



CITY OF MORRO BAY HARBOR ADVISORY BOARD A G E N D A

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

**Regular Meeting - Thursday, October 2, 2014
Veteran's Memorial Building - 6:00 P.M.
209 Surf Street, Morro Bay, CA**

Jeff Eckles, Chair	Waterfront Leaseholders
Bill Luffee, Vice-Chair	Marine Oriented Business
Alan Alward	Morro Bay Commercial Fishermen's Organization
Dana McClish	Recreational Boating
Gene Doughty	South Bay/Los Osos
Lynn Meissen	Member at Large
Ron Reisner	Member at Large
Tom Hafer	Alternate to Alan Alward (MBCFO)
Joe Conchelos	Alternate to Alan Alward (MBCFO)

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CHAIR AND ADVISORY BOARD MEMBER ANNOUNCEMENTS & PRESENTATIONS

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Board on City business matters other than scheduled items may do so at this time. To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Chair, please come forward to the podium and state your name and address for the record. Board meetings are audio and video recorded and this information is voluntary and desired for the preparation of minutes.
- Comments are to be limited to three minutes.
- All remarks shall be addressed to the Board, as a whole, and not to any individual member thereof.
- The Board respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, Board member 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 Board to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in Board meetings is welcome and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Harbor Department's Office Assistant at (805) 772-6254. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

- A-1 Approval of Minutes from Harbor Advisory Board meeting held on September 4, 2014
Staff Recommendation: Approve minutes.

B. PUBLIC HEARINGS, REPORTS, AND APPEARANCES

- B-1 Harbor Department Status Report
Staff Recommendation: Receive and file.

C. UNFINISHED BUSINESS

- C-1 Review of Liveaboard Ordinance Regarding Liveaboard Permit Inspections and Marine Surveyor Requirements
Staff Recommendation: That the Harbor Advisory Board review the Liveaboard Ordinance as it pertains to marine surveyors doing the liveaboard inspections and the inspections themselves, and provide recommendations to staff, if any.
- C-2 Update from the Marine Services Facility/Boatyard Ad-Hoc Committee on Committee's Recent Activities
Staff Recommendation: Receive and file.
- C-3 Update from the Capital Improvement Planning Ad-Hoc Committee on Committee's Recent Activities
Staff Recommendation: Receive and file.

D. NEW BUSINESS

- D-1 Selection of Two Harbor Advisory Board Members to Sit on the Selection Panel to Review Request for Proposals Received for Redevelopment of Lease Site 69-70/69W-70W (Morro Bay Aquarium Located at 595 Embarcadero)
Staff Recommendations: The Harbor Advisory Board select two members to serve on the Selection Panel to review the Requests for Proposals received for Lease Site 69-70/69W-70W.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

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 the Morro Bay Harbor Department, 1275 Embarcadero, for any revisions or call the department at 772-6254 for further information.

Materials related to an item on this Agenda are available for public inspection during normal business hours at the Harbor Department and at Mill's/ASAP, 495 Morro Bay Boulevard, or online at www.morro-bay.ca.us. Materials related to an item on this Agenda submitted to the Board after publication of the Agenda packet are available for inspection at the Harbor Department during normal business hours or at the scheduled meeting.

CITY OF MORRO BAY

HARBOR ADVISORY BOARD

SYNOPSIS MINUTES

The regular meeting of the City of Morro Bay Harbor Advisory Board was held Thursday, September 4, 2014 at 6:00 PM in the Veteran's Hall, 209 Surf ST, Morro Bay, California.

ESTABLISH QUORUM AND CALL TO ORDER

Present:	Members:	Gene Doughty Jeff Eckles Tom Hafer Bill Luffee Dana McClish Lynn Meissen Ron Reisner
	Staff:	Eric Endersby, Harbor Director Polly Curtis, Office Assistant

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CHAIR AND ADVISORY BOARD MEMBER ANNOUNCEMENTS & PRESENTATIONS

Mr. Doughty made a presentation on mooring gear and mooring inspections, saying there are around 150 moorings in six federally designated areas including the launch ramp, yacht club, Morro Bay Marina, and impound moorings. He said each mooring needs to be inspected every two years, and the Harbor Patrol reviews and verifies the completed inspection.

Mr. Doughty described the gear as a block, chain, swivel, and ball. There are also two ¾-inch pennant lines which the owner is responsible for and needs to check for chaffing or wear, especially prior to winter storms. He played a video of a diver following the full length of the chain to the block; then demonstrated several mooring parts: 1-inch chain, ¾-inch chain, eye and swivel, along with a length of chain which was nearly worn through. Mr. Doughty said some of the chain lays on the ocean bottom but it stretches with the tide and wind. He said due to that movement, the mooring spaces cannot be made any bigger than they are currently.

PUBLIC COMMENT

Gary Hickson said he thought the Harbor Advisory Board and Harbor Department were doing a good job.

Gayle Buffo is an administrator for the mobile application "Fishline" which helps people find local seafood for sale directly off the boats. She said fishermen post on this site for free, and there are currently 8,500 app users of Fishline, 3,000 website users on www.fishline.com and 5,100 Fishline followers on Facebook. Ms. Buffo said this has been a very successful endeavor in Half Moon Bay, and she hopes the app will be as successful in Morro Bay. Her contact email address is: Gayle@phondini.com and she said in the future they hope to be posting photos of the fishermen's catch as well as transaction capabilities.

A. CONSENT CALENDAR

A-1 MINUTES

Mr. McClish moved the August 7, 2014 Harbor Advisory Board minutes be approved. The Motion was seconded by Mr. Hafer and carried unanimously.

B. PUBLIC HEARINGS

B-1 Harbor Department Status Report

Mr. Endersby briefed the Board on the following topics:

Boaters Check Pennant Lines and Gear Prior to Storms

North T-Pier Maintenance and Repair Project

Public Safety Dispatching (Regional) EMA/EMD

Off-Boat Fish Sales

Reuse and Recycle – Old Tires to EVOC

Bayshore Bluffs Beach Cleanup

National Estuary Program Eelgrass Planting

Lifeguard Season

Recent Events:

August 5 – Police Department’s National Night Out

August 17 – Deceased Boat Owner on Vessel

Upcoming Events:

September 6 – Dahlia Daze and MB 50th Anniversary Parade

September 7-11 – Never Quit Challenge for Veterans

September 20 – Coastal Cleanup Day 9-Noon (Bayshore Bluffs Beach)

C. UNFINISHED BUSINESS

C-1. Update from the Marine Services Facility/Boatyard Ad-Hoc Committee on Committee’s Recent Activities

Mr. Reiser said the Ad-Hoc Committee met on August 15, 2014 and reviewed two draft documents by Lisa Wise Consulting (LWC). One document was the Morro Bay Boatyard/Haulout Survey, the other Morro Bay Marine Facilities Case Studies. He said the Ad-Hoc Committee’s comments were given to Morro Bay Commercial Fishermen’s Organization (MBCFO) who were designated to pass the information on to LWC.

Mr. Hafer said Henry Pontarelli of LWC initiated the survey and there have been 23 survey documents filled out by MBCFO members and returned back to Lisa Wise Consulting, and he is expecting more surveys to be completed. Discussion ensued on the survey being a draft which was to be reviewed and commented on by MBCFO before being sent out as an actual survey. Chair Eckles said this issue would need to be taken up at the Committee level.

C-2. Update from the Capital Improvement Planning Ad-Hoc Committee on Committee’s Recent Activities

Chair Eckles said the Ad-Hoc Committee formed a Mission Statement: “To make recommendations to the Harbor Department and the City with regard to the process of Capital Improvement Planning and Funding.”

D. NEW BUSINESS

D-1 Consideration of Dynegy Applications to the Federal Energy Regulatory Commission for Energy-Generating Wave Parks in Morro Bay Area Waters

Mr. Endersby briefed the Board on the history of the power plant, its closure, and the switching station that is still active on the location. He said Dynegy applied to the Federal Energy Regulatory Commission (FERC) for a Preliminary Permit for two energy-generating wave parks in area waters; one in Estero Bay and another off Point Estero. He said the purpose of a preliminary permit is to grant the permit holder priority to file a license application during the permit term, and the deadline for filing comments or motions to intervene is September 22, 2014.

Mr. Endersby said the MBCFO have concerns about potential impacts to local fishing grounds, and the Harbor Department staff have concerns over vessel safety and hazards to navigation. He said citizens have voiced concerns over hazards to whales and other marine mammals as well as visual pollution and the environment.

Mr. Endersby displayed an ocean map on screen for the Board to see the proposed locations of the two wave parks by Dynegy. Mr. Hafer said two meetings were held by Dynegy which he and members of the MBCFO and others discussed these two sites, saying that neither location was acceptable to the fishermen. He said the best location would be five miles off shore, directly in line with the former Chevron tanker tie-up location that now holds the pipeline with cables. Mr. Hafer said the Dynegy representatives accepted this site, agreeing with the fishermen. However, this current ocean map of the proposed wave parks only shows the original two unsatisfactory locations.

Public Comment: Mr. Joseph Conchelos, local fisherman who attended these meetings, said this permit application does seem to be a foot-in-the-door scheme by Dynegy; he described the enormous size of just one single wave-generating vessel as being 230-feet long, 59-feet wide, 30-feet deep into the water and 35-feet rising in the air above the water.

Mr. Conchelos said the meeting of the MBCFO and Dynegy ultimately was a bait-and-switch proposal by Dynegy. The MBCFO asked Dynegy if the wave-generating vessels could be placed inside a Marine Protected Area (MPA) and were told these were not allowed in any MPAs. Mr. Conchelos said if these are not environmentally sound enough to be placed in an MPA, then he does not trust them going into waters where he makes a living by fishing.

Further discussion by the Board.

Motion: Chair Eckles moved that the Harbor Advisory Board request the Harbor Department staff to write a letter on behalf of the Board for all Board members' signatures stating opposition to Dynegy's Federal Energy Regulatory Commission (FERC) preliminary permit applications for their proposed Point Estero and Estero Bay Wave Parks for the following reasons: Both locations as proposed would cause significant hazards to navigation. Both locations as proposed would cause significant disruption to commercial and recreational fisheries. The Motion was seconded by Ms. Meissen and carried unanimously.

Motion: Chair Eckles moved that the Harbor Advisory Board recommend that the Morro Bay City Council take a position in opposition to Dynegy's Federal Energy Regulatory Commission (FERC) preliminary permit applications for their proposed Point Estero and Estero Bay Wave Parks for the following reasons: Both locations as proposed would cause significant hazards to navigation. Both locations as proposed would cause significant disruption to commercial and recreational fisheries. The Motion was seconded by Mr. Doughty and carried unanimously.

D-2 Consideration of Changes to the City of Morro Bay Commercial Fishing Vessel Slip Qualifications

Mr. Endersby briefed the Board on the requirements for commercial fishermen to qualify for a City slip, saying that per the Morro Bay Municipal Code section 15.04.150, fishermen must annually provide proof of \$1,000 worth of fish landing receipts or tickets for every net documented ton of their vessel, or \$5,000 minimum in tickets for state registered vessels. Two waivers are allowed in any ten year period. Mr. Endersby said that proof of fishing effort being tied to the net documented tonnage of a vessel in most cases does not truly represent the fishing potential of the vessel. He believes that either one flat dollar amount of fish tickets, or a dollar amount per foot of length of the vessel would be more appropriate.

Discussion by the Board. Mr. Hafer said in talking with the Morro Bay Commercial Fishermen's Organization members, he believes the most equitable and fair formula for commercial fishermen would be \$5,000 worth of fish tickets per year for vessels measuring 26' and under; and \$10,000 worth of fish tickets per year for vessels measuring above 26'.

Public comment: Mr. Conchelos agreed that the size of a vessel does not disclose its earning potential, and that a flat rate as mentioned would be extremely reasonable. Mr. Conchelos also suggested that qualified commercial fishermen who do not yet have a permanent slip be allowed to sublease at the rate fishermen pay, rather than the much higher current sublease rate.

Further discussion by the Board regarding special allowances for older fishermen or the possibility of a sunset clause. Board members said it is a necessity to keep Morro Bay's fishery viable by allowing new, productive fishermen to obtain a slip; and that the City has mandated through Ordinances and Resolutions that the City slips be designated for commercial fishing; and the fact that there have always been fishermen on the waiting list for commercial slips; and also not to allow the City slips to become storage places for rarely used vessels.

Public Comment: Mr. Conchelos said it might be good to remember that these "old guys" being discussed were originally the hard dudes who put these rules into place. He said much as he respects them, if a commercial fisherman cannot earn \$5,000 to \$10,000 per year, he might need to get out of the business.

Motion: Mr. Reisner moved that the Harbor Advisory Board recommend to City Council that the Morro Bay Municipal Code 15.04.150 be modified to eliminate reference to earnings by net ton, and insert language as follows: "Such use shall be verified by proof of vessels measuring 26' in length or less to qualify with fish tickets for \$5,000 per year, and for vessels measuring greater than 26' in length to qualify with fish tickets totaling \$10,000 per year." The Motion was seconded by Mr. Luffee and carried unanimously.

E. DECLARATION OF FUTURE AGENDA ITEMS

October:

**Review of Liveboard Ordinance Regarding Marine Surveyor Certification and Standardization of Liveboard Permit Inspections
Marine Service Facility Ad-Hoc Committee Report
Capital Improvements Planning Ad-Hoc Committee Report**

Future:

**Sublease Fee Schedule for Commercial Slips
State Park Marina Operating Agreement
Morro Bay Fish Quota Share and Trawl Permits
Tsunami Warning and Emergency Notification
Water Lease Site Improvements Including Dock Configurations
Mooring Field Design and Maintenance
Coast Guard Building Location Plans
Planning for Power Plant Property**

F. ADJOURNMENT

This meeting was adjourned at 8:40 PM.
Submitted by,

Polly Curtis
Harbor Department

Bayshore Bluffs Beach Cleanup/Coastal Cleanup Day: Over 50 skiffs and other vessels and a dumpster-full of debris were removed from the “oyster” beach below Bayshores Bluffs Park off lower Main Street during Coastal Cleanup day. Thanks go out to the half dozen or so volunteers who showed up to help.

The vessels will be stored in the Harbor Department yard unless or until owners come to claim them. Unclaimed vessels will either be auctioned or destroyed at a later date in accordance with the provisions of the Harbors and Navigation Code. For folks wishing to continue storing their vessels on this beach we require the following:

- All skiffs/vessels stored be permanently marked somehow with ownership information.
- All skiffs/vessels stored be registered with the Harbor Department.
- All skiffs/vessels stored be in an operable and seaworthy condition.
- If required for the particular vessel, all skiffs/vessels stored be currently registered with the DMV, including display of the CF number and current registration sticker.
- No storage of anything besides skiffs/vessels and minimal storage racks.
- No carpeting left on the ground.

Recent Events: Two credible shark sighting were received in local waters, one on 9/7 and another on 9/17. Per protocol, beach access points were posted with notifications.

September 6 saw the Dahlia Daze and Historic Founders Parade of 2014. With assistance from the Central Coast Women for fisheries group, a Harbor Patrol vessel was decorated and entered into the parade. It won the Best Float award.

On September 8 the “Never Quit Challenge,” a 600 mile personal watercraft adventure for select military veterans and combat wounded to benefit veterans’ charities, departed Morro Bay for a three-day run to San Diego. The event was a success.

The 8th Annual Avocado and Margarita Festival was held on September 13 and 14 in the City parking lot adjacent to the Centennial Stairway. By all accounts it was a success.

The week of August 15-19 was Cal Poly’s WOW week for new students. During the week the bay was full of WOW kayakers and the streets teeming with students. Your Harbor Director was invited again to give a water and boating safety talk to the 700+ WOW student leaders.

Upcoming Events: New City Manager David Buckingham was hired by the City Council and will start work on September 29. A community “meet and greet” for Mr. Buckingham and his family is being hosted by the Chamber of Commerce and City at the Vet’s Hall on Tuesday, September 30 from 4:00 p.m. to 6:00 p.m. Our Interim City Manager, Ed Kreins, will be assisting Mr. Buckingham for a couple weeks in getting him acquainted and wrapping a few things up, after which we bid him farewell and thanks for his service.

The 33rd Annual Harbor Festival is slated for October 4-5 on the Embarcadero between Beach Street and the power plant intake building area. A new and improved site layout is planned that includes a Maritime Heritage Pavilion, Sand Sculpture Spectacular, Kid's Cove, Morro Bay Commercial Fisherman's Albacore BBQ, Wine-n-Beer Court and plenty of live music.

Snowy Plover nesting season is over and in coming weeks, with the assistance of State Parks, the department will be taking down our plover fencing on the sandspit. According to Parks' personnel, this season was one of the most successful for nesting hatches in recent years.

State Lands Commission: As the City's landlord, the State Lands Commission (SLC) oversees our waterfront lease and public property management. In 2013 SLC received public complaints that the City was misappropriating revenues from the power plant's Community Development Fund (CDF), the allegation being that the CDF funds were being diverted from the Harbor (Tidelands Trust) Fund to the General Fund. SLC staff investigated the complaint and found no misappropriation or misuse of funds. The letter from SLC to the City closing the case is included with this staff report.

In other SLC-related activity, the City Council recently received a public complaint that according to SLC public trust land stewardship requirements liveaboard vessels are not allowed since "residential use" of public trust State Tidelands is generally not allowed, with certain exceptions. The complaint also alleged that liveaboards were at odds with the City's zoning and leasing policy, and against the State Attorney General's opinion.

Department staff contacted the SLC staffer responsible for Morro Bay. He advised there is no written Attorney General opinion on liveaboard use in general on State Tidelands. True, residential use of State Tidelands is generally not allowed, with the exception of "caretakers" or "security" uses for overseeing granted lands/properties. We've seen this time and again with caretaker/security units in new waterfront development, including cessation of this use if it is not an allowed use in a particular lease. This includes a certain amount of liveaboards, which must be limited or controlled in some way. This we do by implementing and enforcing our liveaboard ordinance as adopted by the City Council.

SLC's policy is to allow no more than 10% of a body of water's vessel population to be used as liveaboards. This is consistent up and down the coast in numerous other harbors on State Tidelands. Our liveaboard permit number is capped at 50; 10% of the approximately 500 vessels in the bay at any given time. This is MB Municipal Code Section 15.40.



**ALESHIRE &
WYNDER LLP**
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2125 Kern Street, Suite 307
Fresno, CA 93721
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awattorneys.com

September 12, 2014

VIA E-MAIL

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

CC: Dynegy Estero Bay Wave Park, LLC
Michael Hindus
Pillsbury Winthrop LLP
michael.hindus@pillsburylaw.com

Re: Notice of Motion to Intervene for the Dynegy Point Estero Wave Park
Project (FERC No. P-14584-000, FERC No. P-14585-000)

Dear Secretary Bose:

Enclosed for filing in the above-referenced proceeding is the City of Morro Bay's MOTION TO INTERVENE in the Dynegy Point Estero Wave Park Project preliminary application proceeding pursuant to the Federal Energy Regulatory Commission's Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments dated July 16, 2014. Copies of this filing have been served on all necessary parties in this proceeding.

Please contact us if you have any questions or need any additional information. Thank you.

Respectfully submitted,

ALESHIRE & WYNDER, LLP

Joseph W. Pannone, Esq.
Miles P. Hogan, Esq.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

RE: Dynegy Point Estero Wave Park, LLC)	Project No. P-14584-000, P-14585-000
)	Dynegy Point Estero Wave Park Project
)	
Application for Preliminary Permit for)	Motion to Intervene of the
Dynegy Point Estero Wave Park Project)	City of Morro Bay
)	
)	

**CITY OF MORRO BAY'S
MOTION TO INTERVENE IN THE DYNEGY POINT ESTERO WAVE PARK
PROJECT LICENSING PROCEEDINGS**

I. Introduction

On February 6, 2014, Dynegy Point Estero Wave Park, LLC (“Dynegy”) filed a Preliminary Permit Application with the Federal Energy Regulatory Commission (“FERC”) for the Dynegy Point Estero Wave Park Project (FERC No. 14584-000 and 14585-000). On July 16, 2014, FERC issued a Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments regarding the preliminary permit application for the “Point Estero Wave Park Project,” to be located in coastal waters and lands along the coast of San Luis Obispo County, California. The notice established a deadline of September 14, 2014, for filing motions to intervene. In accordance with Rule 214 of FERC’s Rules of Practice and Procedure, 18 C.F.R. § 385.214, the City of Morro Bay hereby moves to intervene in Dynegy’s application for a preliminary permit.

II. Motion to Intervene

A. Statement of Interest

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

The City of Morro Bay is a coastal California city within San Luis Obispo County, directly within the onshore vicinity of the proposed offshore Point Estero Wave Park Project. Morro Bay’s economy is closely tied to the ocean and the near-shore environment, which provides vast commercial, social, and aesthetic benefits to the City and its residents. The project site proposed by Dynegy and surrounding areas are regularly used by Morro Bay residents, fishermen, and tourists. The City of Morro Bay and its residents want to ensure that the Point Estero Wave Park Project, and any other renewable ocean energy proposal in the area, addresses concerns regarding commercial and recreational fisheries, safety and navigational hazards, and threats to marine mammals and wildlife. In line with its Mission Statement, the City of Morro Bay seeks

to play an active role in this FERC process to ensure that these concerns of our community are adequately represented and addressed. The City of Morro Bay's positions are further explained in the Comment Letter signed and approved by the Morro Bay City Council, and attached hereto as **Exhibit A**.

B. Grounds for Intervention

The City of Morro Bay's intervention in Dynegy's preliminary permit application process is in the public interest as required by 18 C.F.R. § 385.214(b)(2)(iii). The City of Morro Bay and its local economy, fisheries, wildlife, and residents are directly impacted by this project. Therefore, the City of Morro Bay has a direct and substantial interest in the outcome of this preliminary permit application process.

C. Statement of Position

The City of Morro Bay is pleased to see alternative energy sources explored and utilized in the Morro Bay area. However, the City files this motion to intervene to oppose the Point Estero Wave Park Project as it is currently proposed.

The proposed project locations present significant cause for concern in three key areas: (1) access to fisheries, (2) safe navigation, and (3) impact on marine mammals and other marine species.

First, commercial and recreational fisheries have played significant roles in the development of Morro Bay and continue to remain vital economic and social contributors to the community. California West Coast fisheries are some of the most highly regulated fisheries in the world. Both proposed locations would significantly disrupt commercial and recreational fishing.

Second, both wave park locations pose significant navigational hazards. Morro Bay is a designated Harbor of Safe Refuge and is the only safe harbor between Monterey and Santa Barbara; thus, a safe entrance and exit to our harbor are critical. Both wave park locations pose significant safety issues for the boating public, both commercial and recreational, and the City is opposed due to navigational hazards.

Third, Morro Bay's ocean environment is the natural habitat for a wide variety of marine mammals including whales, harbor seals, sea lions, and dolphins - some of which are currently listed under the Endangered Species Act. As proposed, the projects have the potential for significant negative impact to marine mammals and may increase the risk for collision or entanglement with the wave energy converters (WECs), mooring systems, and transmission lines. Additionally, the introduction of man-made noise into the marine environment may cause disruption in marine mammal communication, migration, and navigation. These disruptions must be mitigated to the maximum extent possible at any proposed wave park location.

Finally, the project applicants have not held any public information forums detailing the project, which inhibits stakeholder awareness and participation in the project development, planning, and

permitting process. The City requests that Dynegy hold the necessary forums to inform the public and the City of the project and to provide opportunity for stakeholder input.

The City of Morro Bay will be seeking appropriate license conditions and will oppose any license that does not adequately address the above stated concerns. The City of Morro Bay requests to be informed regarding the status this project. Filings and relevant information shall be sent to the following:

City Manager
City Hall
595 Harbor St.
Morro Bay, CA 93442

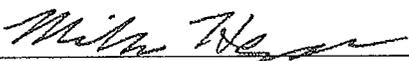
Eric Endersby
Harbor Director
1275 Embarcadero
Morro Bay, CA 93442
(805) 772-6255
EEndersby@morro-bay.ca.us

Aleshire & Wynder, LLP
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mhogan@awattorneys.com

III. Conclusion

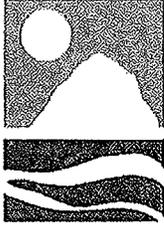
The City of Morro Bay represents interests not yet represented by any other party to the proceeding. The City's intervention is in the public interest as required by 18 C.F.R. § 385.214(b)(2)(iii). Therefore, the City respectfully requests that the Commission grant this timely motion to intervene.

Respectfully submitted this 12th day of September, 2014.



Joseph W. Pannone, Esq., City Attorney for the City of Morro Bay
Miles P. Hogan, Esq., Special Counsel
Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245-4916
(949) 223-1170

EXHIBIT A



City of Morro Bay

Morro Bay, CA 93442

(805) 772-6205

September 10, 2014

Federal Energy Regulatory Commission
Kimberly D. Bose, Secretary
888 First Street NE
Washington, DC 20426

Secretary Bose,

While the City of Morro Bay is pleased to see alternative energy sources explored and utilized in our area, we submit the following comments opposing Dynegy's Preliminary Permit applications to the Federal Energy Regulatory Commission (FERC) for their proposed Point Estero and Estero Bay Wave Parks.

As currently proposed, both Dynegy Wave Park locations present significant cause for concern in three key areas: access to fisheries, safe navigation and impact on marine mammals and other marine species.

First, commercial and recreational fisheries have played significant roles in the development of Morro Bay and continue to remain vital economic and social contributors to our community. California West Coast fisheries are some of the most highly regulated fisheries in the world. Both proposed locations would significantly disrupt commercial and recreational fishing.

Second, both wave park locations pose significant navigational hazards. Morro Bay is a designated Harbor of Safe Refuge and is the only safe harbor between Monterey and Santa Barbara; thus, a safe entrance and exit to our harbor are critical. Both wave park locations pose significant safety issues for the boating public, both commercial and recreational, and the City is opposed due to navigational hazards.

Third, Morro Bay's ocean environment is the natural habitat for a wide variety of marine mammals including whales, harbor seals, sea lions and dolphins some of which are currently listed under the Endangered Species Act. As proposed, the projects have the potential for significant negative impact to marine mammals and may increase the risk for collision or entanglement with the wave energy converters (WECs), mooring systems and transmission lines.

ADMINISTRATION
595 Harbor Street

ADMINISTRATIVE SERVICES
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
850 Morro Bay Boulevard

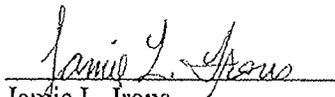
RECREATION & PARKS
1001 Kennedy Way

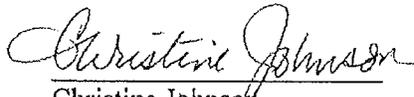
In addition, the introduction of man-made noise into the environment may cause disruption in marine mammal communication, migration and navigation. These disruptions must be mitigated to the maximum extent possible at any proposed wave park location.

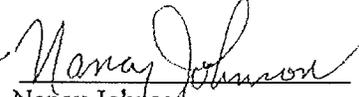
Additionally, the applicants have not held any public information forums detailing the project, which inhibits stakeholder awareness and participation in the process.

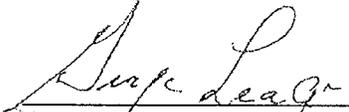
We anticipate you taking the comments of the City of Morro Bay into consideration with regard to Dynegy's Preliminary Permit applications for their proposed Point Estero and Estero Bay Wave Parks. We reserve the right to make additional comments if this project proceeds further.

Respectfully submitted,


Jamie L. Irons
Mayor


Christine Johnson
Councilmember


Nancy Johnson
Councilmember


George Leage
Councilmember


Noah Smukler
Councilmember

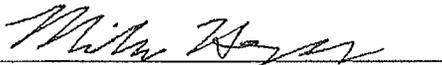
**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

RE: Dynegy Point Estero Wave Park, LLC)	Project No. P-14584-000, P-14585-000
)	Dynegy Point Estero Wave Park Project
)	
Application for Preliminary Permit for)	Motion to Intervene of the
Dynegy Point Estero Wave Park Project)	City of Morro Bay
)	
)	

CERTIFICATE OF SERVICE

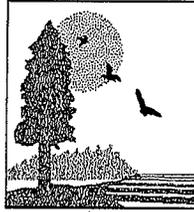
I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Respectfully submitted this 12th day of September, 2014.



Joseph W. Pannone, Esq., City Attorney for the City of Morro Bay
Miles P. Hogan, Esq., Special Counsel

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



JENNIFER LUCCHESI, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

March 14, 2014

File Ref: G 13-02

SENT VIA ELECTRONIC MAIL & U.S. MAIL

ekreins@morro-bay.ca.us

Edward S. Kreins
Interim City Manager
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Dear Mr. Kreins:

This letter is in response to local inquiries made to the California State Lands Commission (Commission) that allege the undervaluation of rent for the outfall pipeline lease between Duke Energy Morro Bay, LLC (Duke) and the City of Morro Bay (City). The allegations specify that the City undervalued the outfall pipeline lease, which is located on public trust land legislatively granted to the City pursuant to Chapter 1076, Statutes of 1947, and overvalued the adjoining upland lease with the result that \$500,000 a year of trust assets were diverted to the City's General Fund. Such a diversion of trust funds would be a breach of the City's fiduciary duty as a trustee of public trust lands.¹ Due to the seriousness of the allegations and as part of its statutory duty, the Commission staff has conducted a review of the alleged wrongdoing.

As background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for public trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The Commission has residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code (PRC) §§ 6301, 6306). Except for certain statutory authorizations, the Commission is not typically involved in day-to-day management operations for legislatively granted public trust lands. The grantee has the primary responsibility of administering the trust within the parameters of its granting statutes. All tidelands and

¹ Public Resources Code § 6009.1

Edward S. Kreins
March 14, 2014
Page 2

submerged lands are subject to the protections of the common law Public Trust Doctrine.

Based on Commission staff's review, it does not appear that the outfall lease was undervalued, nor does it appear that trust assets were diverted to the City's General Fund. Upon taking an independent look at the lease consideration as well as research into the actual valuation process by the City, the lease consideration appears to be within the range of fair market rent. Accordingly, the City acted within its authority as a grantee in determining the lease consideration and does not appear to be in breach of its fiduciary duties in this respect.

The Commission regularly issues leases throughout the State for occupation and use of the land under its jurisdiction, including leases for outfall pipelines. The Commission staff is experienced in appraising public trust lands, which can be particularly challenging due to their unique characteristics. Around the same time as the outfall lease was being negotiated between the City and Duke, the Commission was reviewing the rent for another lease with Duke for a nearby offshore marine terminal, which extended through the land granted to the City and onto ungranted sovereign land. Rent for this lease was based on an appraisal of the full fee value of the lease premises by Commission staff. Based on the proximity in time and physical location of the Commission lease and the City's outfall pipeline lease, Commission staff used the industrial lease appraisal in its review of the City's valuation of the outfall lease with Duke. After calculating what the Commission would have set as rent for the outfall pipeline lease, Commission staff has determined that the City's lease consideration was within the range of fair market rent.

Commission staff appreciates the City's cooperation in its review of this matter. For more information on the Commission's granted lands program, please see our website at www.slc.ca.gov. If you have any questions or if we can be a helpful resource in any manner please do not hesitate to contact me or Reid Boggiano, Granted Lands Representative, at (916) 574-0450.

Sincerely,



SHERI PEMBERTON
Chief, External Affairs
and Legislative Liaison

cc: Reid Boggiano, Granted Lands Representative
Sharron Scheiber, Staff Counsel



AGENDA NO: C-1

MEETING DATE: October 2, 2014

Staff Report

TO: Harbor Advisory Board **DATE:** September 22, 2014

FROM: Eric Endersby, Harbor Director

SUBJECT: Review of Liveaboard Ordinance Regarding Liveaboard Permit Inspections and Marine Surveyor Requirements

RECOMMENDATION

That the Harbor Advisory Board review the Liveaboard Ordinance as it pertains to marine surveyors doing the liveaboard inspections and the inspections themselves, and provide recommendations to staff, if any.

BACKGROUND

At the November 7, 2013 Harbor Advisory Board meeting, Agenda item B-2 was a report on the status of liveaboards and liveaboard permits in Morro Bay. During Declaration of Future Agenda Items, there was Board consensus to bring an item back on reviewing the marine surveyors "acceptability" component of the ordinance language, in addition to review of the permit inspection standards and their consistent application. That item was brought back on April 3, 2014 as agenda item C-1.

During Board discussion on that item, while no motion was made to address anything specific in the ordinance, Board consensus was to bring back at a future meeting further research and information on the issues of marine surveyors as they relate to liveaboard inspections, and the actual liveaboard inspections and inspection criteria.

DISCUSSION

Vessel Liveaboard Inspections

The current Liveaboard Ordinance stipulates certain requirements for the inspection sign-off. The primary elements are that the vessel must:

1. Be owned by the person applying for the permit; no "rental" use is allowed
2. Be currently registered or documented
3. Have a working VHF radio or cell phone
4. Have a safe and legal berthing in Morro Bay
5. Have adequate U.S. Coast Guard-approved vessel sanitation facilities aboard

Prepared By: EE

Dept. Review: EE

6. Be in good material condition and suitable for operation on the Pacific Ocean
7. Make way safely to the inspection site under her own power without being a threat to navigation or a danger to sink or cause injury

Of these items, 1-4 are very straightforward and simple to determine. Item 5 takes more time and expertise to determine if a given sanitation device is Coast Guard-approved or not, but is not difficult. Items 6 and 7 speak to vessel condition, seaworthiness, and operability, and have historically been up to the inspector (Harbor Patrol or marine surveyor) to make a compliance determination as there is no checklist or guide to follow. While the Liveaboard Ordinance specifically does not refer to this, the Harbor Department Rules and Regulations, as adopted by the City Council, do stipulate that all vessels using City-managed facilities must be “operable and seaworthy” thusly:

***Operable** means capable of maneuvering under a vessel’s own power to the harbor entrance or to an inspection site designated by the Harbor Director and back to its berthing location.*

***Seaworthy** shall mean the vessel’s hull, keel, decking, cabin and mast are structurally sound and generally free from rusting, delamination or dry rot.*

As trained and recognized experts in boating safety, Harbor Patrol Officers have used this section of the Rules and Regulations as a basic basis for their liveaboard permit determination. Staff feel, however, that these sections are just that – a basic basis – for a liveaboard inspector to determine whether or not a vessel should pass inspection for the purposes of liveaboard permitting. To truly determine a vessel’s operability or seaworthiness necessarily entails a great deal more equipment, condition and inspection requirements, and by all rights should be done by a qualified marine surveyor as a true marine survey would for insurance requirements.

The question for the Board is whether the Board feels that the basic inspection per the current “operable and seaworthy” language in the Morro Bay Harbor Department Rules and Regulations is sufficient, or should a more stringent and/or comprehensive inspection and/or survey be required for liveaboard permitting? Depending on what degree of vessel inspection requirements are recommended by the Board will largely guide the level of inspector training/expertise needed to conduct said inspections.

At the end of this staff report as “Appendix A” is a listing of vessel safety/seaworthiness and other language gleaned from various provisions, rules and regulations and codes of various cities, ports and harbors that relates to liveaboard inspections adapted to Morro Bay for Board consideration. This language was researched and compiled by Board member Ron Reisner.

Marine Surveyors

The current Liveaboard Ordinance states that the liveaboard inspections can be performed by a Harbor Patrol Officer or a “qualified marine surveyor acceptable to the City.” There is no

definition in the ordinance as to what a “qualified marine surveyor” is. While the issue was discussed by the Board on April 3, the Board felt more information was necessary before a recommendation, if any, could be made.

As stated previously, Harbor Patrol Officers generally use the existing Operable and Seaworthy language in the Rules and Regulations in making liveboard determinations. Staff believe this level of inspection and determination is commensurate with their training and expertise, and that Harbor Patrol Officers are qualified to determine whether a given vessel meets the basic requirements of the Liveboard Ordinance, specifically, whether or not a vessel “is in good material condition not likely to sink or become a menace to navigation and to be of a design suitable for operation on the waters of the Pacific Ocean.” Should a more stringent or comprehensive inspection be required for liveboards, at some point it may cross the line of requiring a qualified marine surveyor to conduct a true marine vessel survey.

In Appendix B is marine surveyor information also researched and compiled by Board member Reisner for Board consideration.

CONCLUSION

Staff have identified two possible approaches for the Board to consider amendments to the Liveboard Ordinance with regard to the two issues at hand:

1. Identify global or general areas of interest for amendment and request staff to bring back at a future meeting specific amendment language to address those areas.
2. Propose specific amendment language now with the information presented in this staff report or proposed at this meeting.

Whichever approach is taken, or if another approach is chosen, staff is seeking Board input and any recommendations regarding the liveboard inspection and what sort of additional criteria and/or standards could be applied to them to ensure adequate and consistent application of them, as well as what “acceptable to the City” or “qualified” might be further defined as with regard to marine surveyors doing liveboard inspections.

A copy of the current Liveboard Ordinance and permit/inspection form is included with this staff report.

Appendix A

Vessel Safety

Vessels must, at all times, meet all Federal, State, and local laws, rules and regulations, including those pertaining to navigational and safety equipment. The obligation for vessels to meet such Federal, State and local laws, rules and regulations is the sole responsibility of the vessel owner and/or vessel operator. However, the City of Morro Bay reserves the right to conduct, or have conducted, a Courtesy Safety Check of any vessel moored or berthed in City of Morro Bay waters, or in waters controlled by the City of Morro Bay, which check shall include a review of the vessel's sewage related equipment.

Sewage and Black Water

Sewage on all vessels moored or berthed in City of Morro Bay waters, or in waters controlled by the City of Morro Bay, must be controlled or contained, and no discharge of sewage from a vessel moored or berthed in those waters is allowed - whether treated or untreated, regardless of the vessel's type of marine sanitation device (MSD). City pump-out station(s) are available, and should be used on a regular basis as needed. Dumping of porta-potties and holding tanks in City restrooms is prohibited.

Vessels berthed or moored in waters of the City of Morro Bay shall conform to 33 CFR, Chapter 1, Part 159, "Marine Sanitation Devices"; Section 312 of the Federal Water Pollution Control Act, 33 U.S.C. 1322, as amended; and State of California regulations as applicable.

When making permit application, liveaboards must submit to the City of Morro Bay a plan showing their method of handling the sewage from the boats or vessels identified in their liveaboard agreements. Upon signing a liveaboard agreement, the vessel owner agrees to a Courtesy Safety Check by City of Morro Bay personnel, or other party approved in advance by the City of Morro Bay, within 30 days of signing the agreement. The liveaboard vessel owner agrees to abide by any sewage related recommendations resulting from a Courtesy Safety Check.

Fit for Service – ("Seaworthy")

Vessels moored or berthed in City of Morro Bay waters, or waters controlled by the City of Morro Bay, must, at all times, be completely without hazardous conditions, must be fit for the vessel's intended service, and be ready for immediate cruising in local waters in safety, and with no significant probability of requiring assistance.. These requirements are the sole responsibility of the vessel owner and/or vessel operator. The City may ask vessel owners to prove or demonstrate the fit for service condition of the vessel. However, the City of Morro Bay does not undertake to enforce workplace safety standards aboard vessels moored or berthed in City waters, or in waters controlled by the City.

Vessel owners must grant permission when requested for an on-board examination of his/her vessel by: the City of Morro Bay; law enforcement agencies; the U.S. Coast Guard; the U.S. Coast Guard Auxiliary; or other parties as may be designated by the City of Morro Bay.

Vessels which because of their size, construction, and/or condition are deemed by the City to be hazardous to property or other vessels in City waters or water controlled by the City may be denied moorage or berthing, and may be asked to depart those waters. Moorage or berthing may be denied or terminated if a vessel deteriorates to the point that it is deemed a hazard to property or other vessels.

The City of Morro Bay reserves the right, at the vessel owner's expense, to take all actions necessary, including hauling the vessel out of the water, if the City believes a vessel moored or berthed in City waters or waters controlled by the City is in immediate danger of sinking, polluting, or damaging other property. The City is not, however, obligated to inspect vessels, nor does the City warrant or guarantee, the condition, seaworthiness, or fitness for service of any vessel.

Vessel Maintained in Operable Condition

Vessels moored or berthed in City of Morro Bay waters, to include vessels to which a liveaboard permit has been issued, shall be kept in good repair and in an operable condition. The obligation for vessels to be in such condition is the sole responsibility of the vessel owner and/or vessel operator. However, The City of Morro Bay reserves the right to conduct, or have conducted, a Courtesy Safety Check of any vessel moored or berthed in City of Morro Bay waters, which check may include the operable condition of the vessel's: masts; rigging; propulsion systems; mechanical systems; plumbing systems; electrical systems; and navigation systems; as well as the vessel's structure to include but not be limited to hull, decks, superstructure, and keel.

Additionally, vessels moored or berthed in City of Morro Bay waters, may, at the sole discretion of the City of Morro Bay and as a condition of moorage or berthing, be asked to demonstrate the vessel's ability to leave the moorage or berth, and successfully operate in terms of making way and maneuvering for a period of time to be designated by the City, as well as demonstrating the vessel's ability to anchor and to moor.

Key Issues

- Vessel Safety
- Safety of Personnel on Board Vessels
- Vessel Compliance with Applicable U.S. Federal Requirements
- Vessel Compliance with Applicable U.S.C.G. Requirements
- Vessel Compliance with Applicable City of Morro Bay Harbor Regulations

- Various liability potentials for the City of Morro Bay resulting from vessels located on the waters of Morro Bay, as well as on water controlled by the City.

Inspection Items

Vessel Ownership and Documentation/Registration

- State-issued Certificate of Number properly displayed (33 CFR 173)
- Vessel Documentation – Federally documented and properly displayed (46 CFR 67)
- Current vessel title of ownership (in conformance with current Registration or Documentation)

Vessel Safety

- Personal floatation devices (PFD's) - (36 CFR 175)
- Visual distress signals (flares, etc.) – (33 CFR 175.101)
- Sound producing devices for vessels (air horns, etc.) – (33 CFR 83)
- Ship-to-Shore communications device (VHF radios, cell phones, etc.)
- On-board fire extinguishers (46 CFR 25)
- Vessel interior ventilation - including carbon monoxide (CO) detectors – (33 CFR 175/183; 46 CFR 25)
- Gasoline propulsion engine backfire flame control (46 CFR 25/58)
- Vessel navigation lights (33 CFR 83)
- Vessel bilge pumps (ABYC H-22/46 CFR 182.500(b))
- Marine liquefied petroleum gas (LPG) system (ABYC A-1)
- On-board cooking apparatus: LPG, CNG (ABYC H-22), Alcohol, electric, other
- On-board heating systems: electric, LPG; diesel, gasoline, solid fuel (ABYC A-07/46 CFR 184.200)

Pollution Regulations

- Placards in conformance with 33 CFR 151/155
- Knowledge of and conformance with Morro Bay Harbor regulations

Sewage and Black Water

- Operational marine Sanitation Device in conformance with 33 CFR 159
- Marine sanitation device can be readily evacuated to shore facility
- Knowledge of and conformance with Morro Bay Harbor regulations

Vessel Fit for Intended Service

- Vessels granted Morro Bay Harbor liveaboard permits should, at all times, be:
 - Without on-board hazardous conditions;
 - Able to immediately get under way, and be fully maneuverable;
 - Ready for immediate cruising in local waters.

[Note: There are no fixed criteria for setting the standard for a vessel's "seaworthiness". As a general rule however, a vessel will be found seaworthy if it is reasonably fit for its intended purpose, whether that be pleasure purposes or commercial. In addition to deterioration of the vessel's hull and equipment, conditions not directly related to the vessel's hull and equipment may lead to a finding of unseaworthiness and the imposition of liability. Whether a vessel owner has a duty to provide a seaworthy vessel in the first instance, and the effort needed to make the vessel seaworthy, will depend on the circumstances, but potential liability devolves in any case.]

Vessel Serviceability

- Vessel's apparent general level of maintenance
- Operability of vessel's key systems: mast(s), standing rigging and running rigging; propulsion; electrical; steering; anchoring; mooring

Appendix B

"Professional Marine Surveyor" means a person who derives a substantial portion of his or her income from surveying the type of vessel in question, and who advertises these services. Professional marine surveyor also means a person who routinely conducts inspections, surveys or examinations of marine vessels to assess, monitor and report on their condition and the products on them. Marine surveyors also inspect vessel equipment to ensure compliance with various standards or specifications. Marine surveys typically include the structure, machinery and equipment (to include navigational and safety) and general condition of a vessel.

Morro Bay, California, Code of Ordinances >> Title 15 - HARBOR AND OCEAN REGULATIONS >>
Chapter 15.40 VESSEL HABITATION >>

Chapter 15.40 VESSEL HABITATION ^[1]

Sections:

[15.40.010 Purpose.](#)

[15.40.020 Definitions.](#)

[15.40.030 Permit required.](#)

[15.40.040 Permit issuance.](#)

[15.40.050 Termination/revocation of permit.](#)

[15.40.060 Transferability of liveaboard permit.](#)

[15.40.070 Temporary leaves, retention of permit.](#)

[15.40.080 Occupancy by non-owner.](#)

[15.40.090 Use of pumpout facilities.](#)

[15.40.100 Enforcement.](#)

[15.40.110 Applicability of chapter.](#)

[15.40.120 Fees.](#)

15.40.010 Purpose.

To regulate liveaboard use on tidelands granted to the city of Morro Bay by the State Lands Commission for public health and safety.

(Ord. No. 550, 8-10-09)

15.40.020 Definitions.

For the purposes of this chapter the following definitions shall apply:

- A. For the purposes of this chapter, "Morro Bay Harbor" shall be the tidelands and submerged lands granted to the city of Morro Bay as successor to the county of San Luis Obispo under Chapter 1076 Statutes of 1947 of the State of California.
- B. Liveaboard—Individual(s) and/or Vessel(s).
 1. A "liveaboard" is defined as any person(s) who uses a vessel as a residence and/or is occupying that vessel for four or more days or nights within any seven day period engaging in those usual and customary activities associated with a person's residence or abode such as, but not limited to, sleeping and preparation of meals. This definition will also include any individual using a vessel for four or more days or nights within any seven-day period as a place of business, professional location or other commercial enterprise, as evidenced by a business license, when transportation is a secondary or subsidiary use.
 2. A "liveaboard vessel" is any vessel which is moored in Morro Bay Harbor for more than sixty days in any twelve-month period and is occupied by a liveaboard. Liveaboard vessels shall be considered single family residences for purposes of health, safety, welfare and public nuisances and shall at no time house such number of persons so

as to create a public nuisance or to be detrimental to the health, safety and welfare of others.

- C. "Harbor director" means the harbor director or his/her designate.
- D. "Off-shore mooring" means any site where a vessel is secured within Morro Bay Harbor which is not directly connected to the shore or land by means of a dock, pier, float or other structure providing direct access from the vessel to the land or shore.
- E. "Shore-side mooring" means any site where a vessel is secured within Morro Bay Harbor which is directly connected to the shore or land by means of a dock, pier, float or other structure providing direct access from the vessel to the land or shore.
- F. "Sewage" means that portion of the wastewater from toilets or any other receptacles containing human or animal excreta and urine, commonly known as blackwater.
- G. "Sewage holding tank" means a permanently installed receptacle on a vessel which is used to retain sewage.
- H. "Sewage pump-out" means a mechanical device which is temporarily connected to a vessel for the purpose of removing sewage from its holding tank.
- I. An "adequate vessel sanitation facility" means an operational marine sanitation device or portable toilet approved by the United States Coast Guard as suitable to prevent direct discharge of human waste into Morro Bay Harbor.

(Ord. No. 550, 8-10-09)

15.40.030 Permit required.

It shall be unlawful for any person to occupy or own a liveaboard vessel within Morro Bay Harbor unless the vessel has been permitted under this chapter.

- A. **Liveaboard Vessel—Permit Application and Fees.** An application for liveaboard permit shall be filed with the harbor director upon forms provided by the city. The permit is valid for two fiscal years, including the year issued, and may be renewable after payment of the biennial renewal and inspection and completion of the required biennial re-inspection. The harbor director shall have the discretion to provide applicants a six-month extension of their existing permit to complete inspection requirements of the vessel. An applicant must provide a written request to the harbor director for the six-month re-inspection including an explanation of why the extension is needed. Should any existing liveaboard permittee not complete the permitting process and obtain a new valid liveaboard permit within this six-month extension period, the permit will expire. Applications shall be filled out completely and submitted with the required non-refundable fees. Fees shall be paid as set and established in the city master fee schedule.
- B. **General Restrictions for Issuance.** Liveaboard vessels are prohibited from the city T-Piers. Permits will not be granted for vessels or floating structures such as houseboats, barges, floating homes or other such vessels or floating structures not specifically designed for or not safely capable of navigating ocean waters under their own power. An exception for work barges actively engaged in construction activity in Morro Bay Harbor may be made by the harbor director.

(Ord. No. 550, 8-10-09)

15.40.040 Permit issuance.

- A.

Issuance of a Liveaboard Permit. Upon receipt of the original liveaboard permit application, or any renewal thereof, the harbor director shall notify applicant that the applicant must make arrangements within a specified period with the harbor department to have the liveaboard vessel, under its own power, make way to the harbor patrol docks or other facility designated by the harbor patrol to submit to an inspection to insure the liveaboard vessel is in compliance with the conditions of this chapter. The inspection shall be accomplished by a city of Morro Bay Harbor patrol officer or a qualified marine surveyor acceptable to the city provided that if applicant chooses to have an inspection completed by a marine surveyor, then applicant will bear all costs thereof and provide city a copy of the inspection report. Conditions for issuance of a liveaboard permit are as follows:

1. Vessels to be used for liveaboard purposes must be in good material condition not likely to sink or become a menace to navigation and to be of a design suitable for operation on the waters of the Pacific Ocean. All vessels must be currently registered or documented.
2. All liveaboard vessels are required to have adequate vessel sanitation facilities on board.
3. The proposed liveaboard individual and the vessel to be used for liveaboard purposes must be in compliance with all sections and provisions of this chapter.
4. Liveaboard vessels must have on board a working VHF marine radio with minimum channels of twelve and sixteen, or have a functioning telephone.
5. The individual(s) submitting the application must be the owner of the vessel and shall liveaboard the vessel during any liveaboard use thereof except that paid crew member(s) of qualified commercial fishing vessels may liveaboard without the vessel owner and may receive liveaboard permits with the vessel owner's consent. No permit will be issued in the name of a partnership (general or limited), corporation, joint venture or other legal entity. A permit for a vessel which is registered, documented or owned by a partnership (general or limited), corporation, joint venture or other legal entity will be issued only to a natural person whose interest in the vessel (whether by virtue of an interest in the partnership, ownership or stock or a corporation or otherwise) is equal to or greater than that of each of the other partners, stockholders, members or associates. An applicant for a permit in Morro Bay for a vessel which is owned by a partnership (general or limited), corporation, joint venture, or other legal entity shall submit for approval by the harbor director, a valid certificate of ownership or valid marine document. Notwithstanding the form of ownership of the vessel, the permit to liveaboard the same within the city of Morro Bay shall not be transferable under any circumstances. If a permittee fails or refuses to notify the harbor director of a change to any of the information contained in the liveaboard permit application within five days from the date of any such change, such failure or refusal shall constitute grounds for revocation of the permit.
6. The liveaboard vessel must have a safe and legal berthing location in Morro Bay Harbor other than the A1-5 anchorage area or the city T-Piers.
7. The permit will be valid for two fiscal years and the applicant must meet the requirements for permit issuance biennially thereafter or the harbor director shall not reissue the liveaboard permit. Liveaboard vessels which are not in Morro Bay Harbor as provided for in Section 15.040.070 shall not have to meet requirements for permit reissuance until the vessel returns to Morro Bay Harbor.
8. The permit will be issued for the vessel, and will state the specific names of the liveaboards authorized to occupy the vessel.

9. No more than fifty liveaboard permits may be issued at any time. City will not maintain a liveaboard permit waiting list unless fifty permits are issued and additional individuals desire to apply for liveaboard permits.

(Ord. No. 550, 8-10-09)

15.40.050 Termination/revocation of permit.

- A. Conditions for Termination/Revocation. Liveaboard permits may be revoked for the following reasons:
 1. Discharge of sewage.
 2. Violation of any section of this chapter not specifically listed in this section, for a period in excess of thirty days after having been notified to correct the violation. Notice of violation shall be given by first-class mail or personal service or by attachment of said notice in a conspicuous location on the vessel or any combination of the above. Proof of correction of any violation shall be deemed to be the obligation of the permittee, or liveaboard, and shall be to the satisfaction of the harbor director.
 3. If twice in any twelve-month period the permittee has been found in violation of the terms of this chapter, it shall be evidence of non-compliance with the intent of this chapter to maintain an orderly harbor operation and shall constitute grounds for revocation of the permit.
 4. In the event that city policy concerning the number of liveaboard permits issued shall change and the number of liveaboard permits shall be reduced, notice of revocation of liveaboard permits shall be given by first-class mail or personal service or by attachment of said notice in a conspicuous location on the vessel or any combination of the above. Since this will require relocation of a personal residence, sixty days notice of termination of the liveaboard permit will be given in this situation. This shall also include requirements established by other agencies whose jurisdiction may be imposed upon the city of Morro Bay. In the event terms and or conditions of maintaining a liveaboard permit are modified by the city council, then those persons holding current liveaboard permits shall have a period of sixty days after adoption of said modifications in which to fully comply with such new regulations. Those permittees with the shortest tenure as a permitted liveaboard will be the first to receive such notice.
 5. In the event that the liveaboard permit holder moves from the area or no longer resides on the vessel for minimum time periods required or voluntarily terminates liveaboard status.
 6. Non-payment of fees associated with liveaboard permit or vessel associated with liveaboard permit, service charges, dockage charges or other fees due to the city of Morro Bay for a period in excess of ten days after written notice. Notice shall be given as described in subsection (A)(2) of this section.
- B. Termination/Revocation Procedure. Upon determining that grounds for revocation of a permit exist, the harbor director shall give written notice of intent to revoke (including the grounds thereof) to the permit holder by first-class mail, personal delivery, by attachment in a conspicuous location on the vessel or any combination of the above, or if the permit holder cannot be located with reasonable effort such notice shall be given to any person aboard the vessel. The revocation shall be effective fifteen days following the giving of such notice except as provided below:
 1. Appeal. A decision by the harbor director to terminate or revoke a liveaboard permit pursuant to this section shall be appealable to the harbor advisory board. Any such appeal must be

filed in writing with the harbor director within ten days of the date of notice of revocation. The revocation shall be stayed while the appeal is pending, unless it is determined by the harbor director that immediate cessation of overnight occupancy of the vessel is necessary for the preservation of the public peace, health or safety. The appeal shall be filed in writing and shall specify all of the grounds for the appeal. The harbor advisory board shall provide the permit holder an opportunity to present evidence on his behalf and to challenge the determination of the harbor director. Formal rules of evidence or procedure need not be followed. If the harbor advisory board is unable to approve any formal motion regarding the appeal after two publicly held hearings on the appeal then the revocation shall become effective three days following the second public meeting. If the appeal is denied revocation shall become effective three days following the harbor advisory board's decision.

(Ord. No. 550, 8-10-09)

15.40.060 Transferability of liveaboard permit.

No transfer of liveaboard permits between individuals is allowed. Under no circumstances will the sale of a vessel or any interest therein maintain any associated liveaboard permit with the vessel for the benefit of the new owner or interested party. Should a new owner or interested party wish to liveaboard a vessel purchased from a prior liveaboard permittee, said party must apply for a new liveaboard permit for the vessel in their name.

In the event that a permitted liveaboard shall purchase a new vessel, they may retain their liveaboard permit and level of seniority providing that the new vessel is inspected within sixty days and that the inspection fee is paid for the new vessel.

(Ord. No. 550, 8-10-09)

15.40.070 Temporary leaves, retention of permit.

Absence of either the vessel, the permit holder or both from Morro Bay harbor or failure to maintain residency aboard the vessel shall result in revocation of the liveaboard permit. The liveaboard permit may be retained up to five years without meeting these minimum residency requirements provided that:

- A. All fees are kept current.
- B. The absence has been requested in writing and approved by the harbor director in advance of absence; or if the absence is related to vessels of a commercial nature actively fishing in areas away from Morro Bay.

(Ord. No. 550, 8-10-09)

15.40.080 Occupancy by non-owner.

Rental or sublease of vessels resulting in liveaboard uses are prohibited. "Boat sitting", caretaking, maintenance or any other activity related to vessels resulting in liveaboard use either for compensation or no compensation are prohibited. Only the person(s) named on the application for liveaboard permit or as amended and approved are permitted to reside on the vessel.

(Ord. No. 550, 8-10-09)

15.40.090 Use of pumpout facilities.

Where permittees are required to have adequate vessel sanitation facilities permittees shall use pumpout facilities on a regular basis or otherwise discharge greywater, human waste and sewage in a legal manner.

(Ord. No. 550, 8-10-09)

15.40.100 Enforcement.

The harbor director shall be responsible for enforcing the provisions of this chapter. Enforcement guidelines shall be developed and made available to the public at the harbor office.

(Ord. No. 550, 8-10-09)

15.40.110 Applicability of chapter.

This chapter shall not apply to vessels in the State Park Marina or any vessels berthed outside the city of Morro Bay limits.

(Ord. No. 550, 8-10-09)

15.40.120 Fees.

Permit application fees, renewal fees and service fees shall be set forth in the city of Morro Bay master fee schedule. Fees are non-refundable and permits may be revoked at any time under the terms and conditions of this chapter. A ten percent late payment fee will apply for failure to pay fees when due. Service fees will apply to any liveaboard permittee in city mooring areas or slips. Service fees shall not apply to those permittees berthed at leased sites or moorings where the leaseholder is providing restroom, water and trash services to the permittee at no cost to the city.

(Ord. No. 550, 8-10-09)

FOOTNOTE(S):

--- (1) ---

Editor's note— Ord. No. 550, adopted August 10, 2009, repealed the former Chapter 15.40, §§ 15.40.010—15.40.130, and enacted a new Chapter 15.40 as set out herein. The former Chapter 15.40 pertained to similar subject matter and derived from Ord. No. 427, 1993. ([Back](#))

**CITY OF MORRO BAY – HARBOR DEPARTMENT
NON-TRANSIENT LIVEBOARD APPLICATION/RENEWAL & PERMIT**

APPLICATION FEE : \$ _____

INSPECTION FEE : \$ _____

TOTAL FEE PAID: _____

NAME: _____

VESSEL BERTHING LOCATION*: _____

*If you are not a City slip or mooring holder (A1-1-, A1-2-, and A2- moorings), you must provide written confirmation of a permanent, legal berthing arrangement other than the City T-Piers, anchorage area, or floating dock.

MAILING ADDRESS: _____

NAMES OF PEOPLE LIVING ABOARD VESSEL:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

PHONE #: DAY: _____ NIGHT: _____ MESSAGE / EMERGENCY #: _____

VESSEL NAME: _____

VESSEL REGISTERED OWNER*: _____

*Must be applicant per Section 15.40.040 B of Ordinance 407.

VESSEL DOCUMENTATION OR CF #: _____ VESSEL LENGTH: _____

VESSEL TYPE: _____ (sail / power) (commercial / recreational)

HOLDING TANK? YES _____ NO _____

TYPE OF MARINE SANITATION DEVICE: _____

VESSEL INSPECTION BY THE HARBOR DEPARTMENT

INSPECTION DATE: _____ INSPECTOR: _____

VESSEL NAME: _____

VHF OR OPERATING TELEPHONE: _____ CURRENT REGISTRATION: _____

Vessel made way under her own power to the inspection site without being a threat to navigation or a danger to sink or cause injury: _____

U.S. Coast Guard approved Marine Sanitation Device or portable toilet suitable to prevent direct discharge of waste into Morro Bay: _____

LIVEBOARD INSPECTED BY QUALIFIED SURVEYOR: _____ DATE: _____

SIGNATURE OF APPLICANT REQUIRED ON REVERSE SIDE

_____ No discharge of sewage or waste water into Morro Bay Harbor is allowed and evidence of such discharge will be cause for revocation of a liveaboard permit and citation.

_____ Permittee agrees to notify the City in writing of any changes to the liveaboard application/permit within five days of the date of the change.

_____ The primary purpose of the inspection of the applicant's vessel is for the protection of the public health and safety by verifying the applicant's vessel has adequate vessel sanitation facilities and the vessel is able to use a shoreside pump-out station. The inspector does not certify that the vessel is safe or seaworthy. Applicant agrees to indemnify and hold the City harmless from any claims arising from any actions or omissions of the applicant for any accident, injury, or damage whatsoever caused to any person or property that arises from this agreement.

_____ The non-transient permit is valid for a two-year fiscal period and must be renewed biennially.

The undersigned agrees to abide by the terms and conditions set forth in Ordinance #407 of the City of Morro Bay, and is aware that a violation of said Ordinance is a cause for revocation of the liveaboard permit.

LIVEABOARD APPLICANT

DATE

PERMIT APPROVED: _____ DATE	BY: _____ HARBOR DIRECTOR
PERMIT VALID THROUGH: _____	

PERMIT DENIED: _____
DATE

BY: _____
HARBOR DIRECTOR

**CITY OF MORRO BAY – HARBOR DEPARTMENT
1275 EMBARCADERO
MORRO BAY, CA 93442
(805) 772-6254**



AGENDA NO: C-2

MEETING DATE: October 2, 2014

Staff Report

TO: Harbor Advisory Board

DATE: September 23, 2014

FROM: Eric Endersby, Harbor Director

SUBJECT: Update from the Marine Services Facility/Boatyard Ad-Hoc Committee on Committee's Recent Activities

RECOMMENDATION

Receive and file.

DISCUSSION

The Marine Services Facility/Boatyard Ad-Hoc Committee will be presenting an oral update on their activities and progress, if any. This is a standing committee report agenda item.

Prepared By: EE

Dept. Review: EE



AGENDA NO: C-3

MEETING DATE: October 2, 2014

Staff Report

TO: Harbor Advisory Board

DATE: September 23, 2014

FROM: Eric Endersby, Harbor Director

SUBJECT: Update from the Capital Improvement Planning Ad-Hoc Committee on Committee's Recent Activities

RECOMMENDATION

Receive and file.

DISCUSSION

The Capital Improvement Planning Ad-Hoc Committee will be presenting an oral update on their activities, if any. This is a standing committee report agenda item.

Prepared By: EE

Dept. Review: EE



City of Morro Bay Request for Proposals



Redevelopment of
Lease Site 69-70/69W-70W
595 Embarcadero
Morro Bay, CA 93442
Project MB-2013-HRFP4

October 15, 2013

Prospective Proposer:

SUBJECT: REQUEST FOR PROPOSALS FOR LEASE SITE 69-70/69W-70W, 595 EMBARCADERO, MORRO BAY, CA 93442

The City of Morro Bay invites the submittal of proposals from qualified entities and/or operators (Proposer) to redevelop land and water located on the Embarcadero for Lease Site 69-70/69W-70W located at 595 Embarcadero, Morro Bay, CA 93442.

The City of Morro Bay intends to select a Proposer to comprehensively redevelop this property. This property will be available on a long-term ground lease basis after September 2018, unless the current tenants choose to terminate their lease prior. However, since design, planning and permitting can take several years to complete, and in accordance with the City's Lease Management Policy, the City is desirous of moving a redevelopment project forward sufficiently in advance of the current lease expiration in order to minimize the lag time between current lease expiration and redevelopment.

Instructions and forms to be used in preparing the proposal are found in the information included in the Request for Proposals (RFP). The schedule for this RFP will be as follows:

ACTIVITY/Key Steps	DATE
Issue Request for Proposals	October 16, 2013
Recommended Pre-Proposal Meeting and Site Walk-Through	November 20, 2013
Questions Due	December 18, 2013
Responses to Questions Posted by	January 10, 2014
Proposals Due	April 16, 2014

For more information and a copy of the City of Morro Bay Harbor Department Lease Management Policy, as well as a copy of the City's standard lease format, visit the Harbor Department's page of the City website under "Harbor Administration and Leases." If you cannot agree to the requirements exactly as set forth in this RFP, please do not submit a proposal.

For questions regarding this RFP, please contact Eric Endersby by email at eendersby@morro-bay.ca.us. Questions must be submitted by December 18, 2013. Responses to questions will be

posted on the City's website at www.morro-bay.ca.us under the original bid posting by January 10, 2014. It is the responsibility of any Proposer to review the City's website for any RFP revisions or answers to questions prior to submitting a proposal in order to ensure all proposals are complete and responsive.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Endersby', with a long horizontal flourish extending to the right.

Eric Endersby
Harbor Director

REQUEST FOR PROPOSALS
REDEVELOPMENT OF LEASE SITE 69-70/69W-70W
595 EMBARCADERO, MORRO BAY, CA 93442
PROJECT MB-2013-HRFP4

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INTRODUCTION

Purpose

The City is seeking proposals from qualified entities and/or operators to redevelop Lease Site 69-70/69W-70W, located at 595 Embarcadero, Morro Bay, CA 93442, currently operating as the Morro Bay Aquarium, and hereinafter referred to as “Site.” The property will be available for a long-term ground lease after September 2018, and the City will consider redevelopment proposals by one or more Proposer or Proposer Teams (Proposer). The term (length) and conditions of the lease to be awarded as a result of this Request for Proposals (RFP) will be negotiable, depending on the investment and redevelopment plan of the Proposer. The agreement will become effective once approved by the City Council.

Objectives

The Morro Bay City Council has determined that it is in the best interest of the City and public to consider potential redevelopment proposals for the Site. The City desires to have the property redeveloped in a manner which will continue to provide a unique and affordable visitor-serving marine aquarium and/or marine educational opportunity, as well as an economic return to the Harbor Department. It is the City’s objective that the Site is redeveloped into a modernized aquarium and/or marine educational facility, as well as meet modern design criteria that incorporates planning and building codes with uses that are the most beneficial to the Embarcadero visitor-serving and business environments. Key City objectives with this RFP are design improvements that include:

- A modernized marine aquarium and/or marine educational facility
- Minimum 8-foot wide sidewalks
- Minimum 8-foot lateral public access along the waterfront
- ADA compliant

The City is seeking Proposers who have the proven experience, financial resources, and professional expertise to deliver the highest quality and economically feasible project that is consistent with and best implements the land and water uses approved in the City’s Master Plan, Local Coastal Plan, and Harbor Department Lease Management Policy.

SECTION I: SITE HISTORY

Tracing back to English Common law the Public Trust Doctrine establishes that navigable water or lands subject to tidal influence are “sovereign,” held open to the public for commerce, fisheries or navigation. In 1942-1944, the federal government constructed a revetment along the Morro Bay waterfront and filled most of the area now known as the commercial strip along the Embarcadero. The State of California claimed ownership of the newly created land as at least a portion of it had previously been below the high tide line. After many years of dispute with private property owners, who also claimed an interest in the land, most title issues were settled in the 1950s-1960s by designating those lands west of Embarcadero Road as public trust lands owned by the State, and those lands east of Embarcadero Road as privately owned.

In 1947, the State of California granted those public trust lands in Morro Bay to the County of San Luis Obispo. The City of Morro Bay assumed trusteeship of the granted lands upon incorporation in 1964-1965. The tidelands grant in Morro Bay is in perpetuity, provided the City conforms to the terms of the legislative grant. The granted lands must be used for commerce, fisheries, navigation, recreational purposes, parklands, public access, public parking and environmental protection or enhancement. Residential use of these public lands is specifically prohibited. The City may lease out these lands to private businesses for a period up to 50 years and all revenues from such leases must be expended within the area of the granted lands for the purposes of the public trust. Much of the granted lands were leased to established businesses in the 1960s on long-term leases that provided low rental rates in exchange for tenant investment in the business on the sites or settlement of previous land ownership or county lease disputes. Some of these old long-term leases have accrued significant “bonus” value to the benefit of the private party because waterfront property values have increased far in excess of the contractual rental return to the City.

This site is currently occupied by the Morro Bay Aquarium. The Morro Bay Aquarium was built in 1960 and has operated for over 50 years by Dean and Bertha Tyler. The Morro Bay Aquarium became a rehabilitation center for distressed mammals in 1984, although it is no longer permitted for rehabilitation, and currently features sea lions and harbor seals permitted for aquaria display only. There are also fourteen tanks inside of the building with local marine life such as fish, sharks, octopus, eels, abalone and sea anemones. The aquarium is a member of I.M.A.T.A (International Marine Animals Training Association).

The City desires to solicit proposals from interested parties to ensure maximization of public benefit from development and a long-term lease agreement for the Site.

SECTION II: SITE DATA

Redevelopment property is Lease Site 69-70/69W-70W as delineated on Exhibit A, page 3 of City of Morro Bay Resolution 119-89, and was recorded on October 10, 1989 in the Office of the County Recorder, San Luis Obispo, California. Property is located within the visitor-serving Tidelands Trust granted lands. The designated Site, located at 595 Embarcadero, has been surveyed and contains approximately 4067 square feet of land and 2206 square feet of water. **In addition, proposals may include expansion of the water portion of the lease site in westerly and northerly directions, within the confines of the Federal navigation channel and adjacent lease boundaries, as well as expansion of the land portion of the land lease site to incorporate in whole or in part the street-end parking area to the immediate north of the Site at the option of Proposers. See lease site map (Attachment 3).**

A. Current Uses

The Site currently serves as the Morro Bay Aquarium. There are public sidewalks on the eastern and northern boundaries of the land site.

B. Topography/Soil Conditions

The Site is generally flat on filled land, with a rock revetment leading down to the water. Investigation of land, soil, revetment, and harbor bottom conditions for suitability of the proposed development shall be the responsibility of the Proposer; however, no untoward hazards or conditions are known to exist on the site.

C. Hazards

The Site is subject to all conditions and hazards commonly associated with a bay/ocean-front setting including, but not limited to:

1. Flooding: the Site is not in a designated flood zone.
2. Tsunami: the Site is within the tsunami 50-foot inundation zone.
3. Earthquake: the Site is within an earthquake hazard zone.
4. Storms: the Site is subject to periodic storm conditions.
5. Tidal Overflow: the Site can be subject to periodic tidal overflow.

D. Archeology

The Site is not listed as, nor is it within 300 feet of a known archaeological site.

E. Hazardous Materials

It is the City's intention to deliver an environmentally clean Site to the Proposer, and no environmental hazards are known to exist beyond those normally associated with the daily operation of like businesses on the Site.

F. Zoning

The Site is located within the Waterfront (WF) District of the City, with a Planned Development (PD) overlay. The purpose of the WF District is to provide for the continued mixture of visitor-serving commercial and recreational and harbor-dependant land uses in appropriate waterfront areas, and can be found in Morro Bay Municipal Code Section 17.24.170. The purpose of the PD overlay is to provide for detailed and substantial analysis of development on parcels which, because of location, size, or public ownership, warrant special review. This overlay zone is also intended to allow for the modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in better design or other public benefit, and can be found in Morro Bay Municipal Code Section 17.24.030. Uses on the Site shall be in conformance with the Morro Bay Municipal Code Chapter 17 and must be in conformance with planning, zoning and land use policies of the City.

G. Parking

The Site currently has 11 parking spaces attributed to the site when calculating parking requirements for proposals.

SECTION III: INVITATION TO PARTICIPATE

The City is seeking proposals from Proposers with experience in commercial facilities, with the financial resources and capabilities to fund a proposed project, and whose general development approach and concept for the site best meets the City's objectives in this Request for Proposals.

A. Proposal Process

1. All proposals must be submitted per Section V, "Request for Proposals Submittal Package." All proposals become the property of the City of Morro Bay and will not be returned.
2. Submittals will be initially screened to ensure that they are complete and conform to this Request for Proposals. City staff will review and evaluate the qualifying proposals and make recommendations in a Staff Report to the Selection Panel.
3. The City will convene the Selection Panel to review the proposals, and to interview each qualified proposing party. The Selection Panel will consist of two members from the City Council, two members from the Harbor Advisory Board, two members from City staff, and four members-at-large chosen from the community.
4. The Selection Panel will make Primary and Secondary Proposer recommendations to the City Council.
5. The City Council will determine the final Primary and Secondary proposals, and approve issuance of a Consent of Landowner agreement with the Primary Proposer for them to begin the Concept Plan approval process. Should the Primary Proposer decline to participate, then the Secondary Proposer will ascend to the Primary Proposer position.
6. Concurrent to the Concept Plan approval process, City staff will begin negotiations for a long-term lease agreement with the Primary Proposer. Upon approval of the Concept Plan by the City Council, City staff will recommend to the City Council approval and execution of the lease agreement. Proposing parties must assume that the rental terms of the new lease agreement will be set forth as in the City's Harbor Department Lease Management Policy.
7. Any long-term lease shall include the requirement that the tenant, at the tenant's sole cost and expense, finalize all plans and permits, and obtain Precise Plan approval from the City Council prior to the commencement date of the lease.

B. Project Costs

ANY AND ALL DESIGN, ENGINEERING, OR PLAN SUBMITTAL COSTS FOR THE PROPOSAL WILL BE THE SOLE RESPONSIBILITY OF THE PROPOSING PARTY. THE CITY SHALL INCUR NO COST OR LIABILITY FOR ANY COSTS SHOULD THE PROPOSING PARTY BE UNABLE TO COMPLETE THE PROJECT APPROVAL AND/OR PERMITTING PROCESSES.

C. City's Right to Amend RFP

The City reserves the right to amend the RFP process and the selection procedures at any time. It is the responsibility of any Proposer to review the City's website for any RFP revisions or answers to questions prior to submitting a proposal in order to ensure all proposals are complete and responsive.

D. Contact Person

Request for Proposal Packets and written inquiries regarding the Request for Proposals or the project site can be obtained by contacting:

Eric Endersby, Harbor Director, Morro Bay Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
805-772-6254
eendersby@morro-bay.ca.us

E. Pre-Proposal Meeting and Questions

Attendance is recommended at the Pre-Proposal Meeting and Site Walk-Through on November 20, 2013, at 1:00 p.m. starting at the Harbor Office, 1275 Embarcadero in Morro Bay. All questions on the RFP are due by 5:00 p.m. on December 18, 2013. For any questions posed, a response will be posted on the City website under the original bid posting by January 10, 2014.

F. Submittals

Interested parties are required to submit their proposal to the City no later than 5:00 p.m. Verizon Time on April 16, 2014, per Section V of this RFP to:

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

Submittal envelopes shall be clearly marked "MB-2013-HRFP4." Postmarks will not be accepted.

SECTION IV: SELECTION PROCESS

The City reserves the right in its sole discretion to waive any defect or omission in any proposal that does not materially affect the terms of the response to this proposal. The City reserves the right in its sole discretion to reject any and all proposals submitted, to revise its selection process at any time, and to rescind this Request for Proposals at any time.

A. Criteria for Selection of Proposer

The City will select a proposal on the basis of maximization of public benefit in the proposed project, in addition to the proposing party's potential to bring the project to completion and successfully operate the lease based on financial capability and experience. The City expects to negotiate with the successful Proposer on all aspects of the development program including a long term lease for the property.

Important elements influencing selection of a proposal are:

- Continuation of a modernized marine aquarium and/or marine educational facility.
- Maximization of public benefit of the project and best utilization of both the land and water portions of the Site.
- Best balance between uses and requirements in the City's Master Plan, Local Coastal Plan, building codes, and design elements.
- The overall quality of the development team as evidenced by the professional reputations and experience of the principals and agents, especially with regard to experience in aquaria and educational facilities.
- Financial capabilities and expertise in commercial development, especially with regard to grant, foundation, and other funding applicable to public aquaria and educational facilities.
- Experience in commercial leasing and property management.
- History of successfully completed development projects.
- The architectural excellence, engineering and overall quality of previous projects of like scope and scale.
- Proposed timing and progress through the design, planning, and permitting processes in order to minimize lag time between current lease expiration (September 2018) and redevelopment.

Additional desirable elements particular to this site include:

- The Site to be utilized as a modernized marine aquarium and/or marine educational facility meeting current design, code, and aquaria standards. It is desired that the redevelopment be capable of Association of Zoos and Aquariums (AZA) accreditation, but at a minimum meet AZA design and operation guidelines and criteria for the proposed redevelopment. AZA can be found online at www.aza.org.

- Offer a new and unique, and affordable recreational and visitor-serving facility that is not generally available.
- Be water-oriented and coastal dependent/related.
- Provide a use that has broad public appeal, by reason of cost or charges and facilities.
- Provide for academic and/or research opportunities and facilities.
- Recognition of the history of the Morro Bay Aquarium including the existing leaseholders and their contributions to the community.

Proposed uses on the lease sites shall be in conformance with the Tidelands Trust and consistent with current planning, zoning and land use policies of the City. The successful proposal will be subject to the normal planning and building approval process of the City.

B. Proposer Selection

The City reserves its right to seek input from various community and business representatives, staff, and other agencies. In addition, the City may utilize the services of leading consultants in the areas of design, land and marine architecture and engineering, real estate, economics, and law to assist in the evaluation of the proposals and to negotiate a new lease.

In order to submit a proposal, a \$5,000 deposit is required as outlined in Section V. Deposits from proposing parties reviewed by the City will be held in trust during the proposal review period. After City Council selection, the City will refund Deposits from parties not in Primary or Secondary position, if any. The City will hold the Deposits from the proposing party under final Primary and Secondary consideration in trust during the twelve month Concept Plan processing period. If the Primary Proposer successfully completes Concept Plan approval of their proposal as outlined, all Deposits will be fully refunded. If the Primary proposing party fails to complete Concept plan approval within the specified time, the City will retain the Deposit as a processing fee and the Secondary proposal may ascend to Primary status and the remaining Deposit handled accordingly.

C. Selection Methodology

In reviewing and evaluating the qualifications of the Proposers and their proposals, the following criteria will be considered:

1. The proposal complies with the Request for Proposals – **Pass/Fail**
2. Overall quality of the conceptual design of the facilities, overall Site plan and maximum utilization of Site square footage (land and water), and maximum benefit to the public – **up to 20 points**
3. Proposer’s financial strength and current relationships with financing sources, and demonstrated ability to finance the proposal through to completion – **up to 20 points**

4. Proposal that includes a marine aquarium and/or marine educational element with the ability to meet the Association of Zoos and Aquariums design and operation guidelines, if applicable – **up to 15 points**
5. Demonstrated understanding of the development constraints on the Embarcadero, and market knowledge of the Morro Bay and Central Coast local and visitor serving needs – **up to 10 points**
6. Proposed lease terms – **up to 10 points**
7. “Green” and/or “LEED” building features including, but not limited to, site and landscaping, building materials, energy and water use, indoor air quality, lighting, and waste management – **up to 10 points**
8. Overall Proposer and team qualifications and experience in similar projects, including collaboration with educational, scientific, marine mammal rehabilitation, or environmental organizations or entities, if applicable/feasible – **up to 10 points**
9. Proposed development schedule – **up to 5 points**

D. Exclusive Lease Negotiation

The City intends to enter into a ground lease with a Proposer who is capable of planning, designing, financing, developing and operating the project as proposed. Proposers responding to the RFP will be financially responsible for all construction activities. It is not anticipated that any direct financial assistance will be available from the City. The Harbor Department’s typical ground lease is “triple net” and includes base rent and percentage rent terms. Negotiations for a ground lease will be initiated with the selected Proposer.

The lease will outline roles, expectations, responsibilities, goals, objectives and timelines with regard to the proposed development and specific financial parameters to which both the selected Proposer and City will adhere. Proposers will be responsible for all costs associated with the RFP process including all costs incurred by the Proposer associated with the negotiation and development of the lease, as well as all costs associated with the entitlement, permitting, CEQA processing, and development. The selected Proposer will work closely with the City to establish general design parameters for the proposed development

The City and the Proposer shall negotiate a long-term ground lease agreement not to exceed a term of 50 years, the maximum allowable under State law.

SECTION V: REQUEST FOR PROPOSALS SUBMITTAL PACKAGE

1. **Proposal Submittal.** All responses to this Request for Proposals must be received no later than **5:00 p.m. Verizon Time on April 16, 2014. Postmarks will not be accepted.**

Proposals shall be dropped off or sent to:

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

Submittal envelopes shall be clearly marked “MB-2013-HRFP4.” No fax or email proposals will be accepted.

2. **Acknowledgement Form.** Each proposing party must review, complete, and sign the attached Acknowledgement Form and include it with their proposals.
3. **Deposit Check.** A \$5,000 Deposit check or bank draft payable to the City of Morro Bay must be included with the proposal. Deposit disposition shall be in accordance with Section IV B.

All Proposers must submit four (4) copies of the following information:

A. Proposer Information

1. **Identification.** Name of Proposer and type of entity. Also provide known members of development team such as architect, engineer, landscape architect, major equity investors, consultants, etc., including project organizational and management roles in implementation of development.
2. **Experience.** Provide a brief description of the Proposer’s and key team members’ recent development experience. This experience should include projects in which the Proposer was instrumental and which are similar to the kind of project or similar project being proposed. Please be specific and indicate references for each project.
3. **Financial Data.** Provide information indicating Proposer has sufficient financial resources to undertake the project, including a statement of proof of financial capability to plan and construct the proposed project. Provide bank references where appropriate. The latter may be in the form of bank or financing institution’s letter of reference.

The City will independently investigate the financial background of proposing parties as agreed to in the required Acknowledgment Form signed by the proposing parties.

4. **Prior Financing.** Provide information on financing for prior or current development projects. Please be specific. Include a current Credit Report with credit score.

B. Proposal Narrative

1. **Narrative.** The written narrative must be included in the proposal describing the redevelopment proposal for the Site; the type of development envisioned and its market orientation which best implements both the land and water elements of the Site.
2. **Design.** The narrative should include the basic design elements, especially as they pertain to the City's waterfront design criteria, and all current planning conditions and zoning standards. A description of proposed treatment of building facades and "Green Building" features shall be included. If appropriate, photographs of existing buildings with similar facades may be included to further illustrate the concept.

C. Proposal Visuals

ALL DRAWINGS SHALL BE 24" X 36" BLACKLINE PRINTS WITH A HORIZONTAL LAYOUT. FOUR (4) SETS ARE REQUIRED.

EACH 24" X 36" DRAWING SHALL ALSO BE PROVIDED IN 8 ½" X 11" BLACK AND WHITE REDUCTIONS WHICH CAN BE PHOTO-COPIED.

1. **Site Plan.** Site Plan illustrating at a scale of 1" to 40" the outline of all buildings and improvements, including proposed building locations, landscape and hardscape areas, adjoining public areas, and proposed public improvements. Tabulations in square footage and percentage of the following shall be shown on the Site Plan:
 - a. Building footprint, landscaped areas and hardscaped areas.
 - b. Individual building tabulations depicting gross floor area and gross leasable floor area as well as proposed use.
 - c. Parking designated as standard, compact, handicap and loading spaces.
2. **4-Sided Elevations.** Four sided elevations shall be at appropriate scale and overall dimensions shall not exceed 24" X 36". All elevations shall be dimensioned to illustrate the height of roof and height of parapet. Material details shall be illustrated on these elevations.

3. **Section Drawings.** Section drawings shall be provided of all street frontages, and shall show true dimensions and the outlines of buildings on the adjoining lots. Section drawings shall include the adjacent roadway.
4. **Colored Site Plan Rendering.** A rendering utilizing the above mentioned Site Plan shall be provided. This Site Plan rendering is intended to provide a colored overall view of the entire project.
5. **Building.** A narrative description of proposed treatment of building facades and “Green Building” features shall be included. If appropriate, photographs of existing buildings with similar facades may be included to further illustrate the concept.
6. **Water Portion.** Proposals should include plans, elevations, etc. for the water portion of the Site as well.

NOTE: Plan will be considered a Conceptual Plan and will be subject to adjustment and City approval once a proposal has been selected and the details of the project are finalized through the planning, permitting, and negotiation processes.

D. Pro Forma

The proposal shall include a ten-year pro forma for the entire development to include, but not be limited to, construction, sublease, and stabilization. A description of the proposal financing as it pertains to the pro forma shall also be included. The proposal should include an estimate of the total value of the project, broken down into land and water improvement values. The pro forma should reflect all income and expense line items including, but not limited to, ground lease payments, with sufficient detail and clarity, for the proposal to be properly evaluated by the City.

E. Terms of Lease

The proposal should include an accurate estimate of the total cost of development, and a set of draft lease and business terms and conditions that the Proposer is willing to negotiate for development of the project and subsequent ground lease.

F. Schedule

Include a preliminary time schedule including any proposed phasing. The schedule should include any financial scheduling, amortization, etc.

G. Ownership of Materials

All drawings, plan documents, proposals and other materials submitted by the Proposer shall become the permanent property of the City.

SECTION VI: TENTATIVE PROPOSAL SCHEDULE

ACTIVITY/Key Steps	DATE
Issue Request for Proposals	October 16, 2013
Recommended Pre-Proposal Meeting and Site Walk-Through	November 20, 2013
Questions Due	December 18, 2013
Responses to Questions Posted by	January 10, 2014
Proposals Due	April 16, 2014

SECTION VII: ATTACHMENTS

- A. Attachment 1: **Acknowledgement Form****
- B. Attachment 2: **Proposer Information****
- C. Attachment 3: **Lease Site Map****

Thank you for your interest in working with the City of Morro Bay for this service. We look forward to receiving your proposal.

ATTACHMENT 1

**ACKNOWLEDGEMENT FORM
REQUEST FOR PROPOSALS
DEVELOPMENT OF LEASE SITE 69-70/69W-70W
PROJECT MB-2013-HRFP4**

Initial Below

1. _____ I have reviewed all of the information in this Request for Proposals and agree to all of the terms and conditions outlined therein.

2. _____ I understand that each proposing party should review the City's General Plan, Local Coastal Plan, and any and all planning and permitting elements as they pertain to this lease site.

3. _____ Any new lease with the City must be in the City's approved Master Lease format and should comply with the City's Harbor Department Lease Management Policy.

4. _____ I have reviewed the City's Master Lease format and Harbor Department Lease Management Policy and agree that the lease policy and basic lease format is acceptable for any future lease negotiations.

5. _____ I agree that the City of Morro Bay may take all steps necessary to investigate any financial information provided in response to this Request for Proposals. The City has my permission and consent to investigate such information however it deems appropriate.

6. _____ Enclosed is a check or bank counter draft in the amount of \$5,000 made out to the City of Morro Bay as a Deposit and an indication of good faith interest for consideration in this Request for Proposals.

7. _____ I agree that this check will be handled as outlined in this Request for Proposals including that the check may be retained by the City as a processing fee under certain conditions.

8. _____ The parties signing below are all the parties in interest in our proposal to the City in response to this Request for Proposals, and, if part of a partnership or other entity, affirm that they have the authority to enter into this Request for Proposals.

Printed Name

Signature

Date

Printed Name

Signature

Date

ATTACHMENT 2

**PROPOSER INFORMATION
REQUEST FOR PROPOSALS
DEVELOPMENT OF LEASE SITE 69-70/69W-70W
PROJECT MB-2013-HRFP4**

Include the personal information for all persons or entities submitting this proposal. If a partnership:

Name _____

Address _____

Phone(s) _____ (home) _____ (work)

_____ (cell)

Email _____

Name _____

Address _____

Phone(s) _____ (home) _____ (work)

_____ (cell)

Email _____

Name _____

Address _____

Phone(s) _____ (home) _____ (work)

_____ (cell)

Email _____

