



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

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

**Meeting - Thursday, September 6, 2018  
Veteran's Memorial Building - 6:00 P.M.  
209 Surf Street, Morro Bay, CA**

Ron Reisner, Chair	Marine Oriented Business
Lynn Meissen, Vice Chair	Member at Large
Mark Blackford	Member at Large
Gene Doughty	South Bay/Los Osos
Cherise Hansson	Waterfront Leaseholders
Dana McClish	Recreational Boating
Jeremiah O'Brien	Morro Bay Commercial Fishermen's Organization
Peter Griffin	Alternate to Jeremiah O'Brien (MBCFO)
Owen Hackleman	Alternate to Jeremiah O'Brien (MBCFO)

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CHAIR, ADVISORY BOARD MEMBER & LIAISON 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 the Harbor Advisory Board meeting held on August 2, 2018  
**Staff Recommendation: Approve minutes.**

B. REPORTS AND APPEARANCES

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

C. BUSINESS ITEMS

- C-1 Update from the Marine Services Facility/Boatyard Ad-Hoc Committee on Committee's Recent Activities  
**Staff Recommendation: Receive and file.**
- C-2 Update from the Finance & Budget Ad-Hoc Committee on Committee's Recent Activities  
**Staff Recommendation: Receive and file.**
- C-3 Report from the Eelgrass Ad-Hoc Committee on Committee's Recommendation(s) Regarding the August 2018 Morro Bay Conceptual Eelgrass Plan by Anchor QEA  
**Staff Recommendation: Receive oral report and recommendation from the Eelgrass Ad-Hoc Committee on the Morro Bay Conceptual Eelgrass Plan report received from consultant Anchor QEA, and make recommendation(s) to the City Council on next steps for creation of a Morro Bay-specific eelgrass mitigation plan based on the Anchor QEA report.**
- C-4 Input on the Harbor Department Lease Management Policy Update Process, and Nomination of Two Harbor Advisory Board Members to a Serve on a Lease Management Policy Update Group  
**Staff Recommendation: Provide staff input on the areas of the Lease Management Policy as-outlined in this report, and nominate two Harbor Advisory Board members to serve on a future Lease Management Policy update group.**
- C-5 Oral Update and Question/Answer on Status of Lease Sites 37W (Meyer's Morro Bay Marina), 69-70/69W-70W (Morro Bay Aquarium), 90/90W (Otter Rock Café) and 141 (United States Coast Guard)  
**Staff Recommendation: Receive and file.**

D. DECLARATION OF FUTURE AGENDA ITEMS

Pending items previously declared:  
Goals and Objectives – Working Waterfront Designation  
Measure D  
Explore Benefits of Becoming a Harbor or Port District  
Wind Energy Generation off the Coast of Morro Bay  
Creation of an Embarcadero Business District to Fund Harbor Infrastructure  
Review of TBID Assessment funding

E. 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.morrobayca.gov](http://www.morrobayca.gov). 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.

MINUTES-MORRO BAY HARBOR ADVISORY BOARD  
MEETING – August 2, 2018  
VETERAN'S MEMORIAL HALL - 6:00 P.M.

AGENDA NO: A-1

MEETING DATE: September 6, 2018

PRESENT: Ron Reisner HAB Chair  
Lynn Meissen HAB Vice-Chair  
Owen Hackleman HAB Member  
Gene Doughty HAB Member  
Dana McClish HAB Member

STAFF: Eric Endersby Harbor Director  
Lori Stilts Harbor Business Coordinator

ESTABLISH QUORUM AND CALL TO ORDER

<https://youtu.be/fGS9liZhT-w?t=51s>

The meeting was called to order at 6:01 p.m., with a quorum present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CHAIR AND ADVISORY BOARD MEMBER ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/fGS9liZhT-w?t=2m20s>

Board Member Doughty said there are still anchovies in the bay along with a few halibut, typical summer in Morro bay.

Vice-Chair Meissen announced the 10th annual Zongo Yachting Cup coming up on Saturday August 11, 2018. The Cup is open to sail, power and paddle craft. The Cup starts in Morro Bay and ends at Port San Luis. For more information go to: <http://www.mbyc.net/zongo-yachting-cup/> or call Paul Irving at 805-441-3344.

Board Member McClish stated there is continued effort to get final occupancy for the Maritime Museum building, possibly by the end of September, just in time for their grand opening which is the week before Harbor Festival. A Navy anchor is going on display in front of the building.

PUBLIC COMMENT

<https://youtu.be/fGS9liZhT-w?t=6m59s>

The public comment period was opened.

Bill Martony, Morro Bay resident, asked if there will be public comment for item C-6. Chair Reisner confirmed that there would be. Mr. Martony stated lease site 34W is in front of his property and would like to know when the RFP would be going out along with lease sites 35W-36W. Mr. Martony stated that site 34W is in need of repair and would like to reattach it to the private property, which he owns.

Joan Solu, Morro Bay resident and Morro Bay Historical Society (MBHS) Board member and Susan Stewart, Morro Bay business owner, resident, and MBHS volunteer gave a pre-statement on the MBHS's first historic preservation project; the "iconic" boat building currently operating as Dockside 3. The MBHS would like to use the boat building and possibly share the space with the Morro Bay Visitor Center and relocate it in the south end of the Triangle lot close to the Maritime Museum. For more information or how you may get involved contact Ms. Solu at [solujoan@aol.com](mailto:solujoan@aol.com).

The public comment period was closed.

A. CONSENT AGENDA

<https://youtu.be/fGS9liZhT-w?t=17m51s>

A-1 APPROVAL OF MINUTES FROM THE HARBOR ADVISORY BOARD MEETING HELD ON, MAY 3, 2018

MOTION: Board Member Doughty moved the May 3, 2018 Harbor Advisory Board minutes be approved. The Motion was seconded by Board Member Meissen and carried unanimously, 5-0.

A-2 APPROVAL OF MINUTES FROM THE HARBOR ADVISORY BOARD MEETING HELD ON JUNE 7, 2018

MOTION: Board Member Doughty moved the June 7, 2018 Harbor Advisory Board minutes be approved. The Motion was seconded by Board Member McClish and carried 4-0, with Board Member Reisner abstaining.

B. REPORTS AND APPEARANCES

<https://youtu.be/fGS9liZhT-w?t=19m24s>

B-1 HARBOR DEPARTMENT STATUS REPORT

Harbor Director Endersby presented the staff report for B-1 and responded to Board Member inquiries.

Chair Reisner thanked Mr. Luffee and Mr. Maloney for their service on the Harbor Advisory Board and is hopeful there will be qualified candidates applying for the two vacated seats.

C. BUSINESS ITEMS

<https://youtu.be/fGS9liZhT-w?t=47m42s>

There was Board consensus to move item C-3 to the beginning of the Business Items.

C-3 UPDATE FROM THE EELGRASS AD-HOC COMMITTEE ON COMMITTEE'S RECENT ACTIVITIES AND REVIEW, INPUT AND RECOMMENDATION OF ANCHOR QEA'S DRAFT MORRO BAY CONCEPTUAL EELGRASS PLAN

Director Endersby presented the staff report for C-3 and gave a brief background for the need to create a draft Morro Bay Conceptual Eelgrass Plan.

Committee Chair Meissen stated the committee did meet to discuss the Eelgrass Draft Plan and invited Mr. Malone up to speak in more depth on the plan.

Jack Malone, Anchor QEA, LLC provided background of existing eelgrass mitigation plans currently used on the California Coast and spoke to impacts eelgrass can cause with waterfront projects in the Morro Bay Harbor and what the City's practical options are to move forward to manage and mitigate eelgrass in partnership with the Morro Bay National Estuary Program.

There was Board discussion to have Anchor QEA reach out to the primary regulatory agencies to get initial feedback on the draft eelgrass plan as a necessary first step.

Committee Chair Meissen stated NEP will be having their next Board meeting in September where Lexi Bell will bring the draft plan to her board for discussion on their level of commitment, if any, in joining the City to implement the plan.

Discussion and questions by the Board.

Chair Reisner requested Anchor QEA to draft a letter to the City with process recommendations on moving forward and where in that process Anchor would be involved.

Public comment period for C-3 was opened and closed with no comments.

C-1 UPDATE FROM THE MARINE SERVICES FACILITY/BOATYARD AD-HOC COMMITTEE ON COMMITTEE'S RECENT ACTIVITIES

<https://youtu.be/fGS9liZhT-w?t=1h36m18s>

Committee Chair McClish stated there is nothing to report.

Board Member Meissen inquired if the closure of the Morro Bay Boat Yard and the long waiting list at the Port San Luis Boat Yard would affect the findings for the need of a boat yard in the marine services facility feasibility report?

Director Endersby stated the information would be a factor a consultant would use to determine the feasibility for a boat yard.

C-2 UPDATE FROM THE FINANCE & BUDGET AD-HOC COMMITTEE ON COMMITTEE'S RECENT ACTIVITIES

<https://youtu.be/fGS9liZhT-w?t=1h39m13s>

Public comment period was opened and closed with no comments.

Chair Reisner stated there is nothing to report at this time.

C-4 UPDATE FROM THE MARINE SANCTUARY AD-HOC COMMITTEE ON COMMITTEE'S RECENT ACTIVITIES

<https://youtu.be/fGS9liZhT-w?t=1h39m25s>

Chair Reiser stated there is nothing to report and propose to keep the committee intact, however, unless there is new information to report on, to remove this item from the standing agenda.

There was Board consensus to remove this item from the agenda until further notice.

C-5 UPDATE FROM THE WORKING WATERFRONT AD-HOC COMMITTEE ON COMMITTEE'S RECENT ACTIVITIES

<https://youtu.be/fGS9liZhT-w?t=1h40m4s>

Board Member Doughty suggested to remove this item from the agenda as well until further notice, there was Board consensus.

C-6 ORAL UPDATE ON STATUS OF VARIOUS WATERFRONT LEASE SITE PROJECTS AND NEGOTIATIONS, LEASE SITE MANAGEMENT ACTIVITIES AND HARBOR DEPARTMENT CAPITAL PROJECTS

<https://youtu.be/fGS9liZhT-w?t=1h40m31s>

Public comment period was opened.

Bill Martony, Morro Bay resident stated he was interest in the most southern lease sites as to when the RFP's would be coming out, 34W and 35W-36W.

Public comment period was closed.

Director Endersby presented the staff report for item C-6 and answered Board member questions.

D. DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/fGS9liZhT-w?t=2h52m16s>

There were no additional items declared or removed.

Pending items previously declared:

Goals and Objectives – Working Waterfront Designation  
Measure D

Explore Benefits of becoming a Harbor or Port District

Wind Energy Generation off the Coast of Morro Bay

Creation of an Embarcadero Business District to Fund Harbor Infrastructure

Review of TBID Assessment Funding

E. ADJOURNMENT

This meeting was adjourned at 8:52 p.m. The next Regular Meeting will be held on Thursday, September 6, 2018 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by,

Lori Stilts  
Harbor Business Coordinator



AGENDA NO: B-1

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 30, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Harbor Department Status Report

### **RECOMMENDATION**

Receive and file.

### **DISCUSSION**

#### **Harbor Advisory Board Vacancies:**

On August 28, Cherise Hansson was recently appointed by the City Council to fill the vacant Waterfront Leaseholder seat, and Mark Blackford to fill the Member-at-Large seat. Welcome Cherise and Mark.

#### **Recent Department Activity:**

Harbor Patrol statistics for the month of August 2018 were 11 emergency responses, 111 calls for service, 47 assists of other agencies, 25 enforcement contacts, and 4 weather warnings.

Harbor Patrol wrapped up a busy summer with the Morro Bay and Cayucos Junior Guards. Harbor Patrol gave dockside tours and boating safety talks to more than 300 kids as well as providing 6 days of boat operations training. Boat operations training included multiple boats underway teaching the Junior Guards important safety and rescue techniques. Discussion of weather, boating law and local area familiarization was covered.

On August 3rd Harbor Patrol was dispatched to the Rock to assist Police with a found 5-year-old girl. The juvenile was left alone at the beach by her grandmother for several hours. Lifeguards were alerted to the situation and called for help. When the grandmother returned she was counseled by PD about the severity of her actions and the possibility of arrest.

Harbor Patrol and Lifeguards participated in National Night Out on August 7th. This is a community event promoting police awareness and partnerships across the United States.

On August 11th, Harbor Patrol provided safety and support to the memorial service for a Cayucos Lifeguard that passed away. Alex "Skinny" Taylor participated in the Morro Bay Lifeguards USLA Academy and was a positive role model to many Junior Guards. He is truly missed.

On August 14th, Harbor Patrol was first on scene to a rescue call in Cayucos at 10th St access for a boogie boarder in distress. HPO Jacobs deployed from boat, to swim one unconscious male approximately 150 yards off shore to the beach. Cayucos Fire personnel provided CPR on the beach and loaded into ambulance.

Prepared By: EE

Dept Review: EE

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

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

August 19th, Harbor Patrol assisted Coast Guard with an emergency tow off 24th street in Cayucos. A 21' boat was dragging anchor just outside the surf. Harbor Patrol towed the boat back to Morro Bay and USCG provided a safety inspection. The vessel owners replaced battery and went back out fishing.

A capsized kayak was reported on August 24th with one person in the water off the North T Pier. HPO's pulled victim out of the water and retrieved her kayak. Transported to Coleman Beach but no medical attention was needed.

### **Recent City Council Activity:**

At a Special August 14 City Council meeting, Council adopted Resolution No 64-18, approving Consent of Landowner for the United States Coast Guard Station Morro Bay building expansion project proposal.

In addition, at the Special August 14 meeting, Council authorized the City Manager to execute an agreement with Revenue and Cost Specialist, LLC to update the City's comprehensive user fee study, cost allocation plan, development impact fee study and master facilities plan in amount not to exceed \$83,569.

At the regular August 28, 2018 City Council meeting, Council:

1. Approved Resolution No.66-18, authorizing the City of Morro Bay to Enter Into a \$25,584 Boating Safety and Enforcement Grant Contract with the State of California Department of Parks and Recreation, Division of Boating and Waterways for purchase of two rescue watercraft, rescue sled and trailer.
2. Adopted Resolution No. 68-18, approving Amendment #3 to the new master lease agreement with Boatyard LLC for lease site 89/89W ("The Boatyard"), and Amendment #1 to the new master lease agreement with Boatyard LLC for lease site 90/90W ("Otter Rock Café").
3. Approved the Harbor Advisory Board Council Goal Objective Work Plan Element for establishment of a boat dry storage yard in the "Triangle" parking lot.
4. Approved the issuance of a Request for Proposals for a Morro Bay Marine Services Facility and Boatyard Financial Feasibility Study, and reaffirmation of financial commitment to complete it.

### **Fishing Front:**

Changes to recreational groundfish fishing depths effective August 25, 2018. For more information go to <https://cdfgnews.wordpress.com/2018/08/15/changes-to-recreational-groundfish-regulations-effective-aug-25/>.

### **Upcoming Events:**

9/7/18 3rd Annual Taste of the Grove <https://avomargfest.com/taste-of-the-grove/>

9/8/18 Avocado & Margarita Street Festival <https://avomargfest.com/>

9/8/18 Baywood Lighted Boat Parade 6-9 PM at Back Bay Cafe

10/6/18 Jesse King Memorial Paddle Race

10/6/18 37th Annual Morro Bay Harbor Festival <http://www.mbf.com/>

10/26/18 Hero's Wine Walk <https://www.eventbrite.com/e/heros-wine-walk-tickets-49236021265>

Two tall Ships will arrive in late November for approximately 21 days. This year they are planning to tie up at the South T-Pier.

**Status of Pending HAB Recommendations:**

	<b>HAB Recommendation</b>	<b>Date</b>	<b>Status</b>
1	Staff draft letter to Council encouraging the City to pursue negotiating with State Parks the City assume both marina and café concessions.	5/7/15	<p>Staff's last contact with Parks indicated no Parks interest in giving up the café concession. Since that time, all of Parks' key personnel on the SPM have either retired or positions turned over. Staff's current thinking is we're at a "start-over" point with Parks to begin talks anew, and are acting accordingly before taking anything back to the Council.</p> <p>11/1/17. Staff have reached out to Parks to renew discussions.</p> <p>12/20/17. Spoke with office of Director for State Parks; tentative meeting set for week of January 8-12.</p> <p>2/13/18 Spoke with office of Director of Concessions office left message with assistant for our concession specialist to set up conference call. No response. 2/22/18 Called again left message. 2/23/18 new Parks concession specialist contacted department.</p> <p>4/23/18 Harbor Director email sent to Parks.</p> <p>4/27/18 Contacted Parks staff, discussions underway.</p> <p>5/17/18 Harbor Director met with Dan Falat, District Superintendent, regarding reviving discussions, putting concessions out to bid and prospects for City taking over operation and management of the marina.</p> <p><b>No new updates.</b></p>
2	Staff provide Council with modified sections of MBMC 15.24 (harbor sanitation) and develop environmental BMP's.	7/22/15	<p>Staff have incorporated this BMP effort into the ongoing Rules &amp; Regs/MBMC updating project.</p> <p>11/1/17. Work ongoing; tentatively scheduled to come to HAB Feb or March 2018.</p> <p>1/18/18. Review at HAB 2/1/18 meeting item C7.</p> <p>4/27/18 Pending Council consideration.</p> <p><b>No new updates.</b></p>
3	City Council to approve issuance of the final draft Marine Services Facility/Boatyard Request for Qualifications document.	2/2/17	<p>2/14/17. Council approved the release of a Request for Qualifications (RFQ) document as-proposed. RFQ is out, and responses due July 14, 2017.</p> <p>7/27/17. No responses to RFQ.</p> <p>8/3/17. HAB meeting to consider next steps.</p> <p>11/3/17. Put together a RFP for a financial feasibility study to go to Council for approval.</p> <p>12/1/17. Draft proposal in process for HAB review 2/2018.</p> <p>12/18/17. Tentatively on Council agenda for 1/23/18 to lay out scope of work and get authorization for a financial feasibility study.</p> <p>1/18/18. Discussing at HAB meeting 2/1/18 during item C1.</p>

			<p>4/27/18 Working on draft RFP to go to Council. Tentatively on 6/26/18 City Council agenda for consideration of issuance. Tentatively on 8/28/18 City Council agenda for consideration of issuance. <b>8/28/18 Council approved issuance of a financial feasibility RFP. RFP to be issues asap.</b></p>
4	City to use a consultant to update the cost allocation plan, if feasible, if not, then direct staff to do an internal check.	6/1/17	<p>Approved Council Goal Objective Work Plan Item – Internal “gut check” Goal 1(e). 11/2/17. On HAB agenda for process consideration. Staff/Committee analysis review calendar 2017. To new Finance Director January 2018. Consideration of findings into development of FY 18/19 budget. 1/18/18 Staff currently engaging in internal check. Staff met 3/2 with new Finance Director. Lighting issue “gut check” in Cost Allocation resolved in draft FY 18/19 budget. 4/13/18 issued RFP for Comprehensive Fee Study &amp; Cost Allocation Plan – closes 5/11/18. Multiple proposals received; have gone through initial staff review and evaluation. Interviews of top candidates pending in first half of June. Tentatively on 8/14/18 City Council agenda to award contract for comprehensive fee study. <b>8/14/18 Council authorized the City Manager to execute an agreement with Consultant to update the City’s user fees, cost allocation, and development impact fee study’s.</b></p>
5	City to share tax revenues that are collected in the Harbor fund (and not currently going to the Harbor Fund) and used for Harbor Capitol maintenance and improvements.	6/1/17	<p>Pending until a new Finance Director and City Manager are in place. 10/30/17. Per the SLC it is normal for these taxes to go into the City’s General municipal funds. 4/5/18 – Chair Reisner requesting City Manager to provide a memorandum on this item. <b>No new updates.</b></p>
6	City Council to include proposed eelgrass language into General Plan/Local Coastal Plan updates, and to review the proposed outline for the eelgrass policy to decide if the elements are appropriate.	6/7/17	<p>7/28/17. Consultant Anchor QEA is developing a proposal to review existing information and documentation, research typical projects that have eelgrass issues, interview NEP personnel, and meet with Eelgrass Ad-Hoc committee members to discuss Newport Beach management plan. 11/1/17. Staff engaged with Anchor on eelgrass proposal. 12/1/17. Update to HAB on 12/7/17 on revised consultant contract scope of work. 12/18/17. Draft eelgrass consultant agreement submitted to legal for review and approval. 1/18/18 executed contract with Anchor QEA. 4/27/18 Anchor QEA beginning project. 4/25/18 Eelgrass Ad-Hoc committee met with Anchor QEA reps in Morro Bay</p>

			Draft Anchor QEA eelgrass mitigation report on HAB agenda for consideration 8/2/18. 8/18 final Morro Bay Conceptual Eelgrass Plan report issued by Anchor QEA for ad-hoc and HAB consideration.
7	Incorporate Working Waterfront land area and uses into General Plan/Local Coastal Plan updates.  In General Plan/Local Coastal Plan updates, consideration be given to a list of uses provided, and that the Measure D area and its uses be incorporated into Morro Bay's Working Waterfront.	6/1/17	Tentatively on the July 11, 2017 City Council agenda for consideration with Measure D recommendation above. 7/27/17. City Council on 7/11/17 authorized PC subcommittee to jointly work with HAB ad-hoc committee on Measure D ambiguities and Working Waterfront policy language for consideration of incorporation into GP/LCP update process. 9/1/17. First joint HAB/PC subcommittee meeting to consider Measure D and Working Waterfronts scheduled for September 8, 2017, at the Community Center Studio room from 3:00-5:00 pm. 9/8/17. First joint subcommittee meeting held. General discussion and public input. Second meeting TBD, likely late October or early November. 12/18/17. 1/11/18 PC/HAB joint meeting, recommendations made to GPAC. 4/27/18 Pending GPAC action. No new updates.
8	Paid parking be established on and around the Embarcadero, and recommended list of issues to be addressed when considering establishment of same.	7/6/17	7/18/17 letter from HAB Chairman provided to Planning Commission and copied to City Council, Public Works Advisory Board and Community Development Director with HAB's recommendations. 10/9/17. Once CD Director gets additional input from PC, it will be brought to Council to obtain direction on parking initiatives. PC to the lead on policy development. 11/7/17. Discussed at the Planning Commission Meeting. 12/1/17. Per CD Director also discussed with PWAB and tentatively going to Council in Jan or Feb 2018 for direction. 12/19/17. Per CD Director PC and Council will be provided with HABs recommendations. 4/27/18. Pending consideration by PC and Council. No new updates.

**ATTACHMENTS**

1. Morro Bay Junior Guard Photos
2. Alex "Skinny" Taylor Memorial Service Photos



HARBOR PATROL









AGENDA NO: C-1

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 23, 2018

**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 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 Manager Review: \_\_\_\_\_

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



AGENDA NO: C-2

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 22, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Update from the Finance & Budget Ad-Hoc Committee on Committee's Recent Activities

### **RECOMMENDATION**

Receive and file.

### **BACKGROUND**

The Finance & Budget 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 Manager Review: \_\_\_\_\_

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



AGENDA NO: C-3

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 30, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Report from the Eelgrass Ad-Hoc Committee on Committee's Recommendation(s) Regarding the August 2018 Morro Bay Conceptual Eelgrass Plan by Anchor QEA

### **RECOMMENDATION**

Receive oral report and recommendation from the Eelgrass Ad-Hoc Committee on the Morro Bay Conceptual Eelgrass Plan report received from consultant Anchor QEA and make recommendation(s) to the City Council on next steps for creation of a Morro Bay-specific eelgrass mitigation plan based on the Anchor QEA report.

### **BACKGROUND**

Early this year, environmental and planning consultant Anchor QEA was retained by the City to provide eelgrass management planning support in the form of researching and reporting on a potential framework for an eelgrass comprehensive management plan (Plan) specific to Morro Bay that could balance Morro Bay's commercial and recreational uses with management of natural resources.

Anchor QEA met with the Eelgrass Ad-Hoc Committee in May to discuss their findings and work to-date, and to receive input from the committee, staff and stakeholders. In mid-July, a draft Plan was presented to staff, and a presentation by Anchor planned for the August Harbor Advisory Board (HAB) meeting. Anchor presented in August, which included the draft Plan being provided, and took HAB input.

In mid-August, a final Plan was presented staff, incorporating staff, ad-hoc committee and HAB input. That Plan is included with this report as Attachment 1.

### **DISCUSSION & CONCLUSION**

The Eelgrass Ad-Hoc Committee will be making an oral presentation on their recommendation for Plan disposition and next steps. It is recommended the HAB make a recommendation to the City Council regarding Plan next steps as well. Any position or recommendation by the HAB regarding Plan next steps will be forwarded to the City Council as-appropriate.

Finally, although the bulk of the Eelgrass Ad-Hoc committee's work is accomplished, staff advise the committee to remain a standing committee in order to advise and consent on Plan next steps, or other actions or activities deemed necessary or relevant.

Prepared By: EE

Dept Review: EE

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

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

**ATTACHMENT**

1. August 2018 City of Morro Bay Conceptual Eelgrass Plan report by Anchor QEA



August 2018  
City of Morro Bay Eelgrass Plan



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# Conceptual Eelgrass Plan

Prepared for City of Morro Bay

August 2018  
City of Morro Bay Eelgrass Plan

# Conceptual Eelgrass Plan

**Prepared for**  
City of Morro Bay  
595 Harbor Street  
Morro Bay, California 93442

**Prepared by**  
Anchor QEA, LLC  
27201 Puerta Real, Suite 350  
Mission Viejo, California 92691

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## ABBREVIATIONS

CCC	California Coastal Commission
CEMP	<i>California Eelgrass Mitigation Policy and Implementing Guidelines</i>
City	City of Morro Bay
CMP	comprehensive management plan
MBNEP	Morro Bay National Estuary Program
Mitigation Rule	USACE's 2008 compensatory mitigation regulations
Newport Beach Eelgrass Plan	<i>Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem-Based Management Approach</i>
NMFS	National Marine Fisheries Service
Plan	Morro Bay Eelgrass Mitigation Plan
RGP	Regional General Permit
USACE	U.S. Army Corps of Engineers

# 1 Introduction

The City of Morro Bay (City) must balance a variety of commercial, public, and recreational uses along the waterfront and in the bay with management of natural resources. The City's waterfront supports a variety of coastal-dependent uses including recreation, public access, commercial and recreational fishing, mariculture, public safety, education, and research. Morro Bay serves as an important harbor of refuge and is the base of operations for local and federal public safety operations by the Morro Bay Harbor Patrol and the U.S. Coast Guard. The bay also supports a wide variety of shore- and water-based public recreation.

Maintenance, renovation, or new development projects by the City or commercial tenants along the waterfront or in the bay undergo local, state, and federal review, and addressing potential impacts to eelgrass (*Zostera marina*) has become increasingly difficult and time consuming. Project proponents must navigate several levels of agency review and comply with environmental regulations and policies from multiple agencies. This report provides a summary of typical projects, important environmental regulations and policies pertinent to eelgrass, a conceptual plan to address typical eelgrass impacts in the bay, and potential next steps to develop and implement the plan.

## 2 Background

Typical waterfront projects include replacement of existing docks and associated infrastructure or renovation or construction of overwater structures such as walkways or gangways. These projects may result in changes in infrastructure configuration or increases in the size of structures to meet increased demand for slips or to comply with current navigation, safety, design standards, building codes, and access (such as the Americans with Disabilities Act) requirements. In some cases, design and access requirements may conflict with requirements to avoid and minimize environmental impacts, leaving project proponents in an untenable position.

In a typical year, several of the projects proposed along the Morro Bay waterfront have the potential to affect eelgrass by shading or direct removal. The potential impacts are typically small—less than 10 square meters—but any impacts to eelgrass are a source of concern because of its decline in the bay. Since 2007, eelgrass has decreased more than 90% in the bay. In 2007, mapping by the Morro Bay National Estuary Program (MBNEP) documented 344 acres of eelgrass in the bay, while surveys in 2013 and 2015 measured less than 20 acres of eelgrass (MBNEP 2017). Recent MBNEP surveys suggest that the eelgrass acreage has remained relatively unchanged since 2013. The causes of the decline in eelgrass are being investigated, and research suggests that the decline is likely due to multiple factors including excess sedimentation, increasing water temperatures, and lower levels of dissolved oxygen in the bay (MBNEP 2017). Eelgrass research in the bay, led by the MBNEP and Cal Poly, San Luis Obispo is ongoing, and substantial efforts are being made to understand the causes of the decline and potential opportunities and methods to restore eelgrass. However, the regulatory and resource agencies, including the California Coastal Commission (CCC), U.S. Army Corps of Engineers (USACE), and National Marine Fisheries Service (NMFS), remain very concerned about any potential impacts to eelgrass in Morro Bay.

Agency concerns combined with the complicated permitting process and eelgrass survey requirements have resulted in a high level of uncertainty, long timelines, and high costs for proposed waterfront development projects. In an attempt to avoid impacts to eelgrass, project proponents are often caught in a cycle of costly eelgrass surveys and project design changes. Typically, project proponents commission a reconnaissance-level eelgrass survey to support the permitting process, and then a more comprehensive and detailed pre-construction survey is required within 30 days of construction. As eelgrass beds shift or change in size naturally over time between surveys, the project proponent is forced to modify the project design to avoid the eelgrass.

While it is appropriate first to avoid impacts to natural resources before minimizing and finally mitigating for unavoidable impacts, because of the sensitivity regarding eelgrass in the bay, project proponents are pressured to avoid eelgrass impacts at all costs. Traditional permittee-responsible eelgrass mitigation, in which the permittee is responsible for developing and implementing a

mitigation plan and then monitoring and protecting the mitigation site, is viewed as undesirable by the agencies and expensive and risky by project proponents. Because there are no other eelgrass mitigation options available in Morro Bay, project proponents with waterfront projects with the potential to affect eelgrass find it very difficult and time consuming to obtain permits and may be forced to agree to perform permittee-responsible eelgrass mitigation with a low likelihood of success.

### 3 Eelgrass and Mitigation Regulations and Policies

A variety of local, state, and federal environmental regulations and policies pertain to eelgrass impacts and mitigation. The two most important policies and regulations are the *U.S. Army Corps of Engineers' Compensatory Mitigation for Losses of Aquatic Resources; Final Rule* (73 Fed. Reg. 19594) and the *California Eelgrass Mitigation Policy and Implementing Guidelines* (CEMP; NOAA 2014).

#### 3.1 Compensatory Mitigation for Losses of Aquatic Resources

Compensatory mitigation for projects requiring permits from the USACE under the Clean Water Act or Rivers and Harbors Act of 1899 is governed by the USACE's 2008 compensatory mitigation regulations (Mitigation Rule). The Mitigation Rule establishes standards and criteria for compensatory mitigation, including permittee-responsible mitigation, in-lieu fee mitigation, and mitigation banks. The Mitigation Rule describes requirements for all phases of compensatory mitigation, including development of mitigation plans and documentation, ecological performance standards, mitigation monitoring and management, and long-term mitigation site protection.

The Mitigation Rule states that a spatially appropriate approach to mitigation should be pursued in marine environments, to the extent practical. This approach emphasizes the importance of a landscape approach to aquatic resource functions in a changing environment and the habitat requirements of important species. Within the appropriate area, the Mitigation Rule presents a hierarchy of preference for mitigation, with mitigation banks the preferred approach, in-lieu fee programs the next preferred approach, and permittee-responsible mitigation the least preferred approach. Mitigation banks and in-lieu fee programs typically result in more successful mitigation through larger, more ecologically important projects. Both approaches rely on a sponsor to develop and implement detailed plans, monitor and manage the mitigation sites, and comply with reporting requirements. Significant time, expertise, and funding are required to establish mitigation banks and in-lieu fee programs. For marine areas in California, establishing a bank or in-lieu fee program would take several years and several hundred thousand dollars.

Permittee-responsible mitigation is viewed as riskier and less ecologically beneficial than mitigation banks and in-lieu fee programs because it relies on individual permittees to implement small mitigation projects on a case-by-case basis rather than relying on a large-scale programmatic mitigation approach. Permittee-responsible mitigation may be pursued in a regional approach and may include in-kind, on-site mitigation or off-site or out-of-kind mitigation. If a regional mitigation approach targeting the lost ecological functions is not practicable, the preference is typically for in-kind, on-site mitigation rather than off-site or out-of-kind mitigation. However, in many cases, in-kind, on-site mitigation may not be possible or may have a lower likelihood of success than off-site or out-of-kind mitigation. Because the goal of mitigation is to replace lost ecological functions, flexibility may be used in evaluating mitigation opportunities for individual projects.

## 3.2 California Eelgrass Mitigation Policy

Eelgrass management in California is largely driven by the NMFS's CEMP, which was finalized in October 2014. The CEMP provides policy guidance on all aspects of eelgrass mitigation, including survey methods and timing, regional mitigation ratios, mitigation options, in-kind mitigation site performance standards, and relevance to the USACE's compensatory mitigation regulations. The policy emphasizes no net loss of eelgrass habitat function in California and recommends that avoidance and minimization of impacts to eelgrass be pursued to the maximum extent practicable before mitigation for unavoidable impacts is pursued.

The CEMP states that NMFS supports the development of comprehensive management plans (CMPs) that protect eelgrass within the context of broader ecosystem needs and management objectives for a local area and that CMPs may be most appropriate where similar projects may result in incremental and recurrent impacts to a small proportion of local eelgrass populations over time. The CEMP provides examples of potential mechanisms for CMPs, including programmatic permits, special area management plans, harbor plans, or ecosystem-based management plans. Furthermore, the CEMP states that recommendations different from in-kind mitigation may be appropriate when a CMP provides local population-level protection to eelgrass. The CEMP advises that NMFS should be involved in development of CMPs. Two eelgrass CMPs have been developed in California following publication of the CEMP.

## 4 Existing Eelgrass Comprehensive Management Plans

The City of Newport Beach developed the *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem-Based Management Approach* (Newport Beach Eelgrass Plan), which was approved in 2015 (City of Newport Beach 2015). The plan relies on data from many years of biannual bay-wide eelgrass surveys that provide a long-term understanding of the local dynamics of eelgrass population changes in Lower Newport Bay and addresses impacts to eelgrass within a defined area where maintenance dredging may occur. The Newport Beach Eelgrass Plan is complemented by a maintenance dredging permitting program called Regional General Permit (RGP) 54 that delegates most management and oversight of routine maintenance dredging projects to the City of Newport Beach. The Newport Beach Eelgrass Plan is implemented through RGP 54, which provides an enforceable programmatic permit mechanism for addressing eelgrass management under the plan.

The Humboldt Bay Harbor Recreation and Conservation District recently released the *Humboldt Bay Eelgrass Comprehensive Management Plan* (Humboldt Bay Harbor, Recreation, and Conservation District 2017). This plan discusses the ecology of eelgrass in Humboldt Bay in detail and includes recent eelgrass survey data. The plan describes the recreational and commercial activities in Humboldt Bay and discusses the ways that they could potentially impact eelgrass. The standard regulatory process for evaluating potential impacts to eelgrass is described, and the plan includes a short set of questions to help project proponents to determine whether their project may affect eelgrass. The plan does not include a programmatic mechanism to address eelgrass impacts and mitigation, leaving project proponents responsible for their own eelgrass mitigation, if required. The recent eelgrass survey data included as part of the plan may help project proponents in the planning stages of projects, but standard surveys and mitigation pursuant to the CEMP are still required. The Humboldt Bay Harbor, Recreation, and Conservation District does not have a programmatic permit associated with its CMP like the City of Newport Beach does.

Even though Morro Bay's eelgrass population dynamics differ greatly from these other areas, their plans provide examples of site-specific management plans that have been developed pursuant to the CEMP. Development of eelgrass management plans requires technical studies and eelgrass survey data. To be effective, the plans must provide an effective programmatic approach to eelgrass mitigation so that project proponents are not forced to implement permittee-responsible mitigation for every project. While there is no "one-size-fits-all" CMP for all harbors and bays in California, given the relatively small size of typical projects and associated eelgrass impacts in Morro Bay, it may be possible to develop a focused eelgrass mitigation approach that would provide effective eelgrass mitigation options and a more streamlined regulatory review process.

## 5 Conceptual Eelgrass Plan for the City of Morro Bay

After discussions with City staff and stakeholders in Morro Bay, Anchor QEA has developed a conceptual approach to managing eelgrass mitigation. The conceptual approach would need to be reviewed by the City and stakeholders and modified as appropriate to best meet their needs and to be protective of eelgrass.

To increase the effectiveness of eelgrass mitigation in the bay, the City could work with the MBNEP, or other qualified organization, to develop a programmatic Morro Bay Eelgrass Mitigation Plan (Plan) that would include a variety of high-priority eelgrass restoration projects and activities. The restoration projects and activities in the Plan would be designed to provide the greatest ecological benefit to Morro Bay and a higher chance of success than permittee-responsible mitigation. The Plan would include sufficient detail about the projects to satisfy Mitigation Rule and CEMP requirements for eelgrass mitigation. The Plan would be developed in coordination with the resource and regulatory agencies so that it meets their needs as well as the needs of project proponents.

Project proponents would work directly with the MBNEP to identify appropriate restoration projects to offset the loss of eelgrass functions that would result from their projects. During the permit application process, project proponents would describe the potential eelgrass impacts and include correspondence with the MBNEP outlining the restoration projects that would be implemented to offset the impacts. Restoration project(s) would be selected to provide benefits commensurate with the potential impacts to eelgrass that may result from a development project. Project proponents would pay for implementation, annual monitoring, and management for the restoration projects that would be implemented by the MBNEP as mitigation for eelgrass impacts. To make the process efficient, a single annual monitoring report covering all the restoration sites used for mitigation could be prepared by the MBNEP. The report would describe the monitoring results for the individual restoration sites designed to provide mitigation for each development project and any adaptive management actions taken at the mitigation sites. Although the MBNEP would implement the mitigation projects, the project proponents would retain responsibility for success of the mitigation at the end of the 5-year monitoring period, and for funding remedial restoration activities if required to meet success criteria.

This approach would save project proponents substantial time and money because the Plan would be available and approved by the agencies prior to submittal of their applications. Project proponents would not need to develop their own individual mitigation plans for review and approval by the agencies, and they would not need to implement the projects on their own, within their own waterfront lease area. The likelihood of restoration project success would be increased because the projects would be identified and implemented by the MBNEP as part of their bay-wide restoration efforts. The Plan would support a holistic approach to eelgrass restoration in the bay that would be

more effective in mitigating loss of eelgrass functions than individual permittee-responsible mitigation projects. The Plan would also allow flexibility in implementing a variety of restoration projects and activities throughout the bay, rather than being restricted to small permittee-responsible eelgrass mitigation projects that may not be located in the most suitable locations.

The regulatory and resource agencies would be involved in development of the Plan, but it would likely need to be associated with a "project" to facilitate regulatory agency approval. For example, the CCC requires that plans or agreements be associated with a Coastal Development Permit for staff to present it to the Commissioners for approval. One option that would satisfy this requirement would be for the City to include the Plan with an application for a City project with the potential to impact eelgrass. The City would fund one of the Plan's restoration projects if required to mitigate for impacts to eelgrass and include the Plan and a discussion of the way that it would be used for other projects in Morro Bay. The USACE and Regional Water Quality Control Board would also likely accept this approach, and they have been amenable to reviewing and approving similar plans, even if they are not associated with a specific permit action. The Plan could also be implemented through a programmatic permit developed for typical, recurring projects in Morro Bay if the agencies and City agree that this is a better approach.

Prior to engaging the resource and regulatory agencies, the City and the MBNEP would need to define roles and responsibilities that maximize the value of the plan to the stakeholders. One way the City could facilitate success of the Plan would be to assist in funding annual or biannual bay-wide eelgrass surveys. These surveys would provide valuable information to agencies, researchers, and project proponents, who could use the survey data for project planning purposes. The surveys could be used to provide the annual restoration site monitoring data that would be required by the agencies to track project performance.

Simple, low-cost measures such as deploying eelgrass seed bags from docks or buoys could be implemented by project proponents as an additional restoration effort. Because the eelgrass seeds are dispersed by currents, it would be difficult to attribute eelgrass growth to a specific seed bag, but this method could contribute to the overall restoration of eelgrass functions in Morro Bay and would make the Plan more attractive to the agencies during their review. Including a range of restoration projects and activities in the Plan would provide options for project proponents and allow flexibility in addressing project-specific impacts. The Plan should include an adaptive management approach so that the MBNEP, with input from biologists and technical experts, can adapt the restoration projects and activities to the changing bay environment. As researchers develop a better understanding of the factors affecting eelgrass in Morro Bay, there would be opportunities to identify new and different priorities for restoring eelgrass in the bay. The Plan would need to be updated to reflect the most current research. This adaptive management approach could be proposed as part of the Plan, with updates on adaptive management activities presented in annual

reports. Additionally, as restoration projects are completed, the Plan would need to be updated to identify new restoration projects and activities.

Developing the Plan based on this conceptual approach to eelgrass mitigation would be relatively inexpensive compared to alternatives like establishing an eelgrass mitigation bank or an in-lieu fee program and would likely require substantially less time. This approach also avoids the need for a third-party sponsor to accept responsibility for success of the restoration projects, because the project proponents would retain responsibility. The MBNEP has extensive experience with eelgrass restoration and monitoring in Morro Bay and maintains trusted relationships with agency staff and technical experts. A partnership between the City and the MBNEP would leverage the experience of both entities to develop an eelgrass plan that meets the needs of project proponents and provides the most efficient approach to increasing eelgrass in Morro Bay. Although project proponents would still be required to fund the eelgrass restoration activities under the Plan, the cost, time, and uncertainty associated with eelgrass mitigation would be reduced compared to permittee-responsible mitigation.

## 6 Next Steps

If the City and the MBNEP elect to pursue development of this Plan, the following steps should be implemented:

1. The City and MBNEP would need to agree on the framework for the Plan, including roles, responsibilities, and costs, before committing additional resources to Plan development. Table 1 outlines the conceptual framework for the Plan.

**Table 1**  
**Morro Bay Eelgrass Plan Framework**

Project Element	Responsibility	Notes
Plan Development	The City would lead development of the plan with technical input from the MBNEP. The MBNEP would identify potential restoration projects and activities that would serve as mitigation projects.	Developing the Plan would be a collaborative effort between the City and MBNEP, including initial regulatory and resource agency consultation on the Plan framework. The MBNEP would develop a mitigation plan describing how the restoration projects would be implemented to mitigate for eelgrass impacts resulting from development projects.
Plan Approval	The City, with technical input from the MBNEP, would coordinate with agencies.	The City would lead the effort to obtain approval of the Plan by the regulatory and resource agencies.
Plan Implementation	The City would provide administrative support for the Plan and coordinate with regulatory agencies. The MBNEP would work directly with project proponents to implement mitigation efforts.	The MBNEP would identify costs and a contracting mechanism to work with project proponents to perform mitigation activities under the Plan.
Annual Monitoring	The MBNEP would perform monitoring of the mitigation sites that would be funded by the project proponents.	The annual monitoring costs would be paid by project proponents commensurate with the effort required to mitigate for their impacts. The City could contribute to annual or biannual eelgrass surveys of Morro Bay to help provide consistent bay-wide eelgrass data.
Annual Reporting	The MBNEP would prepare the report, and the City would coordinate submittal of the annual report to the agencies under the Plan.	The MBNEP would prepare a single annual report that covers all mitigation activities, adaptive management, and other information required by the regulatory agencies.
Adaptive Management	The MBNEP would implement adaptive management measures as required for the restoration sites and would describe them in the annual monitoring reports.	Adaptive management of mitigation projects would be implemented based on bay-wide and site-specific eelgrass trends, new technologies, scientific research, and agency input.

<b>Project Element</b>	<b>Responsibility</b>	<b>Notes</b>
Plan Oversight and Management	The City would provide oversight and management of the Plan.	As the Plan manager, the City would communicate with the regulatory agencies and ensure that the administrative requirements of the Plan are fulfilled.

2. Once the City and MBNEP agree on the conceptual framework for the Plan, Anchor QEA recommends a meeting with the regulatory and resource agencies to discuss the conceptual Plan framework and obtain agency input. At the conceptual stage, agency staff will likely provide general comments, and the goal of the communications at this stage would be to identify any significant flaws or suggestions that would improve the Plan.
3. Following the agency meeting, a Draft Plan incorporating agency input would be developed by the City and the MBNEP. Coordination with major stakeholders would be very important during development of the Draft Plan, to build support for the plan and make sure that it addresses their needs.
4. Once the Draft Plan is completed, it should be submitted to the agencies for their review and comment. During the agency review process, it will likely be beneficial to schedule a meeting with the agencies to discuss the Plan, answer agency questions, and solicit feedback. Because multiple agencies are involved in permitting projects with the potential to affect eelgrass, it will be necessary to balance the requirements of individual agencies in the Plan.
5. Once agency comments are addressed, a Final Plan would be prepared. Some agencies may be willing to review and approve the Plan for implementation at this stage, while others—like the CCC—may require that the Plan be submitted in conjunction with a permit application for their official review and approval. If required, the Plan could be submitted as part of a project application for a City project with a statement that the Plan would be available for use by anyone proposing a development project with the potential to affect eelgrass in Morro Bay.

It is difficult to predict the timeline for development of plans like this one that require review and approval from multiple agencies and input from stakeholders. To be effective, the Plan will need to include a detailed list of potential eelgrass restoration projects and activities and monitoring and management plans. Because of these uncertainties, if the City and MBNEP decide to pursue development of the Plan, a schedule and milestones should be developed after the initial agency meeting described in Step 1.

## 7 References

City of Newport Beach, 2015. *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem-Based Management Approach*. October 2015.

Humboldt Bay Harbor, Recreation, and Conservation District, 2017. *Humboldt Bay Eelgrass Comprehensive Management Plan*. October 2017.

MBNEP (Morro Bay National Estuary Program), 2017. *State of the Bay 2017 A Report on the Health of the Morro Bay Estuary*.

NOAA (National Oceanic and Atmospheric Administration), 2014. *California Eelgrass Mitigation Policy and Implementing Guidelines*. October 2014.



AGENDA NO: C-4

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 30, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Input on the Harbor Department Lease Management Policy Update Process, and Nomination of Two Harbor Advisory Board Members to a Serve on a Lease Management Policy Update Group

### **RECOMMENDATION**

Provide staff input on the areas of the Lease Management Policy as-outlined in this report, and nominate two Harbor Advisory Board members to serve on a future Lease Management Policy update group.

### **BACKGROUND**

The City's current Harbor Department Lease Management Policy (LMP) was created in the early 2000's, and adopted by the City Council in October 2001. It was created to provide a guidance document for management of the City's Tidelands Trust lease sites.

According to the LMP: *"The purpose of this document is an attempt to integrate existing policy with a broader statement of public leasing policy to enhance public understanding and provide a framework for future actions."*

While the LMP is a good "mission statement" of sorts and has done a good job of achieving its stated purposes, it is clearly lacking in many respects with regard to providing the City Council and staff more detailed and specific policy process, methodology, standards and criteria by and with which to achieve those purposes. Recognizing this, the City Council made updating the LMP a Council goal objective item, although it is not on the Harbor Advisory Board (HAB) goal work plan.

Although leasing and lease issues were taken out of the purview of the then-Harbor Commission in 1985 when the Commission was reorganized into an Advisory Board, staff believe the HAB can and should play an important role in certain aspects of the current update of the LMP.

### **DISCUSSION**

Staff is seeking HAB input on the LMP update process at this point in two regards: a) areas of the current LMP that warrant more detailed "policy directive" or "policy implementation" documentation?; and (b) nomination of two HAB members to serve on a near-future update process committee or advisory group that will likely include key staff, waterfront master leaseholders and Council members?

Prepared By: EE

Dept Review: EE

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

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

The current LMP is a very general document, but lacking in detail in several areas and topics as previously stated. Staff's intent is for the updated LMP to remain a general document, but to include with it more detailed "policy directive" or "policy implementation" documents that describe in more detail specific policies and procedures to follow.

Staff have identified the following initial list of areas warranting "directive" or "implementation" documents, and are seeking HAB input on this list regarding its completeness, and any general input regarding these areas the HAB may have at this time:

- A. Lease sale, assignment and assumption process/procedure
- B. Subleasing process/procedure
- C. Lease negotiations process/procedure
- D. Lease renewal and extension process/procedure
- E. Establishing lease term years
- F. Establishing fair market rent
- G. Percent gross rental rate determination
- H. Percent gross auditing process/procedure
- I. Site inspection and compliance monitoring process/procedure
- J. Site redevelopment process/procedure
- K. Financial partnership criteria and allowed financing
- L. License agreement process/procedure
- M. Determining approved uses

**CONCLUSION:**

With this list and the general LMP in mind, staff are seeking HAB recommendation which HAB members would be appropriate to serve on a committee or advisory group to address the LMP and follow-on documents in the LMP update process?

Finally, a proposed process to update the LMP is tentatively being brought to the City Council for input and direction on September 11, 2018. HAB input on the list of areas to address and recommended HAB LMP committee members will be brought to the Council for consideration on the 11<sup>th</sup> as well. Review of the draft LMP is tentatively schedule for the October 23 City Council meeting.

## **CITY OF MORRO BAY HARBOR DEPARTMENT LEASE MANAGEMENT POLICY**

### **BACKGROUND**

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 1942-44, 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. Attached is a map of the tidelands grant in Morro Bay.

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.

Over the years, the City has changed its leasing practices and policies to better protect the public interest by adopting modern lease formats and standards for fair market rent and periodic rental adjustments. There has been some resistance on the part of existing tenants to changes in the City's leasing practices and many issues regarding granted land use and City policy have been difficult to make clear to the general public because of their complexity. In 1985, the City created the Harbor Department to focus property management efforts in the tidelands and to assure the State that tidelands revenues were properly accounted for. The Harbor Department is operated through a City enterprise fund known as the Harbor Fund. Similar to the Water and Wastewater enterprise funds, all Harbor services are funded with either users fees or property management income (no tax revenues). In FY88-89 Harbor Fund lease revenues were \$427,634 increasing to \$777,784 in lease revenues in FY98-99. The aggressive modernization of the City's property management practices over the last 15 years have allowed the Harbor Department to expand services to the boating public and improve existing harbor/park facilities.

While many coastal cities in California manage tidelands grants similar to that in Morro Bay, such a property management role is not necessarily a natural fit for local government. Familiarity with the history and terms of the various contract forms allows for resolution on contract interpretation issues before they become problems.

The Harbor Department routinely handles five to ten lease “questions” a week. If these questions were put through a political or bureaucratic process, the result would replicate the situation in Morro Bay in the mid-1980s when the Harbor Commission reviewed all lease actions. The City Council reorganized the Harbor Commission into the current Harbor Advisory Board and took lease management issues out of the Board’s purview to streamline City responsiveness and improve lease management. Inability to answer contract interpretation questions, or to process City required contractual approvals in a timely manner could cripple tenants’ ability to succeed on the tidelands lease sites.

On the one hand, the purpose of the tidelands grant is to develop harbor facilities and with percentage rents, the City is essentially a partner with the lessees along the tidelands. On the other hand, facility development and the desire to increase harbor lease revenues through tidelands lease improvement and business success must be balanced with City planning and land use policies requiring public benefit on sites and good community projects. In the 1990s the City demonstrated it can successfully achieve that balance by working cooperatively with tenants to renegotiate long-term leases (with increased rental revenues) for commercial redevelopment.

The City Manager coordinates the various interests by delegating lease management to the Harbor Director with the understanding that planning, zoning and land use issues shall be determined in accordance with adopted City Plans and Policies administered by the City Planning Staff, legal issues by the City Attorney and insurance issues by the City Risk Manager. The City has previously adopted a lease negotiation policy and a master lease format as policy but has never attempted a more comprehensive statement of management policy. The purpose of this document is an attempt to integrate existing policy with broader statement of public leasing policy to enhance public understanding and provide a framework for future actions.

The City of Morro Bay will use the following policy guidelines in management of the tidelands and Harbor Fee leases in the Harbor Department lease management program.

### **GENERAL POLICY**

The City will manage the tidelands leases to provide and support harbor facilities and enhancement.

The City shall appropriately account for tidelands revenues and expenses in compliance the state law and the tidelands grant.

The Harbor Department will actively work with and attempt to enhance marine dependent or marine related uses in compliance with the adopted City Plans and Policies, and the City’s goals of maintaining a small commercial fishing harbor and working waterfront.

The City shall at all times be governed in its management of the tidelands properties by the granting statutes as interpreted and managed by the State Lands Commission.

The Harbor Department will manage leases in a way that will strive to support tidelands visitor serving lease businesses to increase revenues consistent with adopted City Plans and Policies, and coordinated with City planning and land use policies.

Many property management functions of the City such as: lease assignment, sublease approval, lease renewal, extension or renegotiations contractually require City Council review and approval. The City Council approval process can sometimes be misconstrued by the public or the lessees to mean the City Council approves other issues, required permits or plans for the site. The Harbor Department will process lease contract administration issues requiring City Council approval in a timely fashion so lessees are not unduly burdened in their business operations. Any such approval shall not waive any and all other permits, approvals or governmental regulations such as planning and land use permits, building permits, etc.

### **SPECIFIC POLICIES FOR CONTRACT ADMINISTRATION**

**Master Lease Format:** The City has developed a master lease format based on modern leasing practices and similar formats used by other public agencies. The City master lease format adopted in 1986 is hereby amended and attached to this policy statement. Any lease agreements in the future will be in the approved master lease format. The City may use a license agreement for temporary, interim or non-exclusive use of property when appropriate.

**Approved Uses:** Uses on the lease sites shall be in conformance with the Tidelands Trust and the City Conditional Use Permit for the site. Proposed new uses for lease sites must be in conformance with the then planning, zoning and land use policies of the City. Lessees proposing or considering new uses for a site will be referred to the Planning Division or Department of the City for review and approval.

**Negotiation:** Following is the lease negotiation policy adopted by the City Council July 10, 1987:

“It is the policy of the City Council of the City of Morro Bay that negotiations relative to leasing public tidelands shall commence and remain at the appropriate staff level, as managed by the City Administrator. The City Administrator is to serve as the initial level of negotiation appeal, with the City Attorney participating when legal issues arise. Differences of opinion shall be resolved to the maximum extent possible between the parties at the staff level, *prior* to any City Council consideration of the lease.

In the event certain lease issues remain unresolved upon exhaustion of administrative review, the lessee (tenant) may submit a written document to the City Council outlining their points and perspectives concerning the outstanding lease issues. Upon City receipt of the written report, the City Clerk shall cause the item to be placed on the City Council agenda, and the lessee or his/her representative may provide a brief verbal summary of their perspectives to the City Council during a public meeting. It is the policy of the City Council to receive under advisement any written or verbal report at that time, but not to comment on or negotiate in public.

Following receipt of this input from the lessee, the City Council will exercise its authority under California Government Code Section 54956.8, to meet in Closed Session to give instructions to the City’s negotiator(s) regarding negotiations for lease of real property (public tidelands). Upon conclusion of the Closed Session considering the points submitted by the tenant, the City’s negotiators will be properly instructed and authorized to finalize negotiations and the lease with the tenant.”

The following two sub paragraphs are added for clarification on the negotiation process:

- A. In many cases parties who are considering buying a tidelands leasehold interest desire to renegotiate the lease (to extend the term, change rent or uses) prior to completing the sale/assignment of the lease. Normally, City staff will not negotiate with prospective tenants due to limited staff time and the potential impact on the “sale” price of a lease. **Prospective buyers of leasehold interest are buying the existing lease agreement only.**
  
- B. All lease sites eventually need to be reconstructed or significantly remodeled. In general, the City desires such reconstruction to bring improvements up to modern building codes, design criteria, and market conditions. The City acknowledges that tenants will need to renegotiate leases to new longer terms to amortize and collateralize their investment on the public property. The normal stage for lease negotiation to commence in a reconstruction redevelopment situation is when the tenant has received Planning Commission and/or City Council approval of a Concept Plan for a Conditional Use Permit to redevelop the site. The project will therefore be at a stage when the CUP can be attached to a new lease and the tenant can be required to construct improvements in compliance with the CUP in a given period of time. The appropriate term for the new lease will be determined by the size of the lease site and the level of private investment proposed for the public property.

**Lease Renewal:** The practice of the City in the past has been to automatically renew or renegotiate a lease with an existing tenant. This has led to a false sense of private ownership of the lease site and sometimes leads to tenants not maintaining lease or reconstructing prior to the expiration of a given lease term. The City should set some standards for renewing a lease. Lease expiration dates should be encouraged to coincide where adjoining sites may have mutual planning benefits. In some cases, the City should not renew a lease, either for the purpose of consolidating sites or to pursue other extenuating public benefit.

The City will use the following standards for determining whether it should negotiate a new lease with a tenant:

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

B. In addition to the above, the City recognizes that there are three distinct zoning areas on the waterfront that require different considerations in lease renewals issues. As follows:

1. Tidelands Park south water area only leases. In this area the City leases only the water areas as the upland property and access to the water areas is owned and controlled by private parties. The City will encourage continuation/enhancement of marine dependent uses such as boats slips and boat repair facilities where feasible. However, this area is not suitable for large redevelopment projects and in most cases the City will negotiate a new 10 to 30 year lease extension with existing tenants when they meet the above criteria.
2. Embarcadero from Beach Street to Tidelands Park. In this area, the City controls land and water areas. In this area tenants are encouraged to propose redevelopments of lease sites to improve public benefits on these sites, enhance the Embarcadero business environment, and renegotiate leases to modern terms. To help accomplish this, and to provide tenants motivation not to let long-term leases run to the very end of their terms with degraded building/improvements, and under market lease terms, the City will generally not renew leases with existing tenants in this area if they allow their leases to run to a term of less than five years remaining.
3. Embarcadero from Beach Street north. This area is designated with zoning to preserve commercial fishing/marine dependent uses. In addition, existing restaurants or retail uses are grandfathered in. The City will strongly encourage tenants who propose enhancement of commercial fishing uses or marine dependent uses by considering new long-term leases that facilitate these types of projects. Existing restaurant/retail sites shall be extended or renewed if the tenant can develop plans for enhancement of the site within the constraints of CF District zoning. Within the general outlines of this policy the City Council will provide specific direction to the City's designated negotiator on the Morro Bay Power Plant outfall lease.

In general, leases that are not renewed should be put out to public bid or kept in short-term interim lease arrangements until adjacent sites become available for consolidation. In addition, the City has many long-term ground leases (known as the County or Pipkin leases), which provide low rent in exchange for tenant investment or settlement of previous disputes. These long-term leases provide that the tenant-constructed improvements revert to City ownership upon lease termination and this was a critical part of the consideration in allowing the tenant such a long-term lease at the specified rents. The County and Pipkin leases were 50-year leases (the maximum term set by the tidelands grant) and may not be extended or renewed. The City shall encourage tenants to renegotiate these leases into the new City master lease format well before the termination date of that lease.

In the CF District the City should attempt to consolidate leases in the area between the T-Piers to facilitate marine dependent redevelopment such as a seafood processing plant.

**Fair Market Rent:** State Law requires that fair market rent be charged for use of the granted tidelands. Fair market rental shall be determined through the use of an independent appraiser to appraise the fair market value of the property and the City will set a minimum annual rent equal to 8% of the appraised value of the land or improvements if the improvements have reverted to the City. The lease rent will be structured to provide for a minimum annual rent as outlined above or a percentage of gross sales rent as shown on the attached Schedules entitled Standard City percentage of gross sales rent.

In cases where the tenant is proposing complete redevelopment of a site to eminent modern design criteria at significant private investment the City may allow both temporary reductions in the outlined minimum rent to offset tenants period of reduced revenues during construction and reduction in the standard retail percentage of gross sales to 3% for the first 10 years of a new long-term lease agreement.

**Maintenance of Improvements:** The City has a paramount interest in ensuring that the improvements on the lease site are being properly maintained and are in a safe and secure condition. The City shall contract to have the lease sites inspected and a report made on such inspections every five years. City staff will require significant deficiencies noted in the lease site inspection reports to be repaired or cured by the tenants. As long-term leases draw close to expiration tenants tend to defer maintenance and the City must carefully monitor and strictly enforce lease maintenance provisions to protect the reversionary interest in the lease site improvements.

**Percentage of Gross Sales Audits:** Where tenants are subject to percentage of gross sales rent, the City will contract to have the business accounting records examined for lease compliance at least every five years. City staff will require tenants to comply with or cure any deficiencies noted in the accounting records examinations.

**Lease Assignment/Sale:** All City leases require City Council approval of the sale or assignment of a lease agreement. Any tenant requesting such approval will be required to pay fees noted in the master fee schedule, to submit financial documentation to indicate qualifications to the satisfaction of the Finance Director, and be in full compliance with the terms and conditions of their lease agreement. If the proposed assignment or sale includes a change in use of the site, then the change in use will be reviewed by the Public Services Department of the City for conformance with planning and zoning regulations. Proposed changes in uses for lease sites must comply with City planning and zoning ordinances, the City's adopted Local Coastal Plan and Measure D limitations for properties north of Beach Street. Where zoning allows a variety of uses, preference will be given to coastal related uses whenever possible.

**Sublease Approval:** All leases require City approval of sublease agreements. Prior to approval of the sublease, the tenant shall pay any fees noted in the master fee schedule; submit a properly executed copy of the City standard Consent to Sublease form and a copy of the Sublease Agreement. Future lease agreements may provide for the City Manager or designee to approve sublease agreements which meet the stated qualifications for approval and which comply with the terms and conditions of the lease agreements.

**Financing:** The City will not approve financing related to or using the lease site, or leasehold interest as collateral unless such financing is for sole investment upon the lease site or for City requested public improvements.

## SCHEDULE A

### PERCENTAGE RENT FOR GROUND LEASES

		<b>% GROSS SALES</b>
FOOD SERVICE:	Restaurant, Dining Room	3
	Snack Bar, Delicatessen,	5
	Fast Food, Convenience Food	5
	Bar/Lounge, Beer & Wine Sales	5
RETAIL SALES & SERVICE:	Tenant	3-5
FISH & SEAFOOD:	Retail Sales	3-5
	Wholesale Sales	0
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	10
	Pier/Floating	10
BOAT REPAIR & SALES:	Boat & Marine Repair	3
	New Boat Sales	1
	Used Boat Sales	2
FUEL:	Gasoline	\$0.02/gal.
	Diesel	\$0.015/gal.
MOTEL:		5
ALL OTHER USES:		5

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.

## SCHEDULE B

### PERCENTAGE RENT FOR BUILDING LEASES

		<b>% GROSS SALES</b>
FOOD SERVICE:	Restaurant, Dining Room	5
	Snack Bar, Delicatessen,	7
	Fast Food, Convenience Food	7
	Bar/Lounge, Beer & Wine Sales	10
RETAIL SALES & SERVICE:	Tenant	7
	Sublease	7
FISH & SEAFOOD:	Retail Sales	5
	Wholesale Sales	0.5
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	20
	Pier/Floating	20
BOAT REPAIR & SALES:	Boat & Marine Repair	5
	New & Used Boat Sales	2
FUEL:	Gasoline	.02/gal.
	Diesel	\$0.015/gal.
MOTEL:		10
RV PARK:		25
ALL OTHER USES:		10

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.



AGENDA NO: C-5

MEETING DATE: September 6, 2018

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** August 30, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Oral Update and Question/Answer on Status of Lease Sites 37W (Meyer's Morro Bay Marina), 69-70/69W-70W (Morro Bay Aquarium), 90/90W (Otter Rock Café) and 141 (United States Coast Guard)

### RECOMMENDATION

Receive and file.

### DISCUSSION

The Harbor Director will be presenting an oral update and brief question-answer session on the status of the following lease sites, with basic lease information provided below:

#### Lease Site Number: 37W

Morro Bay Marina, Inc.  
Ty Meyer  
261 Main St, Morro Bay, Ca 93442

Initial Date: 07/01/94 Exp. Date: 06/30/16 – on a monthly holdover

Total lease term: 22 years - *Original lease term 12 years  
Additional 10 years approved 5/09/05 based on continued operation of boat  
haul-out facility.*

Type of Lease: City

Lease Area (Sq. Ft.): Land: 0 Water: 19,400 Total: 19,400

Current Annual Rent: \$19,902.10

Rent basis - Annual minimum: 8% of appraised market value with re-appraisal and rental adjustments every 5<sup>th</sup> year or 75% of the average of the previous 5 years total rent paid.

Percent Gross: Yes

Uses: Boat and motor sales; boat and motor repair; slip rental.

Prepared By: EE

Dept Review: EE

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

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

**Lease Site Number: 69-70/69W-70W**

Morro Bay Aquarium  
Bertha Tyler  
595 Embarcadero, Morro Bay, Ca 93442

Initial Date: 10/01/68                      Exp. Date: 09/30/18

Total lease term: 50 years

Lease Area (Sq. Ft.):    Land: 4,067    Water: 2,206    Total: 6,273

Current Annual Rent: \$18,181.73

Rent Basis - Annual Minimum: Based on 6% of 1993 appraised value.

Percent Gross: N/A

Uses: Aquarium, boat dock, gift shop and offices.

**Lease Site Number: 90/90W**

Otter Rock  
Josef Steinmann  
875 Embarcadero, Morro Bay, Ca 93442

Initial Date:    07/01/93                      Exp. Date: 09/30/40

Total lease term: 47 years    -    *Original lease term 35 years*  
*Additional 12 years approved 12/12/05 based on \$250,000 of improvements.*

Type of Lease: City

Lease Area (Sq. Ft.):    Land: 4,729    Water: 2,500    Total: 7229

Current Annual Rent: \$38,965.86

Rent Basis - Annual Minimum: 8% of appraised market value with re-appraisal and rental adjustments every 5<sup>th</sup> year or 75% of the average of the previous 5 years total rent paid.

Percent Gross: Yes

Uses: Service of food and beverages including alcoholic beverages, live and recorded entertainment, gift and retail sales, outside barbecue provided such use is in compliance with any and all other city regulations, wholesale and retail seafood processing, rental of dock space and use of dock space for loading or unloading seafood or mariculture products.

**Lease Site Number: 141**

United States Coast Guard  
Maintenance and Logistics Command Pacific  
Coast Guard Island  
Alameda, CA 94501-5100

Initial Date: 09/30/90 Exp. Date: 09/30/39

Total lease term: 49 years

Type of Lease: Federal Government

Lease Area (Sq. Ft.): Land: ~1,575 Water: 0 Total: ~1,575

Current Annual Rent: \$1.00

Rent Basis - Annual Minimum: \$1.00

Percent Gross: No

Uses: Search and Rescue, Homeland Security