



REVISED

CITY OF MORRO BAY

JOINT PLANNING COMMISSION AND HARBOR ADVISORY BOARD SUBCOMMITTEE AGENDA

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.

Special Meeting - Friday, September 8, 2017
Morro Bay Community Center, Studio Room– 3:00 P.M. to 5:00 P.M.
1001 Kennedy Way, Morro Bay, CA

Gene Doughty - Harbor Advisory Board Subcommittee Member
Ron Reisner - Harbor Advisory Board Subcommittee Member
Gerry Luhr – Planning Commission Subcommittee Member
Joseph Ingraffia – Planning Commission Subcommittee Member

ESTABLISH QUORUM AND CALL TO ORDER

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the PC and HAB subcommittee on matters not on the agenda may do so at this time. It is important that all participants conduct themselves with courtesy, dignity and respect. All persons who wish to present comments must observe the following rules to increase the effectiveness of the Public Comment Period:

- When recognized, please come forward to the podium and state your name and address for the record.
- Comments are to be limited to three minutes so keep your comments brief and to the point.
- All remarks shall be addressed to the Committee, as a whole, and not to any individual member thereof. Conversation or debate between a speaker at the podium and a member of the audience is not permitted.
- The Committee respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, committee 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 Committee to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in Committee 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 Community Development at (805) 772-6264. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. There are devices for the hearing impaired available upon request at the staff's table.

- A. CONSENT CALENDAR - NONE

- B. UNFINISHED BUSINESS - NONE

- C. NEW BUSINESS
 - C-1 Measure D Study Session
 - C-2 Working Waterfront Study Session
 - C-3 Determination of Next subcommittee meeting date

- D. COMMITTEE MEMBER CLOSING COMMENTS

- E. ADJOURNMENT

COMMITTEE MEETING PROCEDURES

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 Harbor Department, Community Development Department, 955 Shasta Avenue, for any revisions, or call the department at 772-6261 for further information.

Materials related to an item on this Agenda are available for public inspection during normal business hours in the Community Development Department, at Mill's/ASAP, 495 Morro Bay Boulevard, or the Morro Bay Library, 695 Harbor, Morro Bay, CA 93442. Materials related to an item on this Agenda submitted to the General Plan Advisory Committee after publication of the Agenda packet are available for inspection at the Community Development Department during normal business hours or at the scheduled meeting.

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The Brown Act forbids the Committee from taking action or discussing any item not appearing on the agenda, including those items raised at Public Comment. In response to Public Comment, the Committee is limited to:

1. Responding to statements made or questions posed by members of the public; or
2. Requesting staff to report back on a matter at a subsequent meeting; or
3. Directing staff to place the item on a future agenda. (Government Code Section 54954.2(a))



AGENDA NO: C-1 & C-2

MEETING DATE: September 8, 2017

Staff Report

DATE: 09/01/17

TO: Harbor Advisory Board Subcommittee and Planning Commission Subcommittee

FROM: Scot Graham, Community Development Director and Eric Endersby, Harbor Director

SUBJECT: Measure "D" and "Working Waterfront" Study Sessions

RECOMMENDATION

Review staff report and associated materials and develop strategy for development of policy language to better define and resolve ambiguities in Measure D and to develop a Working Waterfront Mission Statement and/or Policy for incorporation into the General Plan/Local Coastal Program/Zoning Code update.

BACKGROUND/DISCUSSION

The City Council, on July 11, 2017 authorized both the Harbor Advisory Board and Planning Commission to work jointly on development of policy language to better define and resolve ambiguities of Measure D and to advance policy language to better define "Working Waterfront". The intent is to insert the new policy language into the General Plan/Local Coastal Program and Zoning Code update. See Council July 11, 2017 Staff report provided as Attachment 1.

The July 11, 2017 Council Staff report includes background materials, developed by the HAB for both Measure D and the Working Waterfront.

The Planning Commission has also reviewed Measure D in the past, with the intent of providing a clearer interpretation of the measure. The Planning Commission Staff report from August 16, 2016 is provided as Attachment 2 to this staff report and includes 5 questions the Planning Commission discussed regarding the meaning of Measure D.

The Measure D discussion, held by the Planning Commission in August of 2016, spurred the drafting of a Memo by Robert Tefft, the then Chairperson of the Planning Commission,

Prepared By: SG _____ Dept Review: SG _____

that attempts to define how Measure D is currently applied from a land use perspective. The Tefft memo is provided as Attachment 3 to this staff report.

Staff has provided some background materials on both Measure D and the Working Waterfront and subcommittee members should review the materials and be prepared to discuss each topic.

CONCLUSION

Based on direction provided by Council on July 11, 2017, it is envisioned that the subcommittees will work together to develop policy language, for both Measure D and the Working Waterfront, that would then be brought back to a joint PC/HAB meeting, where additional public input could be provided and where policy language could be finalized and forwarded to the General Plan Advisory Committee (GPAC) for inclusion in the ongoing GP/LCP/Zoning Code update.

ATTACHMENTS

1. July 11, 2017 Council Staff report with Attachments
2. August 16, 2016 PC Measure D Staff report
3. Tefft August 2016 Memo on Current Application of Measure D



AGENDA NO: C-2

MEETING DATE: July 11, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 29, 2017

FROM: Eric Endersby, Harbor Director
Scot Graham, Community Development Director

SUBJECT: Discussion and Direction Regarding Harbor Advisory Board Request to Resolve Ambiguities in Measure D, and Recommendations on Morro Bay “Working Waterfront” Initiative

RECOMMENDATION

Staff recommend the City Council consider the Harbor Advisory Board’s requests and recommendations regarding ambiguities in Measure D and the “Working Waterfront” initiative, and approve the approach recommended by staff to address the issues identified by the Board.

ALTERNATIVES

The City Council could direct measures, activities or actions taken other than, or additional to, those recommended in this staff report.

FISCAL IMPACT

There is no direct fiscal impact of the recommended actions in this report.

BACKGROUND

The issue of ambiguous language in “Measure D,” Ordinance No. 207, of the City of Morro Bay relating to the restriction of further non-commercial or non-recreational fishing land/water use development on City lease sites between Beach Street and Target Rock, is an ongoing issue the Harbor Advisory Board (HAB) has grappled with in recent years. Additionally, the General Plan Advisory Committee (GPAC) and Planning Commission (PC) are addressing Measure D in the General Plan (GP) and Local Coastal Plan (LCP) updates currently underway.

As part of its fiscal year 2016/2017 City Council Goal Objective Work Plans, the HAB has pursued the prospect of official “designation” or other possible recognition of Morro Bay as a “Working Waterfront.” That goal objective work plan item is also included in the 2017/2018 approved plans.

A summation of the requests, activities, actions, and recommendations made by the HAB regarding Measure D and Working Waterfronts is provided in a March 3, 2017, letter from HAB Chairman Ron Reisner to the City Council, and in an 11-page report by Mr. Reisner, dated June 11, 2017, included as Attachments 1 and 2 to this report. In addition, the text of Measure D is included with this staff report as Attachment 3.

DISCUSSION

Staff is seeking Council direction on how it wishes to proceed from a process standpoint with the

Prepared By: EEDept Review: EECity Manager Review: MRLCity Attorney Review: JWP

ATTACHMENT 1

various HAB requests and recommendations on these two separate, but quite related, issues.

Measure D

The HAB requests its involvement in consideration of the two recognized ambiguities in the measure by way of the GP and LCP updates. That is to say, the HAB recommends a process by which the ambiguities in Measure D be addressed by the City, and requests it be involved in that process, and that process be incorporated into or somehow involve the GP/LCP update process. With Measure D on the docket for GP/LCP consideration, the latter should be accounted for.

The City Council Goal 4 Objective Work Plan Element regarding Measure D is:

HAB Working Waterfront Ad-Hoc Committee to work with staff, consultants and GPAC to provide input and review relative to clarification of Measure D and incorporation of clarifications into the GP/LCP.

Working Waterfront

The HAB approved a Working Waterfront Mission Statement, as outlined in Mr. Reisner's report, as-requested by the City Council for consideration of approval.

Additionally, the HAB recommended the GP/LCP update include consideration of Working Waterfront uses, and included a representative list of those uses for consideration of approval.

The City Council Goal 4 Objective Work Plan Element regarding working waterfronts is:

HAB Working Waterfront Ad-Hoc Committee to develop a "Working Waterfront" mission statement or policy for incorporation into the GP/LCP.

CONCLUSION

Given the PC and GPAC are also working on Measure D and Working Waterfront-type issues in their involvement with the GP/LCP updates, it makes sense HAB, PC and GPAC all work together, so their combined efforts are both harmonious and non-duplicative.

The Harbor Director and Community Development Director, therefore, recommend the City Council approve an approach where *ad hoc* committee of two members from the PC work with the existing HAB Working Waterfront Ad-Hoc Committee to combine their work efforts and product for a cohesive approach to addressing the issues. Their combined work product and recommendations would be brought to a joint HAB/PC meeting (to be determined), where additional public and other input could be taken, the end results being forwarded to the GPAC for inclusion in the GP/LCP update process. Additionally, on an as-needed basis, draft language, policy and other items could be routed back to the Ad-Hoc Committee and/or HAB/PC for further vetting.

Pursuant to the Brown Act, the new body made up of two PC Members and two HAB Ad-Hoc Committee Members would be a legislative body and only able to meet at duly noticed public meetings, Since the HAB Ad-Hoc Committee already exists, if, the two members of the PC *ad hoc* committee were to attend one or more of the HAB Ad-Hoc Committee meetings to provide input to that Committee, but not participate in deciding actual recommendations of the HAB Ad-Hoc Committee, then that would not create a legislative body pursuant to the Brown Act. Alternatively, the two HAB Ad-Hoc Committee Members could similarly provide input to the PC *ad hoc* committee.

ATTACHMENTS

1. March 3, 2017 HAB Measure D request letter.
2. June 11, 2017 HAB Working Waterfront and Measure D recommendations document.
3. Measure D (Ordinance No. 207) text.



CITY OF MORRO BAY

HARBOR DEPARTMENT
1275 Embarcadero Road
Morro Bay, CA 93442

TO: MAYOR IRONS AND CITY COUNCIL

FROM: THE MORRO BAY HARBOR ADVISORY BOARD

MARCH 3, 2017

RE: HARBOR ADVISORY BOARD "MEASURE D" REQUEST

Dear Mayor Irons and City Council,

I am writing on behalf of the Harbor Advisory Board (HAB), which, during its March 2, 2017 meeting, determined to make the following request.

The HAB is aware that the City, with the assistance of consultant Michael Baker Int., is engaged in an update of the City's General Plan and Local Coastal Plan. Agenda item C-5 from the HAB's March 2, 2017 meeting included the following Staff Recommendation, "Consider whether clarification of Measure D's apparent ambiguities should be tied to the City's update of the General Plan and Local Coastal Plan, and make recommendations accordingly".

Over the past two years, the HAB has on several occasions identified and discussed apparent ambiguities in the text of Measure D. The two most apparent ambiguities revolve around: 1. the reference to "primarily" as it relates to uses of the Measure D waterfront for "purposes of serving or facilitating licensed commercial fishing activities or non-commercial recreational activities . . ."; and 2., the reference to "clearly incidental thereto" as it relates to consideration of waterfront land use in terms of being for "purposes of serving or facilitating licensed commercial fishing activities or non-commercial recreational activities . . .".

The HAB has carefully considered this Measure D language, its meaning, and its implications. Additionally, the HAB has on more than one occasion considered Measure D as it relates to usage of Tidelands Trust lands, i.e. Morro Bay's waterfront from Beach Street north to Target Rock.

Considering the above, the Harbor Advisory Board formally requests involvement in the consideration of Measure D, as it relates to the City's current update of the General Plan and Local Coastal Plan. Please advise us as to how we can best become involved to the benefit of the City, the Council, and the community.

Regards,

Ron Reisner, Chairman, Harbor Advisory Board

cc: Mr. Dave Buckingham, City Manager
Mr. Scot Graham, Community Development Director
Mr. Eric Endersby, Harbor Director

**Morro Bay Working Waterfront Initiative and Measure D
Harbor Advisory Board Recommendations**

June 11, 2017

Eleven Pages

Executive Summary

In August 2016, the Morro Bay City Council tasked the Morro Bay Harbor Advisory Board (HAB) to, “. . . begin a “Working Waterfront” policy-making process for Morro Bay”. Per the relevant City Staff Report in August, the HAB was requested to address three Working Waterfront “Work Plan Elements” (WPE) to “. . . guide the process and help achieve the goal”.

The first of those WPE’s (WPE1) was addressed by the HAB during the first quarter (Q1) of the City’s FY 2016/2017. WPE1 called for the HAB and the Committee to, “Research ‘Working Waterfronts’, their designations, guidelines and other information pertinent to Morro Bay for consideration of a Morro Bay policy and possible designation”.

In September 2016, after considerable research into Working Waterfronts in the U.S., as well as research into and consideration of the Working Waterfront concept as it relates to Morro Bay, the HAB presented a written report highlighting a number of key points, as well as relevant data, and imperatives. This report was subsequently enhanced in an updated Committee reported dated November 10, 2016. Further, during its October 6, 2016 meeting, the HAB passed a formal recommendation to the City Council, stating, *“Recommended to the City Council that in order to ensure a vibrant waterfront, the City of Morro Bay self-designate a working waterfront area from Morro Rock to the State Park Marina, with follow-on policies, perhaps zoning, and other land and water use implementation strategies and/or measures.”*

In December 2016 and January 2017, the HAB addressed WPE2, which called for the development of a draft Morro Bay Working Waterfront policy, for consideration by the City Council. On January 26, 2017, the HAB published a report which stated in part that to achieve the goal of WPE2, the HAB concluded that development of a Morro Bay Working Waterfront Policy, including Morro Bay’s definition of “Working Waterfront”, best occurs in concert with the current update of the City’s General Plan and Local Coastal Plan. Further, the HAB concluded that Morro Bay is in a position to self-designate its Working Waterfront, and develop Working Waterfront definitions that are of greatest advantage and opportunity.

Additionally, the January 26, 2017 report commented on a December 12, 2016 meeting with the then City Manager, Councilman Makowetski, and at the beginning of the meeting Councilman-elect Davis. During that meeting, the City Manager discussed issues relative to the HAB’s October 6 recommendation, suggesting that the concept of a Working Waterfront in Morro Bay be concentrated on the area presently delineated by Measure D.

The HAB responded to the City Manager’s suggestion by reiterating its reasoning behind the October 6, 2016 recommendation to Council. However, toward the end of the meeting, HAB

representatives suggested the possibility of designating three separate Working Waterfront sectors for Morro Bay:

- A Working Waterfront Fisheries Sector, extending from Beach Street north to the exiting northern boundary of Measure D. This sector would also include the “Triangle Lot”, given that it is the most viable site identified for a boatyard/marine services facility.
- A Working Waterfront Visitors Sector, extending from Beach Street south to Mariner’s Park.
- A Working Waterfront Commercial Sector, extending from Mariner’s Park south to the State Park Marina.

Through its work relative to a Morro Bay Working Waterfront, the HAB clearly determined that such concept must be integrated into the City’s General Plan, the Local Coastal Plan, and the Waterfront Master Plan. Further, such integration must include the City’s Measure D. Additionally, development of a Morro Bay working waterfront policy should take place in light of waterfront related business and land use projects that are underway, or are being contemplated.

During an April 11, 2017 City Council and HAB joint meeting, the Mayor, speaking for the City Council, requested the HAB provide Council with a generalized “mission statement” regarding a Morro Bay Working Waterfront, and Measure D, for consideration by Council for possible inclusion in the current General Plan/Local Coastal Plan update.

This proposed generalized mission statement was to be sufficiently broad to facilitate the future generation of a Morro Bay Working Waterfront policy, and sufficiently broad to address Measure D, but not at this time be specific as to either a Working Waterfront definition or policy, or any clarification of Measure D.

Subsequently, during its June 1, 2017 meeting, the HAB passed the following motions relative to a Morro Bay Working Waterfront, and Measure D. Consistent with the request of Council, both motions are intended to inform and enhance the current GP/LCP/WMP updates, as they relate to a Morro Bay Working Waterfront and Measure D:

Motion A. – Working Waterfront Mission Statement:

The City of Morro Bay is uniquely located and situated to capitalize on the waters of Morro Bay and the adjacent Pacific Ocean in its General Plan and Local Coastal Plan. Further, the City of Morro Bay is dedicated to ensuring a vibrant Working Waterfront for the purposes of providing, promoting and supporting land uses and access in support of water-dependent commercial activities, water-dependent recreational activities, waterfront enhanced commercial activities, water-enhanced recreational activities, and for purposes related to providing public access to Tidelands Trust lands.

Therefore, the Morro Bay Harbor Advisory Board recommends to the Morro Bay City Council

that incorporated into the current Morro Bay General Plan and Local Coastal Plan update is a Morro Bay Working Waterfront land area and its uses, consistent with the requirements of the California Coastal Act. This Morro Bay Working Waterfront land area encompasses the Morro Bay waterfront from Target Rock in the North, to the southern boundary of the State Park Marina in the South, and encompass all waters of Morro Bay within the City limits, as well as all tidelands within the City limits, and all wetlands within the City limits (i.e. inclusive of City property from the West shore of the Sand Spit, to the bottom of the bluff along the east side of Embarcadero Road).

Motion B. – Working Waterfront Land Uses:

The Morro Bay Harbor Advisory Board recommends to the Morro Bay City Council that in the update of the Morro Bay General Plan, the Morro Bay Local Coastal Plan, and the Morro Bay Waterfront Master Plan, that consideration be given to Working Waterfront uses including, but not limited to: Harbor Tract lease sites and other City lands adjacent to Morro Bay; structures on, over, or adjacent to Morro Bay along the waterfront within the City limits; infrastructure, facilities and properties that provide access to Morro Bay; infrastructure, facilities and properties that are used for water-dependent or Harbor related private, commercial, industrial, or City activities including tourism, boating, commercial fishing, recreational fishing, mariculture, charter boat operations, boat repair and maintenance, boat building, marine supply services, marine construction, marine industry support services, seafood processing, seafood sales, aquariums, transportation, shipping, military activities, coastal-dependent energy production, boat marinas, boat moorage, boat dockage, wharfage, boat launching, and other water dependent uses. Further, that the designated Measure D area and its defined uses be incorporated into the City of Morro Bay’s Working Waterfront.

Background and Timeline

August 2016: In August 2016, the Morro Bay City Council tasked the HAB to, “. . . begin a “Working Waterfront” policy-making process for Morro Bay”. The HAB in turn created a Working Waterfront Ad-Hoc Committee (Committee) to pursue that task.

Per the relevant City Staff Report in August, the HAB and the Committee were requested to address three Working Waterfront “Work Plan Elements” (WPE) to “. . . guide the process and help achieve the goal”.

The first of those WPE’s (WPE1) was to be addressed by the HAB and the Committee during the first quarter (Q1) of the current City fiscal year – July 2016 through September 2016. WPE1 calls for the HAB and the Committee to, “Research ‘Working Waterfronts’, their designations, guidelines and other information pertinent to Morro Bay for consideration of a Morro Bay policy and possible designation”. During August and September 2016, the HAB conducted considerable research into the concept of Working Waterfronts around the U.S., and various implementations of Working Waterfront policies.

ATTACHMENT 1 CONT.

September 2016: Having conducted considerable research into Working Waterfronts around the U.S., as well as research into and consideration of the Working Waterfront concept as it relates to Morro Bay, the HAB published a written report, highlighting a number of key points, relevant data, and imperatives. This report was subsequently enhanced in an updated report dated November 10, 2016.

Through these reports and the HAB's subsequent deliberations related to a Morro Bay Working Waterfront, the HAB clearly determined that such a concept must be integrated into the City's General Plan, the Local Coastal Plan, and the Waterfront Master Plan. Further, such integration must include the City's Measure D. Additionally, development of a Morro Bay Working Waterfront policy should take place in light of waterfront related business and land use projects that are underway, or are being contemplated.

October 2016: During the regular October 6, 2016 HAB meeting, and in response to the Morro Bay City Council's WPE2 assignment relative to a Working Waterfront initiative in Morro Bay, the HAB voted unanimously to recommend the following to the City Council:

Recommended to the City Council that in order to ensure a vibrant waterfront, the City of Morro Bay self-designate a working waterfront area from Morro Rock to the State Park Marina with follow-on policies, perhaps zoning, and other land and water use implementation strategies and/or measures.

This recommendation was transmitted to the City Council in a letter from the HAB dated October 10, 2016.

December 2016: On December 12, 2016, HAB members met with the then City Manager, Councilman Makowetski, and at the beginning of the meeting Councilman-elect Davis. During that meeting, the City Manager discussed issues relative to the HAB's October 6 recommendation, suggesting that the concept of a Working Waterfront in Morro Bay be concentrated on the geographic area presently delineated by Measure D.

The Ad Hoc Committee responded to the City Manager's suggestion by reiterating its reasoning behind the October 6, 2016 recommendation. However, toward the end of the meeting, the Committee suggested the possibility of designating three separate Working Waterfront sectors for Morro Bay:

- A Working Waterfront Fisheries Sector, extending from Beach Street north to the exiting northern boundary of Measure D. This sector would also include the "Triangle Lot", given that it is the most viable site identified for a boatyard/marine services facility.
- A Working Waterfront Visitors Sector, extending from Beach Street south to Mariner's Park.
- A Working Waterfront Commercial Sector, extending from Mariner's Park south to the State Park Marina.

ATTACHMENT 1 CONT.

Delineating these three Working Waterfront sectors, should the City determine to self-designate a Working Waterfront, provides opportunity for each of the sectors to be defined separately.

- The Fisheries Sector incorporates the existing land use protections provided to commercial and recreational fisheries by Measure D, and provides: a discrete portion of the waterfront for fisheries related facilities and services; and a discrete portion of the waterfront for fisheries related commercial activities and opportunities – some of which could readily enhance tourism.
- The Visitors Sector allows the City to define this area in ways that optimize the existing Tidelands Trust enterprise zone to the advantage of enterprise zone lease holders and to the City. This in turn provides optimal opportunities and advantages for visitors, as well as for the community at large, and the City that exists to serve the community.
- The Commercial Sector allows the City to define this area to the advantage of existing commercial lease holders; to the advantage of existing and future commercial enterprise; to the advantage of the community; and to the potential advantage of the City’s management arrangement with the State of California for the State Park Marina.

Additionally, the HAB recognized the definition of working waterfront as adopted by the State of Florida:

Florida’s Working Waterfront Protection Act [Fla. Const. art. VII (amended 2008); Fla. Stat. § 342.201 (2009); and Fla. Stat. § 342.07 (2009)] incorporates a broad definition of working waterfront, a definition that may be useful in the development of a Morro Bay Working Waterfront policy. The Florida Act describes and protects “recreational and commercial working waterfront,” including boatyards, marinas, and, since 2006, resort hotels.

In Florida’s Act, the term “recreational and commercial working waterfront” means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels...or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.

January 2017: The second WPE (WPE2) was to be addressed during the second quarter (Q2) of the current City fiscal year – October through December. WPE2 called for the HAB and the Ad Hoc Committee to: “Develop draft Morro Bay “Working Waterfront” policy for City Council consideration (FY Q2)”.

Toward that end, and as noted above, in December 2016 the HAB developed the three-sector Working Waterfront plan described in the Executive Summary.

March 2017: During its March 2, 2017 regular meeting, the HAB discussed the following agenda item, “Consider whether clarification of Measure D’s apparent ambiguities should be tied to the City’s update of the General Plan and Local Coastal Plan, and make recommendations accordingly”.

During the two-year period, the HAB carefully considered this Measure D language, its meaning, and its implications. Additionally, the HAB has on more than one occasion considered Measure D as it relates to usage of Tidelands Trust lands, i.e. Morro Bay’s waterfront from Beach Street north to Target Rock. During these considerations, the HAB on several occasions identified and discussed apparent ambiguities in the text of Measure D.

Following discussion on March 2, the HAB resolved to formally request that the City Council direct the HAB to further involve itself with Measure D, specifically as it related to the City’s current update of the General Plan and Local Coastal Plan. The HAB further requested, concerning Measure D, that the City Council advise the HAB as to how best it could become involved to the benefit of the City, the Council, and the community. On March 3, 2017, the HAB sent a letter to Council presenting those requests.

May - June 2017: During an April 11, 2017 City Council/HAB joint meeting, the Mayor, speaking for the City Council, requested the HAB provide Council with a generalized “mission statement” regarding a Morro Bay Working Waterfront, and Measure D, for consideration by Council for possible inclusion in the current General Plan/Local Coastal Plan update. This proposed generalized mission statement was to be sufficiently broad to facilitate the future generation of a Morro Bay Working Waterfront policy, and sufficiently broad to address Measure D, but not at this time be specific as to either a Working Waterfront definition or policy, or any clarification of Measure D.

Subsequently, during its June 1, 2017 regular meeting, the HAB passed two motions relative to a Morro Bay Working Waterfront, and Measure D. Consistent with the request of Council, both motions are intended to inform and enhance the current GP/LCP/WMP updates, as they relate to a Morro Bay Working Waterfront and Measure D. The two motions are documented in the above Executive Summary.

Developing a Working Waterfront Policy

To achieve the goal of WPE2, the HAB concluded that development of a Morro Bay Working Waterfront Policy best occurs in concert with the current update of the City’s General Plan and its Local Coastal Plan.

Borrowing from the *Sustainable Working Waterfronts Toolkit* developed by the Economic Development Administration division of the U.S. Department of Commerce, the following applies to the City of Morro Bay’s process of developing definitions for self-designated Working Waterfront Sectors:

Economics

In the economics element, consideration needs to be given to quantifying, to the greatest degree possible, the present financial contribution to Morro Bay, as well as the potential future contribution to Morro Bay economics, of: harboring vessels; marine service facilities; marine construction; coastal tourism and recreation; living marine resources and the marine environment; the commercial fishing industry; onshore and offshore energy production; marine transportation; etc.

Financing

The Financing element focuses on identifying economic resources that may be available to support a Working Waterfront in Morro Bay. Such resources include, but are not limited to: local taxation; State resources, Federal resources, foundations, etc. For instance, State resources are reported to include working waterfront funding mechanisms for thirty coastal states, and Federal resources are reported to include a compilation of federal programs and independent sources with national scope that qualify to be used on working waterfront issues. Additionally, there are reportedly philanthropic foundations that have either funded working waterfront projects or have focused on the economic aspects of coastal communities.

Law and Policy

Reportedly, with the exception of a few States such as Maine and Florida, working waterfronts have not been a primary focus for policymakers, and very few legal tools and policy approaches have reportedly been developed specifically with working waterfronts in mind. There reportedly are, however, tools available to help formulate working waterfront policy in the context of Morro Bay. These tools include: information on how local policymakers can apply water-dependent use definitions; addressing land use and tax policy; considerations of historic preservation laws; and addressing land conservation and acquisition programs relative to a Morro Bay working waterfront. Key components of Morro Bay developing a Working Waterfront policy include identifying existing policy-making tools, assessing those tools for relevance and sufficiency, developing and/or accessing additional tools as may be needed, and then developing and executing a policy-making plan utilizing appropriate tools.

Tools for Development of Working Waterfront Policy

Taken directly from the *Sustainable Working Waterfronts Toolkit*, the three tables below list a number of “Tools” useful to the development of Working Waterfront policy. It would be incumbent upon Morro Bay to use these tools, and to develop and apply any other tools necessary to the development of a well-conceived Working Waterfront policy.

Table 1. Working Waterfront Tools

Category	Tools
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ATTACHMENT 1 CONT.

Policy and Regulation	Building Code; Coastal Zone Management Program; Design Standards; Exaction; Historic Preservation; Litigation; Moratorium; No Net Loss Policy; Police Power; Public Trust Doctrine; Real Estate Disclosure; Special Purpose Political Subdivision; User Fee; Visual Access
Financing	Appropriation, Bond Financing, Dedicated Revenue, Economic Development Entity, Foundation, Grant, Loan, Loan Guarantee Subsidy, Tax Increment Financing, Trade Association
Planning	Action Planning, Business Recruitment Plan, Comprehensive Plan, Disaster Recovery Planning, Growth Management, Harbor Management Plans, Historic Resources Survey, Land Use Planning, Marine Spatial Planning, Six Hats Exercise, Smart Growth, Special Area Management Plan, SWOT Analysis; Waterfront Master Plan
Zoning	Contract Zoning, Form-based Code, Impact Fees, Incentive Zoning, Overlay Zoning, Private Zoning, Shoreland Zoning, Water Dependent Use, Water Dependent Use Zoning, Zoning, Zoning Ordinance
Taxation	Ad Valorem Tax, Current Use Taxation, Excise Tax, Income Tax, Property Tax, Real Estate Transfer Tax, Sales Tax; Special Assessment, Special Taxing Districts Tax, Tax Abatement/Deferral, Tax Incentives
Community/Stakeholder Engagement	Branding, Coalition, Conflict Resolution, Focus Group, Initiative, Partnerships, Stakeholder Analysis, Technical Assistance, Visioning Exercise
Mapping, Inventory, Study	Build Out Analysis, Coastal Access Site Inventory, Community Assets, Mapping/Inventory, Economic Analysis/Assessment, Force Field Analysis, Legal Tools Inventory, Legislative Task Force, Marketing Study, Natural Resource Inventory, Needs Assessment Repository, Visual Preference Survey, Working Waterfront Inventory
Land Conservation, Transfer, Acquisition	Acquisition; Compensation, Conservation Easement, Conveyance, Covenant, Deed Restriction, Easement, Eminent Domain, Land Bank, Land Trust, Lease, Liability Waiver, Purchase of Development Rights, Right-of-Way, Transferable Development Rights, Transferable Slip Rights, Working Waterfront Conservancy
Private Agreements	Consideration, Contracting for Access, Installment Contract, Lease-Option Contract, Private Use Agreements, Use Permitting

Table 2: Working Waterfront Tools for Decision and Policymakers

Category	Tools
Policy and Regulation	Decision and Policymakers may adopt formal policies or regulations to address discrete working waterfront issues. Building and development codes, for example, may impose water-dependent use requirements. Permitting programs can be designed to require consideration and mitigation of the impact of a working waterfront conversion on water-dependent business or uses.
Financing	Many states have created special funding programs to preserve working waterfront access. Money for such programs can come from a variety of sources, including grants, general fund revenue, and the issuance of state and municipal bonds. Indirectly, taxes can also be used by a government entity as a means of raising funds the public can invest in the acquisition of public access or working waterfronts. A land gains tax, real estate transfer tax, impact fees, or tax increment financing can all be explored for these purposes.
Planning	Local governments can use comprehensive plans, including waterfront master plans, harbor management plans, and special area management plans, to incorporate provisions to preserve and plan for the needs of working waterfronts.

Zoning	Zoning may be used to help fully realize any working waterfront goals, especially if those goals have been clearly articulated in local comprehensive plans. For example, zoning may help ensure that water-dependent uses, such as marinas, maintain priority and that other authorized uses, such as commercial spaces, are compatible. For example, Portland, Maine has worked hard to preserve its working waterfronts through zoning that ensures compatibility of uses located on the piers and the city waterfront, while being sensitive to the long-term operation and maintenance needs of pier owners as fishing in the Gulf of Maine has declined. (www.wateraccessus.case_study.cfm?ID=32)
Taxation	Impacts of high waterfront taxes can be mitigated through changes in tax policy that provide incentives for maintaining working waterfront access or protection. For example, a change in tax policy to an ad valorem, or "current use," tax that assesses working waterfront property based on the value of land as it is currently being used can help communities retain water-dependent business that may be struggling to pay property taxes assessed on the fair market value or "highest and best use" of the property.
Community/Stakeholder Engagement	Working waterfront stakeholders in any given community are those who are most affected by changes to the waterfront. As such, their engagement and participation is critical in visioning, planning, and implementing actions along the waterfront. Without the stakeholders at the table, initiatives are much less likely to succeed. The Middle Peninsula Planning District Commission in Virginia, for example, established the York River Use Conflict Committee to gain a better understanding of existing uses and conflicts along the York River and inform the development of policy recommendations.
Category	Tools
	(www.wateraccessus/case_study.cfm?ID=38)
Mapping, Inventory, Study	To clearly delineate their programs and policies, Decision and Policymakers must gather information about their working waterfronts. North Carolina and Alabama, for example, established legislative study committees in response to public concerns regarding loss of traditional working waterfronts. Maine and other states have inventoried and mapped working waterfront land (including ownership patterns), providing for the first time a comprehensive understanding of the status of working waterfront access and a baseline for tracking change.
Land Conservation, Transfer, Acquisition	Sometimes the most effective means of protecting or enhancing a working waterfront is to buy the property. A local government, for instance, may choose to purchase a dock or marina to ensure continued public use and access. Private owners, nonprofit organizations, and government agencies can form public/private partnerships to pursue the purchase and acquisition of working waterfront property and interests.
Private Agreements	Although a government decision-making body cannot require private entities to enter into contracts, policy can be crafted providing incentives for agreements that support working waterfronts. These can be implemented through other tools identified above, such as zoning. Additionally, local and state governments also own working waterfront infrastructure and can enter into private agreements like any other private land owner.

Table 3: Waterfront Users, and Working Waterfront Tools for Waterfront Users

Many who rely on access to working waterfronts for their livelihood or other activities do not have a guaranteed right to that access. Working waterfronts can be publicly owned, managed by a quasi-public entity like a port authority, or privately owned. Competing, and at times conflicting, demands on waterfront space can result in the loss of access for traditional waterfront activities and water-dependent uses. Loss of access frequently impacts the user more than the landowner.

ATTACHMENT 1 CONT.

Lacking ownership interest in their working waterfront and the direct ability to make laws, change zoning, or other regulatory decisions means that waterfront users have the fewest tools at their disposal. However, they are often key partners in the implementation of working waterfront initiatives. Displacement of waterfront users is frequently the catalyst for communities to come together and figure out how to protect land usage and access.

Category	Tools
Policy and Regulation	Working waterfront users can have considerable influence on local and state policies and regulations like tax or policy incentives for waterfront landowners that grant preferences to working waterfronts. In addition, many waterfront users are businesses that require access to the water, and often make important contributions to the local economy and character of coastal communities.
Financing	For many users of working waterfront infrastructure, tools for financing capital improvements or ongoing operations and maintenance costs are not directly applicable. Users, for instance, cannot get a loan or a grant to make an investment on somebody else's property. Working waterfront users, however, frequently help finance the ongoing viability of the infrastructure they use through the payments of taxes, fees, and rent. By entering into leases or other business arrangements, waterfront users may be able to help provide the financing needed to keep the infrastructure operational. In addition, many public financing programs require a commitment from the waterfront landowner to support water-dependent uses for a specific period of time. Users may also influence the funding for public financing through the provision of stakeholder input, or by advocating for a specific appropriation, bond financing, or dedicated revenue.
Planning	Waterfront users can be important participants in planning processes. This is true whether policymakers are developing comprehensive land use plans, harbor management plans, special area management plans, or engaging in marine spatial planning. Some strategies, like development of business recruitment and growth management plans, can be quite focused on the needs of working waterfront users. Concerns about losing a historic industry often drive these planning processes. For example, in Gloucester, Massachusetts, the comprehensive planning process helped identify issues facing waterfront users and provided a forum for negotiating compromises that allow continued access to the working waterfront.
Zoning	Waterfront users are often impacted by zoning decisions. Changes in the economic condition of the working waterfront can cause waterfront landowners to seek changes to or exemptions from zoning ordinances that may shift or displace traditional uses. The public process around zoning decisions gives waterfront users a chance to participate in the decision-making process and contribute to the development of solutions that work for the community, users, and landowners.
Taxation	Waterfront users often indirectly benefit from tax incentives for working waterfronts. Tax programs, including current use taxation, property tax abatement and other tax incentives,
Category	Tools
	can help landowners maintain working waterfronts on their property. This in turn ensures continued access for water-dependent uses. Waterfront users also support working waterfronts through tax payments, which are often the revenue source for public financing of working waterfront initiatives.

ATTACHMENT 1 CONT.

Community/Stakeholder Engagement	Waterfront users are often the most identifiable stakeholder in a community's working waterfront. Users can influence the local and state decision-making and policy processes by utilizing community and stakeholder engagement tools like coalition-building and forming partnerships.
Mapping, Inventory, Study	Some inventories, mapping projects, or studies may come from and be conducted by users or groups working closely with working waterfront users. Others may emerge as part of a public process. Participation in mapping, working waterfront inventories, and other studies can be an extremely important way to influence decisions being made by others about working waterfronts.
Land Conservation, Transfer, Acquisition	Waterfront users in some communities have purchased development rights, easements, covenants, or otherwise placed restrictions on properties they rely on to increase the likelihood of continued water access. Waterfront users are at a high risk for displacement around the time a working waterfront is being transferred or sold. They can work with the sellers, land trusts, and the community to acquire the property for the benefit of the broader community.
Private Agreements	Private arrangements between the landowner and user can help ensure that specific users or a community of working waterfront users maintains water access. Formal private agreements like leases, private use agreements, or other contracts, can provide revenue for the landowner and certainty for the user. Informal arrangements that allow access across private property can also be important; however, many coastal communities have seen that, as pressures on landowners increase, users of working waterfronts are likely to see changes to or the ending of these informal arrangements. Users with informal agreements are particularly at risk for displacement when a property is transferred, particularly if the new owner does not have a connection to those working waterfront users. In any private agreement, a tangible benefit to the landowner will help fortify the agreement, should it need to go before the court.

ATTACHMENT 1 CONT.

ORDINANCE NO. 207

AN ORDINANCE TO RESTRICT FURTHER DEVELOPMENTS AND USES BETWEEN BEACH STREET AND TARGET ROCK TO THOSE PRIMARILY SERVING LICENSED COMMERCIAL FISHING OR RECREATIONAL FISHING

The people of the City of Morro Bay do ordain an ordinance relating to the restriction of further developments and uses between Beach Street and Target Rock to those primarily serving licensed commercial fishing or recreational fishing as follows:

Municipal Code Section 17.36.020C. The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or for any new restaurant, cafe, gift shop or other retail establishments serving the general public, and any existing such uses shall hereafter be considered nonconforming and shall not be expanded or enlarged.

I, BONITA KAY MURRAY, Deputy City Clerk of the City of Morro Bay, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by a majority vote of the electors voting in the special municipal election held in the City of Morro Bay on the 2nd day of June, 1981.

DATED: June 8, 1981


BONITA KAY MURRAY, Deputy City Clerk



AGENDA NO: C-1

MEETING DATE: August 16, 2016

Staff Report

TO: City of Morro Bay Planning Commission **DATE:** 08/10/16

FROM: Scot Graham, Community Development Director

SUBJECT: Measure “D” Discussion/Study Session in support of possible preparation/adoption of a future interpretation memorandum as it relates to the requirements of the Measure D area.

RECOMMENDATION

1. Review the staff report and related materials, discuss and provide direction to staff

BACKGROUND

The Planning Commission recently raised the question about how we might go about better defining what is meant by the language in Measure “D”. The resulting discussion brought about identification of Measure D as a future agenda item.

Concern regarding how the language in Measure “D” has been interpreted overtime has been an ongoing issue since its inception through voter approval by the Citizens of Morro Bay on June 2, 1981.

Measure “D” 2008

The Council, back in 2008, discussed placing an initiative on the November 2008 General Election to either repeal or amend Measure “D”. Ultimately the Council decided to postpone the decision on amending or repealing Measure “D”, and instead direction was provided to staff to pursue additional stakeholder input and then to return to Council with the results of those efforts. It is unclear if this item was ever brought back for consideration by Council, but in searching through City records it appears that it was not.

Measure “D” 20012/2013

Back in April 23, 2013 the Council and Planning Commission held a joint meeting where Measure “D” again surfaced as a topic of discussion. The consensus between the Planning Commission and Council was that the intent behind Measure “D” was to preserve the area for the commercial fishing industry and that this was a topic worthy of discussion at the Planning Commission level, where stakeholder input could be gathered and recommendations brought back to Council for better defining what was allowed

Prepared By: SG Dept Review: SG

in the Measure “D” area.

In looking through the record it does not appear that the subject was ever agendaized for Planning Commission consideration, but instead the Harbor Advisory Board (HAB) picked it up in September of 2013. The agenda and minutes for the September 5, 2013 Harbor Advisory Board meeting can be found at the following link: <http://www.morrobayca.gov/archive.aspx>.

The HAB’s discussion centered on developing potential definitions for portions of Measure “D” to help clarify the language of the measure. Specifically, the Motion included the following:

MOTION: Chairman Eckles moved that the Harbor Advisory Board recommend to City Council that the City develop a policy statement defining passenger for hire and sport fishing as it pertains to Measure D, and to urge the City toward conservative interpretation to favor the commercial fishing industry and strict enforcement of Measure D.

Discussion by the Board. Ms. Meissen said she thought the first part of the Motion would not have great utility in helping the Harbor Director make decisions on what types of businesses are allowed in the area under Measure D, such as the Stand-Up Paddle business. She said that she really liked the second part of the Motion and anything that will help support our local fishermen.

Vote: The Motion was seconded by Mr. Luffee and passed with a vote of 5 to 1, with Ms. Meissen voting no.

It does not appear that the above noted action by the HAB ever resulted in additional action or direction to or by Council.

DISCUSSION

The intent behind Measure “D” is to limit development and uses, within the Tidelands Trust lease site area between Beach Street and Target Rock, to those catering predominately to licensed commercial fishing operations or non-commercial recreational fishing activities.

The language of Measure D follows:

Zoning Code Section 17.36.020:

The City shall not grant any permit, authorization or other approval of any State owned tidelands subject to City lease between Beach Street and Target Rock, unless such development or use is primarily for the purposes of serving or facilitating licensed commercial fishing activities, or noncommercial recreational activities fishing activities, or is clearly incidental thereto. For the purposes of illustration only, and not by way of limitation, no approval shall be granted for any new passenger for hire boats or supporting facilities, or any new restaurant, café, gift shop or other retail establishment serving the general public, and any existing such uses shall hereinafter be considered nonconforming and shall not be expanded or enlarged.

The language is somewhat vague and the first sentence is really the only operational portion of the Measure. The second sentence indicates that it is for “Illustration only” and is thus not binding, although it does help somewhat in trying to define what is meant by the measure.

Chairperson Tefft, provided staff with five (5) questions pertaining to the meaning of the measure and it seemed as good a place to start as any. There may be other questions that the Commission is interested in addressing or Commissioners may have similar concerns as those noted but different solutions, options or ideas on how to address the questions. Again, these questions are provided to help jump start the conversation. Each Questions is followed by a staff comment section:

Question 1

In the phrase "*licensed commercial fishing activities or noncommercial recreational fishing activities*", does the adjective "licensed" apply only to "commercial fishing activities" or does it apply to "noncommercial recreational fishing activities", as well? In other words, does this phrase mean:

- a.) *Licensed commercial fishing activities or licensed noncommercial recreational fishing activities* (e.g., sportfishing), or
- b.) *Licensed commercial fishing activities or any noncommercial recreational fishing activities* (e.g., sportfishing, fishing from private boats, fishing from piers)?

It is notable that, in common English usage, when two nouns separated by the word "or" are preceded by an adjective, the adjective typically applies to both nouns. For example:

"Diners may choose from broiled halibut or cod."

"The space will be planted with a 15-gallon maple or oak."

Common grammatical usage notwithstanding, the Planning Commission should attempt to clarify the actual intent of Measure D and to provide a better-defined statement of the types of activity that must be served or facilitated by new development in this area.

Staff Comment Question 1

The question as to what is meant by "noncommercial recreational fishing activities", seems to be one that has come up regularly over time. In some instances, there is testimony in the record that suggests the original intent behind this section of Measure "D" might have been to allow sport fishing boats. This has also been one of the sections regularly suggested for amendment.

Question 2

What is encompassed within the concept of "*serving or facilitating*"? In many instances, the manner in which a proposed development will serve or facilitate the commercial fishing industry will be clear. Some examples that would appear relatively straightforward include docking sites for commercial fishing boats and fish off-loading and processing facilities. In other cases, however, the facilitative relationship between a development proposal and commercial fishing may be less direct. Specifically, would the following represent valid instances in which the commercial fishing industry is served and facilitated by development, as required by Measure D:

- a.) *Development that is unrelated to fishing but which financially supports a commercial fishing enterprise* – Consider, by way of example, the following:

- The owner of a commercial fishing boat docked in Morro Bay is unable to meet expenses (mortgage, dock fees, salaries, maintenance, *et al.*) with the revenues generated by fishing. He proposes to open a pancake house within the area subject to Measure D, with the condition that 75% of the profits generated by the pancake house will be devoted exclusively to the upkeep, maintenance, and continued operation of the fishing vessel. Is this proposal consistent with Measure D?
 - The holder of both a landside and water lease in the area encompassed by Measure D
-

proposes to build a boutique hotel on the landside site. As a condition of approval for this development, the applicant agrees to build 12 docking slips on the water lease and, in anticipation of profits to be made from the hotel, to rent these slips to commercial fishing vessels at a rate 25% lower than that charged at City-owner docks. Does this proposal “serve and facilitate” the commercial fishing industry, as required by Measure D?

- b.) *Development that does not directly serve or facilitate commercial fishing but which raises public awareness of our local fishing heritage* – For example, a maritime museum or a theater that shows documentaries about the commercial fishing industry.
-

Staff Comment Question 2

We recently received some inquiries that are somewhat related to this item. More specifically, the inquiry centered on an unofficial proposal to operate a boat-vacation rental or (Botel) in the Measure D area.

Question 3

To what degree is the approval of proposed projects within the area covered by Measure D constrained by the requirement that “*such development or use is **primarily** for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities*”?

Does this requirement mean that the City cannot approve a development which serves both fishing and general boat owners unless the service to commercial vessels is greater than that afforded to recreational boats? For example, would the “primarily” provision preclude a boat haul-out facility unless more than 50% of vessels to be hauled are commercial fishing boats or prohibit a new fuel dock unless service is denied to pleasure boats?

Staff Comment Question 3

This issue would likely only come in to play if the haul out facility were on the water side of the Embarcadero. The current location identified for a possible boat haul out facility is the Triangle Lot on the opposite side of the Embarcadero, outside the Measure “D” area.

Question 4

What is the significance of the fact that Measure D does not include language that restricts its impact to only approvals required for new development? An intuitive interpretation of this omission would be to conclude that Measure D does not allow for the “grandfathering” of land uses that fail to meet the test of “*serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities*”. In other words, Measure D appears to require that land uses which do not serve or facilitate the fishing industry be disallowed whenever the City has discretion to do so (i.e, whenever a City permit, authorization, or tidelands lease agreement is under consideration), regardless of whether or not such non-compliant land use currently exists at the site or has existed there in the past. What other interpretations can reasonably be made of this clause?

In a related question, if a structure that houses nonconforming land uses is demolished and a new structure is erected at the site, can the land uses which existed in the demolished building be considered to be “continued” in the new structure, or must all uses in the new building be considered to be “new” uses? Likewise, if a “*passenger for hire boat*” is removed from docks within the Measure D area, should this use be considered “discontinued”? Can such a vessel be replaced with another “*passenger for hire boat*”, or would such an action represent a “new” use? Under the terms of Zoning Ordinance 17.56.130, does it matter if such replacement occurs after a period of six months has elapsed?

Staff Comment Question 4

The recently approved Fowler lease site landside development removes Dockside 3 and places the restaurant square footage within the new waterfront building. Dockside 3 is considered nonconforming related to use, but we were able to relocate the restaurant space, so long as the seating/restaurant area was not expanded. As we were taking this lease site proposal through the approval process, we inquired with Joe Pannone, City Attorney, and he agreed that based on how our nonconforming ordinance is written and taking into consideration the language of Measure D, it was possible to preserve the existing nonconforming use, so long as it was not expanded.

Question 5

Measure D states specifically that *"no approval shall be granted for any new passenger for hire boats or supporting facilities, or for any new restaurant, café, gift shop or other retail establishments serving the general public"*. This restriction, however, is qualified by the phrase *"for purposes of illustration only, and not by way of limitation"*. Does the qualifying phrase provide the City with any latitude with respect to consideration of the listed uses?

Staff Comment 5

I believe the question here is a little more straight forward, given the "for purpose of illustration only" language would typically mean that it is not binding. Although, I would again note that the language following the statement does help define what is allowed in the Measure D area and it would not likely be a good idea to allow uses that directly controvert what is suggested. The point to take away here is that based on the "illustration only" language, the Commission has much more leeway in defining what is meant or allowed by this section.

CONCLUSION

The expectation or desire from this discussion is to emerge with some general direction from the Commission regarding interpretations for allowed uses/development in the Measure "D" area, keeping in mind the intent behind the measure is to preserve the Commercial Fishing industry in the City. I would hope to take input from the Commission and to start forming a policy document that supports and helps define what is allowed on this area. Once the PC finalizes the Draft document, I envision presenting it to the Harbor Advisory Board and then City Council.

Current Application of Land Use Requirements of Measure D

- Uses permitted by Measure D are those related to licensed commercial fishing and licensed non-commercial recreational fishing (i.e., sportfishing). Land uses or waterside facilities related to other forms of recreational fishing, such as pier fishing or spearfishing, are not allowed.
- Land uses prohibited by Measure D which were in existence at the time Measure D was adopted are considered nonconforming uses and are permitted to remain under the provisions of Chapter 17.56 of the Morro Bay Municipal Code. Since this chapter contains no requirement for the abatement of nonconforming uses, these pre-existing land uses may remain indefinitely, so long as they remain in continuous operation.

The permissibility of such a nonconforming use is linked to the site, rather than to a specific building or piece of equipment. Consequently, a restaurant could be relocated from one existing building to another or from an existing building to a proposed structure. and such relocation would constitute a continuation of the nonconforming use, rather than a new use. Likewise, a party boat could be replaced with a different party boat berthed at the same lease site without violating Measure D.

For the sake of clarity, several provisions of MBMC Chapter 17.56 should be noted:

- 17.56.100.A1 – *“Nonconforming use may be replaced with another nonconforming use in the same or in a more restricted classification as determined by the planning commission and subject to first obtaining a conditional use permit, provided that the planning commission finds that the new use is more conforming to the underlying zone than the previous nonconforming use.”*

This provision appears to indicate that a pre-existing use that does not conform to Measure D could, under some circumstances, be converted to a different nonconforming use without violating the terms of Measure D.

In this circumstance, however, the planning commission would have the authority to require eventual abatement, as provided in Section 17.56.100.B: *“In granting a conditional use permit to allow a non-conforming use to be replaced with another nonconforming use in a more restrictive classification, the planning commission may establish an amortization schedule for the nonconforming use by setting a date after which the nonconforming use must be discontinued or replaced with a conforming use.”*

- 17.56.130 – *“No nonconforming use may be resumed, reestablished, reopened or replaced by any other nonconforming use after it has been abandoned or vacated for a period of six months.”*

While it is generally possible, under certain circumstances, for nonconforming uses to be enlarged or expanded, this is specifically prohibited for pre-existing land uses that are not consistent with Measure D.

- Land uses which would otherwise be prohibited by Measure D but which are essential to the financial viability of a *bona fide* commercial fishing or sportfishing business are considered to serve or facilitate the parent enterprise, and are, therefore, permissible. Such subsidiary uses, however, must, however, be directly related to the commercial fishing or sportfishing industry (e.g., fish market, tackle shop) or must be water-dependent (e.g., kayak rentals), so as not to detract from the maritime character of the Measure D area.
- A land use is deemed to be *“primarily for the purposes of serving or facilitating licensed commercial fishing activities, or non-commercial recreational fishing”* if it provides products

ATTACHMENT 3

or services that are of primary importance to these industries. The term “primarily” does not require that a majority of the persons or businesses served be engaged in commercial fishing or sportfishing, nor must the majority of the firm’s income be derived from these sources.

- New land uses which are specifically prohibited by Measure D will not be approved or permitted, regardless of whether they provide financial support to a legitimate commercial fishing or sportfishing business. These include:
 - Passenger for hire boats or supporting facilities
 - Restaurant or cafe
 - Gift shop or other retail establishment serving the general public
- Current lease agreements for properties within the Measure D area do not contain specific language requiring compliance with Measure D or providing information concerning the City’s current interpretation of MBMC Section 17.36.020. It may be useful to consider including this material in the future.