support coastal resiliency and updates to Local Coastal Programs (LCPs); and

WHEREAS, the California Coastal Commission, under the authority of the California Coastal Act, may provide financial assistance to support coastal planning and has approved a grant program to provide such financial assistance for LCP planning; and

WHEREAS, the goal of the grant program is to develop new or updated LCPs in conformance with the California Coastal Act and to promote coastal resiliency and address the effects of climate change; and

WHEREAS, grant proposals submitted under this grant program must complete LCP planning work with special emphasis on coastal resiliency and addressing the effects of climate change and sea-level rise; and

WHEREAS, the City of Morro Bay, has an effectively certified LCP; and

WHEREAS, the City of Morro Bay adopted the Waterfront Master Plan in 1996 and is included in the City's LCP; and

WHEREAS, Policy LU-8.1 of the City's LCP states the Waterfront Master Plan should be updated with a focus on addressing issues of sea level rise and future planning for Morro Rock; and

WHEREAS, the City of Morro Bay, desires to pursue an update of the Waterfront Master Plan project that would result in the completion and submittal for certification by the California Coastal Commission of an Amendment to the LCP [in whole or in part]; and

WHEREAS, the City of Morro Bay commits to and agrees to fully support a planning effort intended to amend a certified LCP pursuant to the provisions of the California Coastal Act, with full public participation and coordination with the Coastal Commission staff.

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

1. Directs City of Morro Bay staff to submit the grant application package attached hereto as Attachment 1 to the California Coastal Commission to provide financial and planning assistance, under authority of the California Coastal Act, in the amount of \$500,000 to fund the project more particularly described in the grant application package.

2. Authorizes the Community Development Director, of the City of Morro Bay, to execute, in the name of the City of Morro Bay, all necessary applications, contracts and agreements and amendments thereto to implement and carry out the grant application package attached hereto and any project approved through approval of the grant application.

PASSED AND ADOPTED by the Morro Bay City Council, at a regular meeting held on this 12th day of September 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk