

City of Morro Bay

City Council Agenda

Mission Statement

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

REGULAR MEETING – APRIL 13, 2009

**CLOSED SESSION – APRIL 13, 2009
CITY HALL CONFERENCE ROOM - 5:00 P.M.
595 HARBOR ST., MORRO BAY, CA**

**CS-1 GOVERNMENT CODE SECTION 54956.9(a); CONFERENCE WITH
LEGAL COUNSEL REGARDING PENDING LITIGATION:**

- City of Morro Bay v. Martony

CS-2 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY

TRANSACTIONS: Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to four (4) parcels.

Property: Whale's Tail - Lease Site 96-96W
Negotiating Parties: Mandella and City of Morro Bay.
Negotiations: Lease Terms and Conditions.

Property: Salt Building - Lease Site- 65-66/65-66W
Negotiating Parties: Abba Imani and City of Morro Bay.
Negotiations: Lease Terms and Conditions.

Property: Harbor Hut - Lease Site 122-123W
Negotiating Parties: Leage and City of Morro Bay.
Negotiations: Lease Terms and Conditions.

**IT IS NOTED THAT THE CONTENTS OF CLOSED SESSION MEETINGS
ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE.**

**PUBLIC SESSION – APRIL 13, 2009
VETERANS MEMORIAL HALL - 6:00 P.M.
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) 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 Mayor, please come forward to the podium and state your name and address for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF MARCH 23, 2009; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 REQUEST FOR APPROVAL OF AMENDMENT #1 TO THE LEASE AGREEMENT FOR LEASE SITE 129W-131W--MORRO BAY FISH COMPANY, INC., 1231 EMBARCADERO; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 13-09.

A-3 REQUEST FOR CONDITIONAL APPROVAL OF ASSIGNMENT OF LEASE AGREEMENT FOR LEASE SITE 122-123/122W-123W AND EXTENSION 122W-123W FROM HARBOR HUT INC., GEORGE LEAGE TO THMT INC., HEATHER AND TROY LEAGE AND CONDITIONAL APPROVAL OF AMENDMENT #1 TO THE LEASE AGREEMENT FOR LEASE SITE 122-123/122W-123W AND EXTENSION 122W-123W--HARBOR HUT, 1205 EMBARCADERO; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 14-09.

A-4 RESOLUTION NO. 12-09 AUTHORIZING THE FEDERAL FUNDING UNDER FTA SECTION 5311 (49 U.S.C. SECTION 5311) WITH CALIFORNIA DEPARTMENT OF TRANSPORTATION TO PURCHASE ONE (1) WHEELCHAIR ACCESSIBLE DIAL-A-RIDE VEHICLE AND ONE (1) WHEELCHAIR ACCESSIBLE TROLLEY; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Resolution No. 12-09.

A-5 ADOPTION OF ORDINANCE NO. 545 AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.04 REGARDING DURATION OF LICENSE AND FEE PAYMENT/PRORATING - SECOND READING; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Approve second reading and adoption of Ordinance No. 545.

A-6 PROCLAMATION DECLARING THE WEEK OF APRIL 12-18, 2009 AS "NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK"; (ADMINISTRATION)

RECOMMENDATION: Adopt Proclamation.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 RESOLUTION NO. 15-09 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

RECOMMENDATION: Adopt Resolution No. 15-09.

B-2 RESOLUTION NO. 16-09 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

RECOMMENDATION: Adopt Resolution No. 16-09.

B-3 ADOPTION OF A MITIGATED NEGATIVE DECLARATION AND CONSIDERATION OF A CONCEPT PLAN FOR A VESTING TENTATIVE SUBDIVISION MAP SOO-062/ CONDITIONAL USE PERMIT UPO-138/COASTAL DEVELOPMENT PERMIT CPO-207, FOR A CUSTOM RESIDENTIAL 10 LOT CONSERVATION SUBDIVISION AND OPEN SPACE EASEMENT ON 4.75 ACRES AT 1305 TERESA DRIVE; (PUBLIC SERVICES)

RECOMMENDATION: Adopt the Mitigated Negative Declaration and Consider the Concept Plan for a Vesting Tentative Subdivision Map/Conditional Use Permit/Coastal Development Permit.

B-4 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 546 ESTABLISHING THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID), FIXING THE BOUNDARIES THEREOF, AND PROVIDING FOR LEVY OF A BUSINESS ASSESSMENT TO BE PAID BY THE HOTEL BUSINESSES IN SUCH DISTRICT; (CITY ATTORNEY)

RECOMMENDATION: Approve first reading and introduction of Ordinance No. 546.

B-5 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 547 PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES; (CITY ATTORNEY)

RECOMMENDATION: Approve first reading and introduction of Ordinance No. 547.

C. UNFINISHED BUSINESS

C-1 REVIEW OF SITE GENERATOR PROJECT FOR DIAL-A-RIDE, CITY HALL AND PUBLIC SERVICES DEPARTMENT OFFICES; (PUBLIC SERVICES)

RECOMMENDATION: Discuss and direct staff accordingly.

D. NEW BUSINESS

D-1 LETTER FROM DAVE GILL REPRESENTING THE SEA SCOUTS REQUESTING A FEE WAIVER FOR THE VESSEL ST. JOSEPH; (HARBOR)

RECOMMENDATION: Consider granting a fee waiver for the St. Joseph for a limited time to enable the Sea Scouts to complete their efforts towards making the vessel seaworthy.

D-2 REDUCED FEE INCENTIVE FOR GREEN BUILDING AND LOW IMPACT DEVELOPMENT; (PUBLIC SERVICES)

RECOMMENDATION: Consider offering green building incentives in reimbursed building plan check and inspection fees.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6200 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

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

AGENDA NO: A-1

MEETING DATE: 4/13/09

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION 6 MARCH 23, 2009
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Vice-Mayor Winholtz called the meeting to order at 5:00 p.m.

PRESENT:	Betty Winholtz	Vice-Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember

ABSENT:	Janice Peters	Mayor
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STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

MOTION: Councilmember Smukler moved the meeting be adjourned to Closed Session. The motion was seconded by Councilmember Grantham and unanimously carried. (4-0)

Vice-Mayor Winholtz read the Closed Session Statement.

CS-1 GOVERNMENT CODE SECTION 54956.9(A); CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING CLAIMS AND LITIGATION; STATUS REPORT ON THE HANDLING OF PENDING CLAIMS AND LITIGATION. This is a report on the process of handling claims and litigation and no action may be taken on any matter not specifically listed. Council may request a specific matter be agendized in the future for action.

CS-2 GOVERNMENT CODE SECTION 54956.9(A); CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING LITIGATION.

- **WALLICK vs. CITY OF MORRO BAY**

The meeting adjourned to Closed Session at 5:00 p.m. and returned to regular session at 5:45 p.m.

MOTION: Councilmember Smukler moved the meeting be adjourned. The motion was seconded by Councilmember Borchard and unanimously carried. (4-0)

The meeting adjourned at 5:45 p.m.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009
VETERANS MEMORIAL HALL - 6:00 P.M.

Vice-Mayor Winholtz called the meeting to order at 6:00 p.m.

PRESENT:	Betty Winholtz	Vice-Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
ABSENT:	Janice Peters	Mayor
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Bridgett Bauer	City Clerk
	Bruce Ambo	Public Services Director
	John DeRohan	Police Chief
	Teresa McClish	Contract Planner
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS &
PRESENTATIONS

CLOSED SESSION REPORT - City Attorney Robert Schultz reported the City Council met in Closed Session, and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Lily Stewart invited the public to Morro Bay High School's production of the musical "Lucky Stiff" which would be held March 26th ó 28th.

David Weisman, representing the Alliance for Nuclear Responsibility, requested the City Council consider placing on a Council agenda a letter regarding the investigation of seismic retrofitting of the power plant (AB 42).

Colby Crotzer expressed concern with the management of City funds.

Hank Roth stated the Citizens Police Academy would be held on consecutive Thursdays April 23rd through June 18th.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

Pearl Munak requested the City's assistance to lobby our representatives to allow SSI recipients to be able to receive food stamps.

Joan Solu announced the Dixon Spaghetti fundraiser would be held Friday, March 27th; and the Del Mar Elementary School fundraiser would be held Sunday, March 29th with an art auction, cow plop and barbeque.

Rick Gilligan announced a meeting regarding the Community Aquatics Center on April 4th. He also expressed support for Item B-1 (Master Plan Amendment/Special Use Permit/Coastal Development Permit to Designate and Improve a One-Acre Area Within Del Mar Park for Use as an Off-Leash Dog Park).

Frank Silva, Morro Bay Garbage, stated "Clean Up Week" is scheduled for the week of April 6th ó 10th, which is a community service provided free to single-family residential customers.

Melody DeMeritt announced the Morro Bay Kite Festival Parade is scheduled on April 25th, and expressed her desire that Morro Bay Boulevard would be paved by that date. She also stated the discussion of a four-year mayoral term is anti-democratic.

Vice-Mayor Winholtz closed the hearing for public comment.

Vice-Mayor Winholtz called for a break at 7:04 p.m.; the meeting resumed at 7:15 p.m.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF MARCH 9, 2009; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 AMENDMENT TO THE FLEXIBLE SPENDING ACCOUNT BENEFIT FOR DEPENDENT CARE EXPENSES CONTRIBUTION LIMIT; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Authorize the maximum contribution limit in the Flexible Spending Account Program for Dependent Care expenses to be set at \$5,000.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING 6 MARCH 23, 2009

A-3 STATUS REPORT ON APPLICATIONS FOR ECONOMIC STIMULUS FUNDING; (ADMINISTRATION)

RECOMMENDATION: Accept the Status Report on Applications for Economic Stimulus Funding for file.

A-4 LETTER OF SUPPORT FOR LIABILITY IMMUNITY BILL (AB 634); (ADMINISTRATION)

RECOMMENDATION: Approve sending the letter of support for Liability Immunity Bill (AB 634).

A-5 PROCLAMATION DECLARING APRIL 2009 AS "FAIR HOUSING MONTH"; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Proclamation.

A-6 PROCLAMATION DECLARING APRIL 2009 AS "MONTH OF THE CHILD" AND "CHILD ABUSE PREVENTION MONTH" AND APRIL 11, 2009 AS "DAY OF THE CHILD"; (ADMINISTRATION)

RECOMMENDATION: Adopt Proclamation.

A-7 PROCLAMATION DECLARING AMERICAN HUMANE SOCIETY'S "EVERY DAY IS TAG DAY"; (ADMINISTRATION)

RECOMMENDATION: Adopt Proclamation.

A-8 CONTINUATION OF EMERGENCY PER PUBLIC CONTRACT CODE SECTION 22050 FOR THE INSTALLATION OF ENERGY RECOVERY EQUIPMENT; (PUBLIC SERVICES)

RECOMMENDATION: Determine the necessity to continue the emergency per Public Contract Code 22050 for the installation of desalination plant energy recovery equipment.

Vice-Mayor Winholtz pulled Items A-6 and A-7 from the Consent Calendar in order to make presentations.

MOTION: Councilmember Borchard moved the City Council approve Items A-6 and A-7 of the Consent Calendar. The motion was seconded by Councilmember Smukler and carried unanimously. (4-0)

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

MOTION: Councilmember Grantham moved the City Council approve the remainder of the Consent Calendar. The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 MASTER PLAN AMENDMENT/SPECIAL USE PERMIT/COASTAL DEVELOPMENT PERMIT TO DESIGNATE AND IMPROVE A ONE-ACRE AREA WITHIN DEL MAR PARK FOR USE AS AN OFF-LEASH DOG PARK; (RECREATION & PARKS)

Planner Teresa McClish stated Morro Bay Pups, working through a joint venture Memorandum of Understanding with the City of Morro Bay, is proposing to designate and construct an off-leash dog park consisting of an amendment to the Parks and Recreation Facilities Plan for the provision of the off-leash dog park in order to provide consistency with the City's General Plan; and a Coastal Development Permit and Special Use Permit for the development of the off-leash dog park, including perimeter fencing of a one-acre area within the northwestern portion of Del Mar Park for off-leash dogs. Existing vegetation is proposed to remain and includes managed turf and cypress trees. The hours of operation of the dog park are from 7:00 a.m. to sunset, coinciding with the hours of operation of Del Mar Park. The proposed improvements consists of chain link fencing, double-entry gates, signage outlining the appropriate rules and regulations including required clean-up after dogs, bulletin board, sanitary mitt/bag dispenser and trash receptacles all of which are designed to be conducive for the safe enjoyment of the dog park. There is no lighting proposed. The Planning Commission reviewed and unanimously approved the project at their March 2, 2009 meeting. Ms. McClish recommended the City Council review the information provided, consider public testimony, and conditionally approve the project by adopting the findings in "Exhibit A"; approve the amendment to the Parks and Facilities Master Plan as shown in "Exhibit B"; and approve the Coastal Development Permit and Special Use Permit subject to the conditions included in "Exhibit C" and the Site Development Plans in "Exhibit D".

Vice-Mayor Winholtz opened the hearing for public comment.

Steve Eckes, representing Morro Bay Pups, stated they unconditionally support the staff's recommendation on the dog park. He said Morro Bay Pups look forward to the prospect of this park being named in honor of the Jody Giannini Family in appreciation of their extraordinary generosity. Mr. Eckes stated Morro Bay Pups has achieved 80% of their fundraising goal.

Vice-Mayor Winholtz closed the public comment hearing.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

Recreation and Parks Director Joe Woods stated the Recreation and Parks Department has supported the off-leash dog park concept since its inception, along with the Del Mar Park Master Plan amendment, which includes this off-leash dog park area. He said as applicant, the Recreation and Parks Department staff agrees with the report that has been provided by Planning staff, and looks forward to the relationship with Morro Bay Pups throughout the construction and maintenance stages of this off-leash dog park.

Councilmember Grantham referred to the hours of operation, and suggested changing the hours to 8:00 a.m. opening on weekdays, and 9:00 a.m. on weekends. He noted Ironwood Avenue has a lot of traffic especially on Sundays when church is in session.

Councilmember Smukler suggested literature or a condition that directs participants of the dog park to access the southern approach of Ironwood Avenue. He also suggested using the Adopt-a-Tree Program and planting larger trees along the north side of the park for visibility and noise buffers. Councilmember Smukler stated he supports the hours of operation to begin at 8:00 a.m.

Councilmember Borchard stated she supports the project as presented along with Councilmember Grantham's suggested time change due to the surrounding residential area. She said she does not see an issue with traffic, as there is a balance between Island Street and Ironwood Avenue.

Councilmember Winholtz suggested the hours of operation be the same as weekend construction hours, which begin at 8:00 a.m. She also agreed that traffic should be directed to Ironwood Avenue because it is not as residential as Island Street.

MOTION: Councilmember Grantham moved the City Council conditionally approve the project by adopting the findings in "Exhibit A"; approve the amendment to the Parks and Facilities Master Plan as shown in "Exhibit B"; and approve the Coastal Development Permit and Special Use Permit subject to the conditions included in "Exhibit C" **with an amendment that the hours of operation are from 8:00 a.m. to sunset**, and the Site Development Plans in "Exhibit D". The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

B-2 HEARING TO CONSIDER PUBLIC TESTIMONY REGARDING THE
ESTABLISHMENT OF THE MORRO BAY TOURISM BUSINESS
IMPROVEMENT DISTRICT (MBTBID) AND LEVY OF ASSESSMENTS;
(CITY ATTORNEY)

City Attorney Robert Schultz stated this item continues the process to establish the Morro Bay Tourism Business Improvement District by asking Council to take public testimony regarding the intention to form a district and levy assessments within the City's jurisdiction. The purpose of today's public meeting is to receive oral and written protests by the owners of lodging businesses within the City's jurisdiction that pay 50% or more of the proposed assessment, no further proceedings may be taken for a period of one year. If there is not such a majority protest, the formation process will continue to the public hearing on April 13, 2009 to consider the ordinance establishing the Morro Bay Tourism Business Improvement District. A second and final reading would be held on April 27, 2009. The Parking and Business Improvement Area Law of 1989, Streets and Highways Code Section 36500 et seq., sets out the sequence of events required for the formation of a Business Improvement District. Mr. Schultz recommended the City Council receive public testimony regarding the establishment of the Morro Bay Tourism Business Improvement District and levy of assessments and then direct staff to bring forth the draft Ordinance establishing the Morro Bay Tourism Business Improvement District for first reading and introduction at the April 13, 2009 City Council meeting.

Vice-Mayor Winholtz opened the hearing for public comment.

Joan Solu stated the motel/hoteliars would like to move forward with the appointment of an advisory board, and requested the City name the two candidates that would serve on the board from the Community Promotions Committee. She said at present no administrative fee has been designated in the ordinance, and requested it be publicly stated if there will or will not be a fee.

Jonni Biaggini stated it is important that the advisory board be seated by May 1, 2009 in order to move forward with the marketing plan and budgeting. She also noted it should be stated if there will be an administrative fee or not.

Harold Biaggini stated he agrees with the above speakers.

Mike Casola stated he appreciates the City's efforts in this matter.

Vice-Mayor Winholtz closed the public comment hearing.

Council asked questions for clarification.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

MOTION: Councilmember Grantham moved the City Council direct staff to bring forth the draft Ordinance establishing the Morro Bay Tourism Business Improvement District for first reading and introduction at the April 13, 2009 City Council meeting. The motion was seconded by Councilmember Smukler and carried unanimously. (4-0)

Vice-Mayor Winholtz called for a break at 8:12 p.m.; the meeting resumed at 8:22 p.m.

B-3 ADOPTION OF ORDINANCE NO. 544 AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTERS 5.04 AND 5.09 REGARDING DELIVERY VEHICLES: FIRST READING/INTRODUCTION; (ADMINISTRATIVE SERVICES)

City Attorney Robert Schultz stated on October 27, 2008, staff brought forth an agenda item to discuss the requirement of a business license from businesses that make deliveries in Morro Bay. The Municipal Code Section 5.04.050 states: "There is hereby imposed, upon the businesses, trade professions, callings, and occupations specified in this title, license fees as established annually in the Business License Rate Schedule." Staff interpreted this to mean that every individual, partnership or corporation that is doing business in Morro Bay is responsible for paying a business license unless it is not legal for the City to charge it. This logic was applied to delivery trucks, as they: 1) benefit from the advertising on their delivery vehicles; 2) are profiting from the sales of their wares; 3) should pay a similar fee, as required of the other businesses within the City limits; 4) have access to the same emergency services as do the license-paying businesses; 5) negatively impact our infrastructure; and 6) do not pay to support our City services as do our license-paying businesses. Mr. Schultz recommended the City Council approve Ordinance No. 544 amending Title 5: Business Licenses and Regulations, Chapters 5.04 and 5.08 regarding delivery vehicles for first reading and introduction.

Vice-Mayor Winholtz opened the hearing for public comment; there were no comments, and Vice-Mayor Winholtz closed the public comment hearing.

Councilmember Winholtz stated she has mixed emotions regarding this issue because there are larger vehicles that are using City streets, and then there are smaller vehicles that deliver goods to businesses that pass on fees to their customers.

Councilmember Borchard stated there are vendors that drive large vehicles and come into the City seven days per week, they utilize City services and facilities, and when the fuel costs were so high they charged the merchants that were in the hospitality business fuel charges.

Councilmember Smukler stated he agrees with Councilmember Borchard's comments.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

Councilmember Grantham stated he supports this Ordinance in order to support Morro Bay consumers who pay delivery fees a break.

MOTION: Councilmember Borchard moved the City Council deny the approval of Ordinance No. 544 amending Title 5: Business Licenses and Regulations, Chapters 5.04 and 5.08 regarding delivery vehicles. The motion was seconded by Councilmember Smukler and carried with Councilmember Grantham voting no. (3-1)

B-4 ADOPTION OF ORDINANCE NO. 545 AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTERS 5.04 REGARDING DURATION OF LICENSE AND FEE PAYMENT ó PRORATING: FIRST READING/INTRODUCTION; (ADMINISTRATIVE SERVICES)

City Attorney Robert Schultz stated on October 27, 2008, staff brought forth an agenda item to maintain the one-year business license renewal cycle and change the renewal dates to coincide with the business start date. Staff contacted the business license software vendor and learned the program can be switched to an annual, monthly renewal cycle for a small fee. Council agreed to maintain a one-year business license renewal cycle, and change the renewal date to coincide with the business start date, and directed staff to return with an ordinance amending the Municipal Code. Mr. Schultz recommended the City Council approve Ordinance No. 545 amending Morro Bay Municipal Code Title 5, Section 5.04.160 entitled *Duration of license* to change the expiration date to coincide with the end of the month in which the business started, and amending Section 5.04.260 *Fee payment – prorating* to remove all references to prorating.

Vice-Mayor Winholtz opened the hearing for public comment; there were no comments, and Vice-Mayor Winholtz closed the public comment hearing.

MOTION: Councilmember Grantham moved the City Council approve Ordinance No. 545 amending Title 5 Business Licenses and Regulations, Chapters 5.04 regarding Duration of License and Fee Payment ó Prorating for first reading and introduction. The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

City Manager Andrea Lueker read Ordinance No. 545 by number and title only.

C. UNFINISHED BUSINESS ó None.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

D. NEW BUSINESS

D-1 RECOMMENDATION FROM BOARDS AND COMMISSIONS ON BY-LAW
AMENDMENTS; (ADMINISTRATION)

City Manager Andrea Lueker stated on December 8, 2008, the City Council directed each Advisory Board and Commission to review its by-laws and return to Council with recommendations.

The Harbor Advisory Board recommended the following amendment be made to the **Absence from Meetings Section** of the by-laws to read as follows: *“At the Department Director’s discretion in consultation with the Chair and Vice Chair, an absence may be excused and not count against the Board Member.”*

The Recreation & Parks Commission recommended the following amendment be made to the City Council Policies and Procedures (which apply to the Boards and Commissions) regarding **Cancellations of a Meeting**: *“Except in the case of an emergency or **mutually agreed upon by Staff and the Chair prior to the noticing of a regular meeting**, a regular meeting can only be canceled by an affirmative vote of the majority of Council at a previously noted meeting.”*

The Community Promotions Committee noted conflicting information regarding the “Qualifications” section of its by-laws and requested the following amendment: *“**Four of the 7 members of the Community Promotions Committee must be** residents and registered voters of the City during the term of appointment, í ö*

The City Council denied the recommended amendment on the **Cancellation of Meetings** policy and concurred it should remain the same.

The City Council denied the recommended amendment on the **Absence from Meetings** policy and concurred it should remain the same.

MOTION: Councilmember Borchard moved the City Council approve the following amendment to the Community Promotions Committee **Qualifications** section: *“**Four of the 7 members of the Community Promotions Committee must be** residents and registered voters of the City during the term of appointment, í ö. The motion was seconded by Councilmember Grantham and carried unanimously. (4-0)*

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING ó MARCH 23, 2009

E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Smukler requested to agendize the consideration of an amendment to Morro Bay Municipal Code 3.08.100(E)(2) regarding preference to local vendors; Council concurred.

Councilmember Smukler requested an update on the funding for the back-up generator for City Hall and Dial-a-Ride; Council concurred

Councilmember Winholtz requested to agendize a letter regarding seismic retrofitting of the power plant (AB 42); Council concurred.

Councilmember Winholtz requested to agendize a letter regarding Pearl Munakø request to lobby our representatives to allow SSI recipients to be able to receive food stamps; Council concurred.

Councilmember Winholtz requested to agendize a discussion on the formation of a committee regarding the Fire Department service options; Council concurred.

ADJOURNMENT

The meeting adjourned at 8:51p.m.

Recorded by:

Bridgett Bauer
City Clerk

The City and Mr. Cunningham also agreed to clarify two Sections of the lease agreement: Section 3, Operating of Ice Making Machine and Section 10, Alterations and Repairs. Section 3 has been streamlined to allow for adequate tracking of the revenues and expenses on the account and removes a sentence stating that the City will pay for repairs to the ice machine in excess of \$10,000 if the Tenant did not have sufficient revenue in the ice machine account to cover such repairs.

A new paragraph was added to Section 10 of the lease agreement agreeing to the installation of a new freezer facility on the Lease Site and a second hoist on the site no later than January 1, 2010, providing Tenant obtains any required permits and approvals for the installation. The existing 40 foot refrigerated container on the Lease Site shall be removed, re-used or demolished by the Tenant.

CONCLUSION:

Staff recommends the City Council adopt Resolution No. 13609 approving Amendment #1 to the lease agreement for Lease Site 129W-131W (Morro Bay Fish Company Inc., 1231 Embarcadero).

RESOLUTION NO. 13-09

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA**

**Approval of Amendment #1 to the Lease Agreement for Lease Site 129W-131W
(Morro Bay Fish Company Inc., 1231 Embarcadero)**

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

WHEREAS, the City is the lessor of certain property on the Morro Bay waterfront described as Lease Site 129W-131W, located at 1231 Embarcadero; and,

WHEREAS, Morro Bay Fish Company is the lessee of said property; and

WHEREAS, Morro Bay Fish Company has recently reorganized to become a California Corporation, Brett Cunningham President.

WHEREAS, the City and Morro Bay Fish Company have agreed to modify the existing lease agreement to extend the term of the lease for 2 years to make it possible for the tenant to obtain a loan from the California Fisheries Fund to purchase equipment for the business, to allow for the installation of said equipment, and to streamline operational and reporting requirement of the lease agreement

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that Amendment #1 to the Lease Agreement for Lease Site 129W-131W is hereby approved and that the Mayor is hereby authorized to execute said amendment.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13th day of April, 2009 on the following vote:

AYES:

NOES:

ABSENT:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk

One of Mr. Leage's sons, Troy Leage, has managed the Lil Hut operation for five years and now desires to take over the lease agreement from George Leage and to renovate the site with the intention of increasing sales. Troy and Heather Leage are in the process of obtaining a loan to complete the purchase of the lease site and the lender requires an additional five years on the lease term for the loan, see the attached letter from Troy Leage dated March 11, 2009.

Normal conditions of approval of assignment are payment of the processing fee, financial capability as verified by a credit check, current lessee in compliance with the terms of the lease and assignment and assumption documents acceptable to the City Attorney. Troy and Heather Leage have paid the processing fee, passed a credit check, opened an escrow account at First American Title and deposited \$15,000 to pay the past due rent on the site and are finalizing incorporation to prepare final Assignment and Assumption documents.

Staff recommends that the City Council adopt Resolution No. 14-09 to approve assignment conditional on paying the past due rent and on City Attorney approval of final assignment and assumption documents no later than July 11, 2009. The resolution will also authorize the Mayor to execute the attached Amendment #1 to the lease agreement to extend the term of the existing lease 5 years in exchange for the new tenants expending a minimum of \$60,000 on renovation of the buildings on the site no later than December 31, 2009.

CONCLUSION:

Staff feels that facilitating an assignment of the Harbor Hut lease agreement to Heather and Troy Leage will provide the opportunity for financial stability on the lease and allow for renovation of the building on their site within the near future. It is recommended that the City Council adopt the attached Resolution No. 14-09 to conditionally approve the assignment of the lease agreement and Amendment #1 providing for a 5-year extension of the lease agreement.

RESOLUTION NO. 14-09

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA**

**Approval of Assignment of Lease Agreement for Lease Site 122-123/122W-123W
and Extension 122W-123W from Harbor Hut Inc., George Leage to THMT Inc.,
Heather and Troy Leage
and Conditional Approval of Amendment #1 to the Lease Agreement for
Lease Site 122-123/122W-123W (Harbor Hut, 1205 Embarcadero)**

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

WHEREAS, the City is the lessor of certain property on the Morro Bay waterfront described as Lease Site 122-123/122W-123W and Extension 122W-123W, located at 1205 Embarcadero; and,

WHEREAS, George Leage, dba Harbor Hut Inc., is the lessee of said property; and

WHEREAS, Mr. Leage, Harbor Hut Inc. has requested the City approval assignment of the lease agreement for said property to THMT Inc. Heather and Troy Leage. The lease agreement requires City Council approval of any assignment of the lease agreement and also states that the City shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this lease; and,

WHEREAS, the lessor has completed the Lease Assignment Application form and has paid the associated fee and the proposed lessors have provided a credit report indicating a satisfactory level of financial capability for operating the site and have placed the rent for the remainder of this fiscal year into the assignment of lease escrow account; and,

WHEREAS, the City and the proposed tenant, THMT, Inc. have agreed to an amendment to the lease agreement to add five years on the existing lease agreement so that the new termination date shall be June 30, 2023 and requires that no later than December 31, 2009 Tenant shall complete refurbishment, remodeling and repairs on the buildings on the premises valued at a minimum of \$60,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that assignment of the lease agreement for Lease Site 122-123/122W-123W from Harbor Hut Inc., George Leage to THMT Inc., Heather and Troy Leage and Amendment #1 to the lease agreement for Lease Site 122-123/122W-123W and Extension 122W-123W is hereby approved and that the Mayor is hereby authorized to execute the Assignment and Assumption document and Amendment #1.

BE IT FURTHER RESOLVED, approval of both the Assignment of the lease agreement and Amendment #1 to the lease agreement for Lease Site 122-123/122W-123W and Extension 122W-123W is conditional upon the City receiving final executed Assignment and Assumption Documents approved by the City Attorney and all rental money owed on the Lease Site no later than July 11, 2009. Failure to provide an acceptable and fully executed Assignment and Assumption document and payment of all rent owed for Lease Site 122-123/122W-123W and Extension 122W-123W by July 11, 2009 shall nullify this Resolution and the approval of said assignment and amendment to said lease agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13th day of April, 2009 on the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Janice Peters, Mayor

Bridgett Bauer, City Clerk



AGENDA NO:

MEETING DATE: April 13, 2009

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 2, 2009
FROM: Janeen Burlingame, Management Analyst
SUBJECT: Resolution No. 12-09 Authorizing the Federal Funding Under FTA Section 5311 (49 U.S.C. Section 5311) With California Department of Transportation to Purchase One (1) Wheelchair Accessible Dial-A-Ride Vehicle and One (1) Wheelchair Accessible Trolley

RECOMMENDATION:

Staff recommends the City Council adopt Resolution No. 12-09.

FISCAL IMPACT:

Purchase of the Dial-A-Ride and trolley vehicles would be funded 100% with Federal Section 5311 funding through the American Recovery and Reinvestment Act (ARRA).

DISCUSSION:

On February 16, 2009, President Obama signed into law the American Recovery and Reinvestment Act which includes funding for Transit Capital Assistance programmed through the existing Federal Transit Administration (FTA) Section 5311 program. Only capital assistance is allowable under the ARRA Transit Capital Assistance program.

Current programming of 5311 funding is through the San Luis Obispo Council of Governments (SLOCOG). Project requests were submitted to the SLOCOG on March 4. The City submitted to SLOCOG requests for two projects: purchase one Dial-A-Ride vehicle and one trolley vehicle that would replace vehicles that are beyond the FTA's useful life criteria by the time funding and procurement are completed. On April 8, 2009 the SLOCOG Board will approve a Program of Projects. The City's two requested projects are on the recommended list for funding.

Once the 5311 funding Program of Projects is approved by the SLOCOG Board, SLOCOG staff will submit to CalTrans an amendment to the San Luis Obispo region's Transportation Improvement Program (TIP) placing these projects in the TIP. While this is occurring, the City will working directly with CalTrans on application submission and grant contract execution. Applications to CalTrans are due April 17.

CONCLUSION:

Staff recommends the City Council adopt Resolution No. 12-09.

Prepared By: _____ Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

RESOLUTION NO. 12-09

**RESOLUTION AUTHORIZING THE FEDERAL FUNDING UNDER
FTA SECTION 5311 (49 U.S.C. SECTION 5311) WITH CALIFORNIA
DEPARTMENT OF TRANSPORTATION TO PURCHASE ONE (1)
WHEELCHAIR ACCESSIBLE DIAL-A-RIDE VEHICLE AND
ONE (1) WHEELCHAIR ACCESSIBLE TROLLEY**

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

WHEREAS, the U. S. Department of Transportation is authorized to make grants to states through the Federal Transit Administration to support capital and operating assistance projects for nonurbanized public transportation systems under Section 5311 of the Federal Transit Act; and

WHEREAS, the California Department of Transportation (Department) has been designated by the Governor of the State of California to administer Section 5311 grants for public transportation projects; and

WHEREAS, the City of Morro Bay desires to apply for said financial assistance to permit the purchase of capital vehicles and equipment for the rural transit service in the City of Morro Bay; and

WHEREAS, the City of Morro Bay has, to the maximum extent feasible, coordinated with other transportation providers and users in the region (including social service agencies).

NOW, THE REFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the City does hereby authorize the Public Services Director to file and execute applications on behalf of the City with the Department to aid in the financing of capital assistance projects pursuant to Section 5311 of the Federal Transit Act of 1964, as amended.

BE IT FURTHER RESOLVED that the Public Services Director is authorized to do the following: execute and file all assurances or any other document required by the Department; provide additional information as the Department may require in connection with the application for the Section 5311 projects; and to submit and approve request for reimbursement of funds from the Department for the Section 5311 project.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13th day of April, 2009 on the following vote:

AYES:
NOES:
ABSENT:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk



AGENDA NO: A-5

MEETING DATE: 4/13/09

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 25, 2009
FROM: Susan Slayton, Administrative Services Director
SUBJECT: Adoption of Ordinance No. 545 Amending Title 5 Business Licenses and Regulations, Chapter 5.04 Regarding Duration of License and Fee Payment—Prorating – Second Reading

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 545.

SUMMARY:

Ordinance 545 was introduced at the Council meeting held on March 23, 2009. This is the second reading, after which the Ordinance is adopted and will become effective on the 31st day after its passage.

Prepared By: _____ Dept Review: _____
City Manager Review: _____
City Attorney Review: _____

ORDINANCE NO. 545

AN ORDINANCE OF THE CITY OF MORRO BAY
TO AMEND MORRO BAY MUNICIPAL CODE TITLE 5 BUSINESS LICENSES AND
REGULATIONS, CHAPTER 5.04, SECTION 5.04.160 DURATION OF LICENSE,
AND SECTION 5.04.260 FEE PAYMENTô PRORATING

THE CITY COUNCIL
CITY OF MORRO BAY, CALIFORNIA

The City Council of the City of Morro Bay does ordain Morro Bay Municipal Code, Title 5 *Business Licenses and Regulations*, Chapter 5.04, Section 5.04.160 ó òDuration of licenseö and Chapter 5.04, Section 5.04.260 ó òFee paymentô Proratingö be amended as follows:

WHEREAS, Title 5 of the Morro Bay Municipal Code sets forth duties and responsibilities of the business licensing and regulation of businesses in the City; and

WHEREAS, the City desires to exempt change the business license annual period to coincide with the business start date; and

WHEREAS, the City of Morro Bay needs to amend Chapter 5.04, Sections 5.04.160 and 5.04.260 in order to make this change; and

WHEREAS, following the Public Hearing, and upon consideration of the testimony of all persons, the City Council of the City of Morro Bay does ordain Chapter 5.04, Section 5.04.160 ó òDuration of licenseö and Section 5.04.260 ó òFee Paymentô Proratingö be amended as follows:

5.04.160 Duration of License.

All licenses issued hereunder shall expire on the last day of the month occurring 1 year after the effective date of issue.

5.04.260 Fee payment

A. Unless otherwise specifically provided, all annual license taxes, under the provisions of this chapter, shall be due and payable in advance each year on the first day of the month following license expiration.

B. Except as otherwise herein provided, license fees, other than annual, required hereunder shall be due and payable as follows:

1. Semiannual license fees on the first day of July and the first day of January each year.
2. Quarterly license fees on the first day of July, October, January, and April of each year;
3. Monthly license fees on the first of the month;
4. Weekly license fees on Monday of each week in advance;
5. Daily license fees each day in advance.

The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the city in accordance with Section 36933 of the Government Code.

INTRODUCED at the regular meeting of the City Council held on the 23rd day of March 2009, by motion of Councilmember Grantham and seconded by Councilmember Borchard.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, on the 13th day of April, 2009 by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING APRIL 12 - 18, 2009 AS
“NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK”**

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

WHEREAS, emergencies can occur at anytime that require public safety personnel; and

WHEREAS, when an emergency occurs the prompt response of public safety personnel is critical to the protection of life and preservation of property; and

WHEREAS, the safety of our public safety personnel is dependent upon the quality and accuracy of information obtained from citizens who telephone the Morro Bay Police Communications Center; and

WHEREAS, Public Safety Dispatchers are the first and most critical contact our citizens have with emergency services; and

WHEREAS, Public Safety Dispatchers are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information and insuring their safety; and

WHEREAS, Public Safety Dispatchers of the Morro Bay Police Department have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and

WHEREAS, each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year, and

WHEREAS, Public Safety Dispatchers will be honored at the annual Footprinter Communicators Banquet on April 16, 2009.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morro Bay hereby proclaims the week of April 12-18, 2009 as “*National Public Safety Telecommunications Week*” in honor of the women and men whose diligence and professionalism keep our city and citizens safe.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
seal of the City of Morro Bay to be
affixed this 13th day of April, 2009

JANICE PETERS, Mayor
City of Morro Bay, California

After the initial formation of the assessment district, each year beginning in April/May the City must hold a series of three (3) public hearings to confirm the levy of assessment for the upcoming fiscal year. The first public hearing initiates the annual levy process and directs the preparation of an Engineers Report; the second hearing approves the Engineer's Report and notices the intent to levy the assessment and the third public hearing actually levies the assessment for the upcoming fiscal year.

DISCUSSION

Upon adoption of Resolution No. 15-09, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review at the May 11, 2009 City Council meeting. The May 11th agenda item will also include a resolution of intention declaring the City Council's intent to levy and collect the assessment. The resolution lists the improvements, names the district and gives its general location, refers to the proposed assessment, gives notice of the time and place for the third and last public hearing regarding the levy of the proposed assessment as well as states whether or not the proposed assessment is an increase from the previous year. The Government Code states that the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 22, 2009. Any interested person may file a written and/or oral protest with the City Clerk stating all grounds of objection for levy of assessment.

However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district.

The Cloisters Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount will then appear each year on the parcel owner's property tax bill.

In conformance with proposition 218, The Right to Vote on Taxes Act, passed in 1996 by the voters in the State of California, the Cloisters Landscaping and Lighting Maintenance Assessment District was approved by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 15-09 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space for the purpose of assessing private property owners of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice that a public hearing on the intent to levy the assessment, review and acceptance of the Engineer's Report, will be held on May 11th, 2009.

Attachments: Exhibit A.
Resolution No. 15-09

RESOLUTION NO. 15-09

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR CLOISTERS LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTION 22500 ET SEQ.)**

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

WHEREAS, the City Council has placed certain conditions on the development of Tract 1996, The Cloisters, requiring formation of a property Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration area, and other common area improvements to be held by or dedicated to the City of Morro Bay as required by City Ordinance; and

WHEREAS, these conditions are more specifically identified in Vesting Tentative Tract Map (condition 10e) and Precise Plan (condition 2c) as required by City Ordinance; and

WHEREAS, the Owners of the real property within the proposed district have consented in writing to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500 et seq.), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners of real property within the proposed district have offered to dedicate in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has agreed to accept said Offer of Dedication, provided that the cost of maintenance of thereof shall be borne by an assessment district as required by the Conditions of Approval of the project; and

WHEREAS, one hundred percent (100%) of the property owners approved formation of the district to assure conformance with the recently enacted “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D); and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay that

- a. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the “Landscaping and Lighting Act of 1972”. (Streets and Highways Code Sections 22500 et seq.)

- b. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Streets and Highways Code Section 22525 which are installed by the developer as a condition of approval of Tract 1996 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.
- c. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
- d. An Engineer's Report will be prepared for consideration at the May 11, 2009 City Council meeting.
- e. This District shall be called the "Cloisters Landscaping and Lighting Maintenance Assessment District".

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13th day of April, 2009 by the following vote:

AYES:

NOES:

ABSENT:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk



AGENDA NO: _____
Meeting Date: _____ Action: _____

Staff Report

TO: Honorable Mayor and City Council **DATE:** 4/13/2009

FROM: Joe Woods, Recreation and Parks Director

SUBJECT: Resolution No. 16-09 Initiating Proceedings to Levy the Annual Assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District

RECOMMENDATION

Staff recommends the City Council adopt Resolution No.16-09, ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2009-10 for the maintenance of the North Point Natural Area.

FISCAL IMPACT

The F.Y. 2008-09 assessment provided \$5,645 for the maintenance of the North Point Natural Area.

BACKGROUND

On June 27, 1994 the City Council accepted Lot 11 of the North Point subdivision and accepted the final map for Tract 2110. As per the conditions of approval, a Landscaping and Lighting Maintenance Assessment District was formed for the ongoing maintenance of the 1.3 acre natural area. The area includes a non-irrigated meadow area, decomposed granite and asphalt walkways, a stairway/beach access, parking lot, drip irrigation system, public access signage and parking lot.

On December 9, 1996 the City Council adopted Resolution No. 89-96 which ordered the formation of the North point Landscaping and Lighting Maintenance Assessment District and confirmed the yearly assessment of \$5,645. On January 13, 1997 the City Council adopted Resolution No. 01-97 which approved and accepted the on and off-site improvements for Tract 2110. By adoption of Resolution No. 01-97, the City officially started the maintenance of the North Point Natural Area.

After the formation of the assessment district, each year beginning in April/May the City must hold a series of three (3) public hearings to confirm the levy of assessment for the upcoming fiscal year. The first public hearing initiates the annual levy process and directs the preparation of an Engineer's Report, the second hearing approves the Engineers Report and notices the intent to levy the assessment and the third public hearing actually levies the assessment for the upcoming fiscal year.

DISCUSSION

Upon adoption of Resolution No.16-09, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for the second public hearing scheduled for the May 11, 2009 City Council meeting. The May 11th agenda item will also include a resolution declaring the City Council's intent to levy and collect the assessment. The resolution also lists the improvements, names the district and gives its general location, refers to the proposed assessment, gives notice of the time and place for the third and last public hearing regarding the

Prepared By: _____ Dept. Review: _____
City Manager Review: _____
City Attorney Review: _____

levy of the proposed assessment as well as states whether or not the proposed assessment is an increase from the previous year.

Staff Report 1 - North Point 2009
Page 2

The Government Code states that the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 22, 2009. Any interested person may file a written and/or oral protest with the City Clerk stating all grounds of objection for levy of assessment. However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district. However, the assessment amount cannot be increased over the highest assessment on record, \$5,645, should a majority protest exist.

The North Point Natural Area Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount will then appear each year on the parcel owner's property tax bill.

In conformance with Proposition 218, "The Right to Vote on Taxes Act", passed in 1996 by the voters in the State of California, the North Point Natural Area Landscaping and Lighting Maintenance Assessment District was approved by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprized of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 16-09 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area for the purpose of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice that a public hearing on the intent to levy the assessment, review and acceptance of the Engineer's Report, will be held on May 11, 2009.

Attachments: Exhibit A
Resolution No. 16-09

RESOLUTION NO. 16-09

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTION 22500 ET SEQ.)**

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

WHEREAS, the City has placed certain conditions on the development of Tract 2110 ðNorth Pointö, requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay as required by the Morro Bay Municipal Code 16.16.030; and

WHEREAS, these conditions are more specifically identified in the Precise Plan (condition F1-F7); and

WHEREAS, the Owners of the real property within the proposed district consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22608.2 et seq.), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners of real property within the proposed district offered in fee and in perpetuity, Lot 11 of Tract 2110, and the City has agreed to said Offer of Dedication, provided that the cost of maintenance of thereof is borne by an assessment district as required by the Conditions of Approval of the project; and

WHEREAS, one hundred percent (100%) of the property owners approved formation of the District to assure conformance with the recently enacted ðRight to Vote on Taxes Actö (Proposition 218, California Constitution Act XIII, C & D).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the “Landscaping and Lighting Act of 1972”. (Streets and Highways Code Sections 22500 et seq.)

1. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Streets and High ways Code Section 22525 which are installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for the North Point Project as approved by the City.
2. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
3. An Engineer's Report will be prepared for consideration at the May 11, 2009 City Council meeting.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13th day of April, 2009 by the following vote:

AYES:

NOES:

ABSENT:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk



AGENDA NO: _____

Meeting Date: 4/13/09 Action: _____

Staff Report

TO: Honorable Mayor and City Council

DATE: April 8, 2009

FROM: Aileen Nygaard, Associate Planner

SUBJECT:

Adoption of a Mitigated Negative Declaration and consideration of a Concept plan for a Vesting Tentative Subdivision Map SOO-062/ Conditional Use Permit UPO-138/Coastal Development Permit CPO-207, for a custom residential 10 lot conservation subdivision and open space easement on 4.75 acres at 1305 Teresa Drive.

RECOMMENDATION:

Staff recommends the City Council adopt the Mitigated Negative Declaration and consider the Concept plan for a Vesting Tentative Subdivision Map SOO-062/ Conditional Use Permit UPO-138/Coastal Development Permit CPO-207.

FISCAL IMPACT:

The project is a residential subdivision on a private road, in an area identified in the General Plan for future residential use. Infrastructure costs associated with providing services to the proposed subdivision will be partially offset by the applicable impact fees associated with recordation of the Final Map and subsequent Building Permits.

SUMMARY:

The applicant proposes to subdivide a 4.75 acre parcel with a Vesting Tentative Tract Map on the east side of Highway 1, adjacent to the senior care facility, into a ten (10)-lot conservation subdivision for custom residential lots ranging in size from 14,458 to 30,461 square feet. Building envelopes are proposed to establish development boundaries on each lot and conserve the remaining lot area in open space easement. The intent of the applicant is to conserve open space for visual and natural vegetation conservation.

For your consideration of the Concept Plan, subdivision improvements for street, drainage, and

Prepared By: _____

Dept Review: _____

City Manager Review:

City Attorney Review: _____

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tract landscaping are proposed along with Design Guidelines and Covenants, Conditions and Restrictions to provide the basis for future lot development. No Homeowners Association is proposed with this subdivision and maintenance responsibilities of open space will be provided by individual lot owners for their individual easement areas and subject to a Road Maintenance Committee.

Although not part of the project description, integral to the concept is a proposed lot line adjustment. A lot line adjustment is proposed to exchange equal area between the senior care facility and 10 lot subdivision in order to locate the existing senior care driveway on its parcel, instead of as an easement on the subdivision parcel. The lot line adjustment will allow room for the senior care facility to provide 22 parking spaces and 5 tree planters along the driveway as an amendment to the workforce building permit.

The applicant's original request to exchange affordable housing provisions for no open space has been withdrawn. Instead, the affordable housing requirement will be met by providing in lieu fees per the affordable housing requirements.

BACKGROUND:

In March 2006, the Subdivision Review Board (SRB) reviewed and commented on conceptual subdivision plans prepared in June 2005 that depicted the general cul-de-sac design prior to the addition of building envelopes and open space components.

Following the SRB review, the Planning Commission reviewed this project on two different occasions. First, at the September 4, 2007 hearing, the Commission directed the applicant to:

- Further develop the design concept, which is intended to emulate aspects of Sea Ranch in Sonoma County. Sea Ranch is a design scheme that features homes located in natural settings with the intent to blend with the natural terrain and vegetation by limiting the impact of built elements on the scenery,
- Submit a landscape plan, including screening of the lots and cul de sac,
- Include CC&Rs-covering height limits, perimeter fencing, common areas, utilities, parking on the cul de sac curb cuts, sidewalk and screening.
- Include limitations on the size of homes.

On a 5-0 vote, action was taken to continue this matter until detailed design materials were developed.

After the first Planning Commission hearing, the applicant requested to process the project under the new Subdivision Ordinance to utilize chapter 16.11 for Conservation Subdivisions. The applicant then prepared a Design Guidelines Manual and conceptual site plan depicting a floating building envelope concept. The Planning Commission again reviewed the proposal on February 4, 2008, and voted 5-0 to approve Residential Conservation Subdivision (S00-062/UPO-138/CPO-207) with the following criteria:

- That there will be 2 very-low and 2 low affordable housing units tied to the Casa de

Flores Workforce Housing. If that project doesn't go forward, the units shall be built elsewhere or 2 lots will be restricted and revert to the City of Morro Bay.

- Change the 30-year restriction to perpetuity.
- Revise condition 25, 26, and 27, deleting "fertilized" and "fumigated" and requiring individual landscaping plans to be submitted for each home lot.
- Revise 7.6 of the Design Manual to require active or passive solar systems
- Prohibit all livestock
- Review 7.0 and 7.2 of the Design Manual to insure approved building materials are used and the Sea Ranch Concept is maintained.

REGULATORY SETTING/PROCESS

The process required to evaluate this project as a conservation subdivision, establish the use and subdivide the parcel is outlined as follows:

Planned Development Process

For projects located on public property (i.e., the waterfront or State Parks), or on private property exceeding one acre, the Planned Development Overlay Zone requires a heightened review process involving Concept Plan approval by both the Planning Commission and City Council, and Precise Plan approval at the Planning Commission. The proposed project is subject to this procedural requirement because it is located on privately owned property over an acre as set forth in the Planned Development Overlay Zone requirements. The applicant has submitted the materials required for Concept Plan review, including a conceptual tentative subdivision map showing proposed lot and easement locations, tract landscaping plans, design guidelines to describe architectural design requirements, CC&R's to demonstrate maintenance responsibilities for common areas, and visual exhibits to demonstrate views of the site from scenic corridors.

Upon approval by City Council of a Concept Plan, a Precise Plan of development shall be submitted to the Planning Commission showing the details of property improvement and uses or activities to be conducted on the site, and any subdivision proposals. Precise Plans shall be processed in accordance with procedures for a Conditional Use Permit contained in 17.60. In this case because the development of the project will occur over time as custom homes there will be a precise plan for the overall Tentative Map and individual precise plans for the development of each lot.

Conservation Subdivision

The intent and standards for conservation developments are established in Chapter 11 of the Subdivision Ordinance. Conservation subdivisions are intended to provide for flexibility in meeting certain design standards to allow for the protection of open space and natural features within residential developments. To qualify as a conservation subdivision, a minimum of 40% of the total site area must be preserved as open space. Qualifying open space must be contiguous, shall not include more than 15% impervious surfaces, and must be legally bound to be held in perpetuity. Although there are no set requirements for minimum lot coverage, yards or setbacks, lots within Conservation Subdivisions are required to have a minimum area of

3,000-square feet, 40-foot width, and provide 400-square feet private open space per unit.

Conditional Use Permit/Coastal Development Permit

Per Chapter 16 Section 11.002 of the Subdivision Ordinance, the developer of a new Conservation Subdivision project shall first submit an application for a Conditional Use Permit to the Planning Division. Coastal Development permits for the new individual homes are also required.

ENVIRONMENTAL DETERMINATION:

The Environmental review conducted on the project resulted in a Mitigated Negative Declaration (MND) (Exhibit C) in accordance with the applicable provisions of the California Environmental Quality Act (Public Resources Code 21000 et. Seq.). The MND was circulated on July 16, 2007 with a review period that ended August 20, 2007. The environmental document concludes that there would not be a significant impact to environment with the incorporation of project mitigations. No comments were received and the applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Mitigation was required for Aesthetics, Biological, Geology, Hazards, Hydrology/Water Quality, Land Use, Noise, Public Services, Recreation, Transportation, and Utilities. At Planning Commission, staff recommended that a finding be made that there would not be a potential for significant impacts with the implementation of those mitigation measures.

Following the February 4, 2008 meeting of Planning Commission, the applicant proposed adjusting the project site. The proposal included additional area to lots 7 and 8 and a reduction in land area for lots 9 and 10. Although the new project size remains at 4.75 acres, the actual boundary did change. With the proposed addition of new area, a biological survey was prepared in March 2009 by Althouse and Meade to include the additional area. A sensitive status plant species, *Blochmanø dudleya* was identified in this area. Grasshopper sparrowø, a species of Special Concern, a ground nesting species was heard in adjacent grasslands. The occurrence of these species on the previously surveyed site may be determined through a preconstruction survey requirement and impacts mitigated through the recommendation of a biologist. Recommended mitigations from the applicantø biologist call for weed mowing and construction activities to be restricted and be performed between August 15th and March 15th in order to avoid nesting birds. Weed mowing between March 15th and August 15th to avoid impacts to the Cambria Morning Glory which should be cut no shorter than 6 inches. Mowing during this time requires a nesting bird survey performed by a qualified biologist within 100øof the work area. If no birds are present within this area work, may proceed. Although new plants species and wildlife species were identified, previous mitigation measures have been modified to include these species and mitigations modifications were made to provide equal or more effective measures.

Recirculation of the document was deemed unnecessary due to Section 15073 which allows

new information if:

- Mitigation measures are replaced with equal or more effective measures.
- New project revisions are added in response to comments on the project's effects identified in the proposed Negative Declaration which are not new significant impacts.
- Measures or conditions of project approval are added after circulation of the proposed Negative Declaration which are not required by CEQA, which do not create new potentially significant environmental impacts, and are not necessary to mitigate an avoidable significant environmental impact.
- New information is added to the Negative Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration that does not affect the impact analysis and the environmental determination and subsequent findings of the Negative Declaration.

SITE DESCRIPTION

The project site is a large vacant lot on the east side of Highway 1, bound by rolling grazing land, a natural drainage, and the adjacent senior care facility. The site is designated in the General Plan as Low Density Residential and zoned Suburban Residential (R-A) with the Planned Development Overlay. Due to the site's proximity to a stream and associated riparian habitat, and prominent location above Highway 1, a designated Scenic Highway, the site is considered as having potentially significant habitat and scenic value. The project site is visible from State Highway 1 both north and southbound and higher than Highway 1 by approximately 80 feet at its highest point.

PROJECT ANALYSIS:

The site is designated Low Density Residential (LDR) and zoned Suburban Residential (RA) with the Planned Development Overlay/Conservation Subdivision. Comparisons of the RA zoning/Conservation Subdivision requirement with the proposed project are described below.

Standard	Conservation Subdivision	Proposed
Maximum Number Lots	10 residential	10 residential
Minimum Area	3,000 square feet	14,458 square feet
Minimum Width	40 feet	41.74 feet
Private Open Space	400 square feet	2,000 square feet per unit
Open Space	81,892 square feet (40% of total acreage)	approx. 104,299 surrounding the home sites (51% of site area)

Parcel	Gross Lot Area (square feet)	Common Open Space Easement (square feet)	Private Drive & Teresa Drive	Maximum Building Envelope	Maximum Lot Coverage	Ave. Slope	Ave. elev. For typ. Garage pad	Building Height
1	30,093	9,646	10,172	3,600sf bldg. footprint	28%	2.1%	85	18-foot 6-inches (chimneys and other architectural features may exceed 3-feet)
2	17,025	9,646	1,484	1,000sf fenced private space	36%	7.9%	89	
3	16,982	9,646	1,484		36%	10.1%	92	
4	17,697	9,646	2,145		36%	17.5%	113	
5	26,997	20,536	1,125	1,000 sf unfenced private open space	21.4%	15.0%	117	
6	14,458	7,903	1,175		42%	17.7%	117	
7	18,328	10,517	2,000		34.7%	18.9%	114	
8	19,322	12,259	1,170	Total of 5,600 sf each lot	31%	16.9%	109	
9	15,698	7,468	2,484		42%	13.2%	86	
10	30,461	7,032	10,622		28%	4.9%	84	
Total	207,061 (4.75 ac)	104,299 (2.6 ac)	33,861 (0.75 ac)	56,000 (1.4 ac)				

Summary	Area	Percent
Building Envelopes	1.4 acres	30%
Private Road on lots	0.75 acres	19%
Open Space Easement	2.6 acres	51%
Total	4.75 acres	100%

Zoning Ordinance Compliance

The R-A zoning standards are as follows:

Setbacks	Required	Proposed	Recommended
Front yard	20 feet	20 feet	20 feet from edge of pavement
Rear yard	20% of depth w/ 20 feet max	10-foot minimum	30 feet from bldg. Envelope (20' exception for lots 9 & 10 (Defensible space requirement))
Side yard (interior)	10% average width w/ 10 feet max	5 feet	5 feet
Street Side yard (corner lot)	10 feet	N/A	

Lot coverage	45% maximum	Maximum building footprint of 3,600 square feet within the 5,600 square foot building envelope	Maximum building footprint of 3,600 square feet within the 5,600 square foot building envelope
Height	25 feet measured from the average natural grade.	18.5 feet	18.5 feet measured from the average natural grade.

ANALYSIS

Open space resources are identified for this project site as visual, riparian and bunchgrass habitats.

The project site is 4.75 acres, which under the Suburban Residential (RA) standards could allow up to ten lots with a minimum area of 20,000-square feet each (20-30% average slope). The applicant has proposed ten parcels ranging in size from 14,458 to 30,461-square feet, distributed throughout the property. Access to the site would be via a 28-foot wide private driveway designed perpendicular to the slope, with four-foot wide sidewalks each side and parking along one side of the roadway. The private road would terminate approximately 500-feet from the Teresa Drive extension. A summary of applicable standards and proposed project is provided below:

To address potential impacts, the Planning Commission required that building envelopes and maximum size for each dwelling be established, and that a landscape planting plan be designed to mitigate potential impacts to the setting and surrounding natural resources. The proposed building heights are less than the RA zone maximum allowance in attempt to keep homes from silhouetting, however a massing or bulk area standard will be required to further restrict the size to reduce visual impacts. The location of building envelopes in respect to special vegetation and terrain will need identification in order to assess the conservation value met by this subdivision.

The Concept Plan

The applicant is proposing to subdivide the site to create 10 parcels for residential development with easements for open space, drainages, common drainage basin, and the Cul-de-sac Street. Maintenance of these easements is proposed to be through a maintenance agreement described in the CC&Rs.

The exact location of the 5,600 square foot building envelopes has not been determined and are shown on the map as a larger building envelope/ development limit line. The applicant proposes to establish the exact envelope during individual applications. The applicant proposes that maintenance agreements provide for the maintenance responsibilities of the common facilities located on individual lots in place of a HOA (homeowner’s association). The parcels range from 14,458 to 30,461 square feet in gross area with maximum slope of 17 percent. Each lot would allow a detached single-family residence with a CC&R provision for a guest house, but no secondary unit with a kitchen. Secondary units are allowed by City code and

exclusion will not be enforced through City regulations.

Access

The applicant proposes a 20 foot wide private street with no on street parking or sidewalks to provide a rural setting. The applicant proposes guest parking to be accommodated on home driveways or along Teresa Drive to accommodate for the loss of on street parking on the proposed street. Section 16-9.406 requires that all roads and streets shall be designed as per the City's Standard Drawings and Specifications. Standard specifications require a 28' pavement section to provide two 10' travel lanes, 8' parking on one side, and 4' sidewalks each side. Relying on guest parking along Teresa Drive is not a viable alternative and will create a higher visual impact. Lack of screening space on Teresa Drive makes it highly visible from the highway while cars parked along the cul-de-sac drive will be screened by the house structures.

Infrastructure

Water and sewer lines, and utilities will be provided to each lot along the private street.

Grading

Proposed tract improvements requiring grading are the private street and drainage basin facility. To minimize grading on individual lots, the CC&R's are proposing stepped foundations to accommodate varying slopes.

Site Drainage

Drainage easements for the site are located along the back of each lot in order to capture drainage and direct into a detention basin along Teresa Drive. Building envelopes will drain to the private driveway storm drain which leads to the detention basin.

Natural Drainage

Per the General Plan and Local Coastal Plan, the natural drainage located on lots 1-3 requires a minimum 50' setback for urban settings. The applicant is proposing to implement this setback by restricting the building envelope outside the setback requirement.

Landscape

Landscaping with the tract improvements will provide the basic subdivision screening, erosion control, and drainage habitat enhancement. Tract landscaping will be drought tolerant and visually compatible with the surrounding vegetation. Landscape on lots is divided by the open space easement and the building envelopes. Natural vegetation will be conserved outside the building envelope by keeping grading and fire management maintenance inside the building envelope. Landscaping within the building envelope is proposed to be dictated by two separate plant palettes, inside the fenced private space and the unfenced natural transition open space. A defensible landscape zone 30' from structures is recommended for the rear setback within the building envelope. This will allow irrigation and maintenance to occur in this zone while not disturbing the open space vegetation.

Visual Analysis

The applicant has provided visual exhibits to evaluate offsite views of the project. One homesite was illustrated to demonstrate the conceptual development of individual sites and does not depict the full potential build-out of the site. Vegetation is depicted as shown on the proposed tract landscape plans for screening along the private driveway and drainage corridor. Additional landscaping is also shown that could potentially occur on individual lots. The accuracy of the additional lot landscaping is difficult to interpret in the exhibits since the intent of the open space easement is to retain natural vegetation occurring on site, which is naturally low shrubs or grassland and individual landscaping will be restricted to the building envelope for each lot. Further, the Design Guidelines propose restricting the height of trees to match the building height restriction, so the value of showing trees higher than 18ø6ö on the exhibits affects the evaluation of the site screening. Staff recommends a full conceptual depiction of the neighborhood be developed utilizing the maximum height allowed and approved plant palette prior to Precise Plan approval allowing for a more thorough evaluation.

Adjacent grades are not fully considered in the analysis. For example, building heights on lot 9 and 10 may be as much as 10 feet higher in the viewshed than the adjacent existing Seashell Community, and the homes on the upper slope could average 45øabove the adjacent facility. The ridge height and potential impacts of homes on the upper lots shall be restricted to the lowest elevation possible.

Building heights are proposed to be more restrictive than the zoning requirements for the underlying RA zone. The proposed 18ø6ö height is designed to minimize the visual impacts along the ridgeline. The applicant proposes to diverge from the City standard height calculation to propose another calculation which the applicant considers more restrictive. Staff recommends consistency in calculation with the City standard.

Biological Resources

The Biological survey prepared in 2004 by Jenesis Ecological Services, identifies Serpentine bunchgrass in the area of lots 3-9 and proposed mitigation for replacement of impacted plants are at a rate of 1:1. The applicant proposes individual lot owners survey their lots for sensitive plant species prior to construction. If species found, individuals are responsible for implementing mitigation and monitoring requirements. Also the developer shall be required to survey the project site and implement any mitigations as necessary prior to construction of onsite subdivision improvements.

With the proposed addition of new area to be added to lot 7 and 8, a biological survey was prepared in March 2009 by Althouse and Meade to include the additional area. A special status plant species, Blochmanø dudleya was identified in this area. Grasshopper sparrowø, a species of Special Concern, are a ground nesting species and were heard in adjacent grasslands. The occurrence of these species on the previously surveyed site may be determined through a preconstruction survey requirement and impacts mitigated through the recommendation of a biologist. Consistent with the earlier discussion, recommendation for the

applicant's biologist are that weed mowing and construction activities be restricted to be performed between August 15th and March 15th in order to avoid nesting birds. Weed mowing between March 15th and August 15th to avoid impacts to the Cambria Morning Glory should be cut no shorter than 6 inches. Mowing during this time requires a nesting bird survey performed by a qualified biologist within 100' of the work area. If no birds are present within this area work, may proceed.

Maintenance

No Home Owners Association (HOA) is proposed to oversee the maintenance responsibilities. In absence of an HOA, the CC&Rs describe a Road Maintenance Committee to facilitate maintenance of the roads, however a more inclusive description of all maintenance requirements for the common open space easement will be needed prior to development permits. Currently, individual lot owners are proposed to maintain common facilities on which the facility is located. Staff strongly recommends that an HOA be established in order to avoid dealing with separate property owners or inexperienced management entities. If an HOA is found unacceptable to City Council, staff recommends this task instead be performed in common by a qualified professional to maintain continuity and quality assurance. Maintenance agreements within the CC&Rs will establish cost sharing, maintenance schedule and routine.

Affordable Housing

Under General Affordable Housing Requirements, all new residential development of eight or more units are required to provide a minimum of 10% of the total number of units intended for sale to be affordable to families of low and moderate income ranges. Therefore, the applicant is required to provide one (1) unit within the proposed development (on-site), off-site if deemed not feasible, on-site (within three miles of coastal zone), or if the City determines that it is not feasible for the developer to provide such affordable housing off-site, the developer shall pay a fee in-lieu of providing such housing. The applicant has requested allowing the in-lieu-fee payment option and follow the contribution amount consistent with Policy H-14 which basis the fee on construction cost in accordance with the sliding scale of the project size (20% of the Construction Cost).

The project changes after the Planning Commission hearing are shown in the following table.

	Planning Commission 9/4/07	Planning Commission 2/4/08	City Council 4/13/09
Lots	10	11(10 residential, 1 open space lot)	10
Building Envelope		Floating envelope = 3600 sf building footprint	Floating envelope= 5600 sf developable area; 3600 sf building footprint 1000 sf private fenced area 1000 sf unfenced private area
Open Space	No open space in	Open space lot to include	Open space easement on

	exchange for providing offsite affordable housing	private drive and detention basin; and all are on lots outside building footprint	lots; area outside building envelope
Natural Drainage		No setback	50øsetback
HOA	HOA	HOA	NO HOA
Architecture Proposed	Sea Ranch style	Design Guidelines	Design Guidelines
Building Height	25ø	25ø	18ø-6ö
Building Square footage		3600 sf building envelope = footprint	3600 sf footprint x 18ø-6ö no maximum building square footage provided.
Street Design		28ø Parking one side Sidewalks both sides	20ø No parking on private drive No sidewalks
Fire Maintenance		In open space easement	In open space easement
LotLine Adjustment			Lot Line Adjustment proposal between 1305 and 1405 Teresa Drive.
Landscape Maintenance		Allowed in open space	Allowed in Open space
		Maintenance through an HOA.	Per individual lot owner and Road Maintenance Committee; Maintenance agreements in CC&Rø
Bunchgrass Mitigation		Off site location	Per individual lot owner

Staff has reviewed the applicant's Concept proposal including the design guidelines and CCRs and has developed a list of conditions which help clarify the development guidelines of the concept plan ensuring that the precise plans and any new development has clear design guidelines to follow. The following is a summary of the conditions recommended by staff. .

Site Design :

- a. Setback requirements shall be: Side yard 5ø minimum from property line, front yard 20ø minimum measured from back of paving, rear yard defensible space 30ø minimum from building envelope (20ø exception for lots 9 and 10).
- b. Lighting shall be shielded and downcast to not provide glare.
- c. Parking on site for guests shall be provided within the building envelope.
- d. Fencing limited to building envelope with same height limitations as per City codes.

Open Space:

- e. Open Space easement: no development or landscape is to be located within the open space easement.

Grading and Drainage:

- f. Grading shall not occur outside the building envelope with the exception of grading required for entry drives. Drainage shall be directed away from open space and toward the street for collection in the detention basin.

Building Design:

- g. Building height shall be a maximum of 18ø-6ö calculated by City standards and no more than two stories. Second stories shall be limited to 75% of footprint.
- h. Massing, size, foundations, color, and character shall be compatible with the surrounding neighborhood and rural setting..
- i. Passive solar systems and other energy saving design are encouraged.
- j. Landscape palettes: fenced private area and unfenced private transition area shall not include invasive species or trees over 18ø-6ö. Only natural existing vegetation is permitted with the open space easement.

Fire Management:

- k. Locate 30ø defensible zone from structures within building envelope, 70ø fire management practices located within open space easement as determined by the fire department and qualified biologist.

Maintenance:

- l. Provision for an HOA or similar entity to hold responsibility for maintenance of common areas.
- m. Maintenance responsibilities, schedules, routine and standards, and fee sharing shall be established in the maintenance agreements. Agreements shall include provisions to maintain all common facilities by qualified professionals including roads, drainage and detention structures, tract landscaping, and mitigation and monitoring for conservation areas.

CONCLUSION:

The City Council should evaluate the Concept plan and consider the Planning Commission's recommendation for the project's conformance with the General Plan, Local Coastal Plan, Zoning Ordinance and the Subdivision provisions. Findings for approval of the Concept Plan shall be made if the project is determined to be consistent with these rules and regulations and the Mitigated Negative Declaration prepared is deemed adequate.

In staff's opinion, this Concept Plan as conditioned is consistent with General Plan policies to provide low density residential hillside development with visual policies to preserve and protect

open spaces, and the rural setting.

Attachments:

Exhibit A Findings
Exhibit B Conditions of Approval
Exhibit C

1. Conceptual Site Plan
2. Vesting Tentative Map exhibit
3. Sea Shell Estates Deign Manual
4. Draft CC& Rø
5. Sea Ranch Concept Description
6. Mitigated Negative Declaration Additional Information
 - a. Althouse & Meade survey
 - b. Central Coast Archaeology
 - c. Heritage Discoveries
7. Planning Commission Agenda, minutes and Staff Report 2/4/08
8. Planning Commission Agenda, minutes and Staff Report 9/4/07
9. Subdivision Review Board Minutes 3/15/06 and 10/20/04

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Project: SEASHELL ESTATES

1305
TERESA DRIVE
WOODBURY
CA 94062

Client: NEW LIFE TRUST

1330
WOODBURY ST
WOODBURY, CA 94062
(415) 418-3120

Development: CONCEPTUAL SITE PLAN

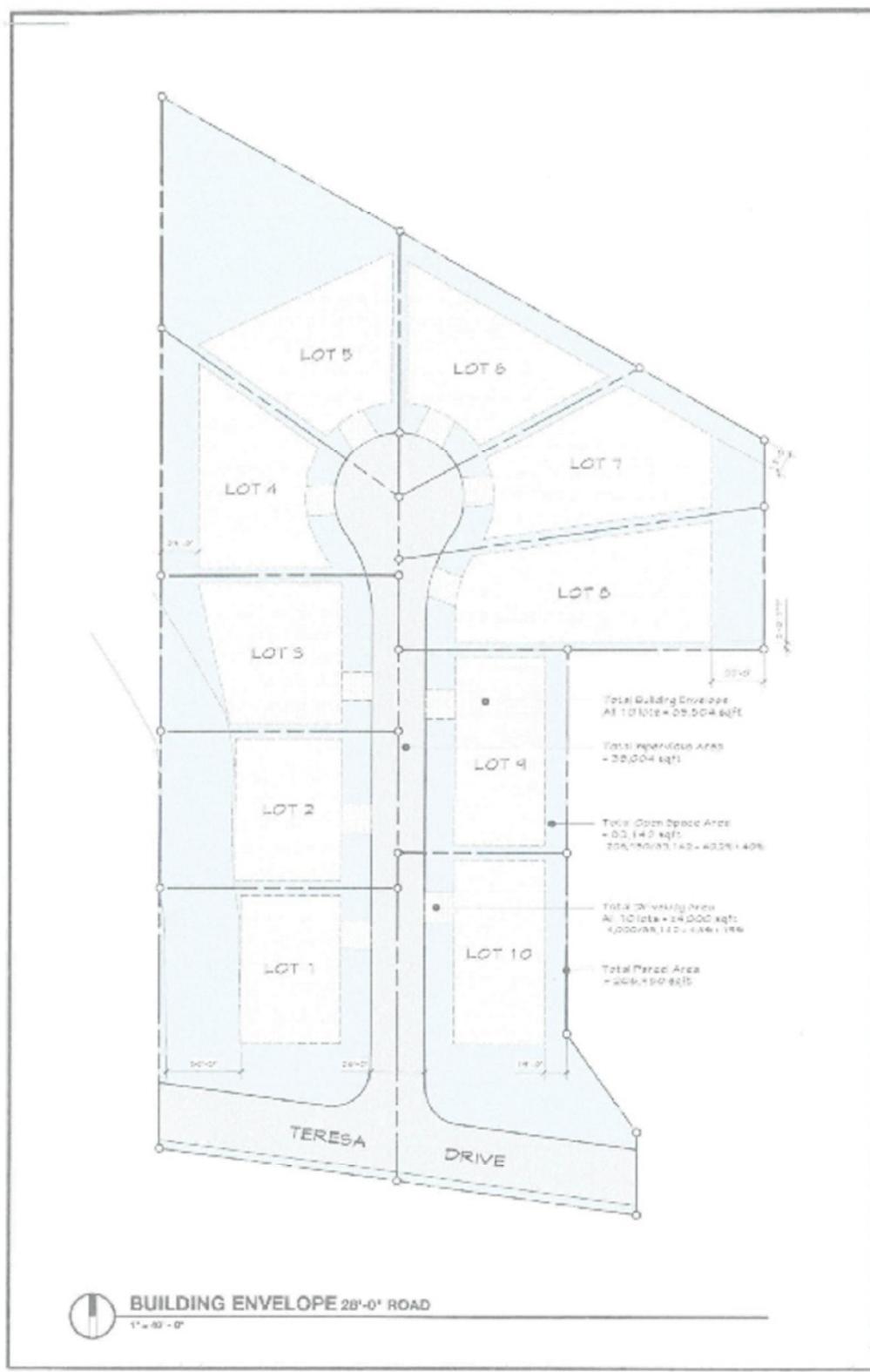


Date: 04/14/15

Drawn:

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

Title: 1.1



BUILDING ENVELOPE 28'-0" ROAD
1" = 80' - 0"

EXHIBIT A
FINDINGS FOR APPROVAL

For Concept Plan Approval of S00-062/UP0-138/CP0-207

California Environmental Quality Act (CEQA)

- A. That for purposes of the California Environmental Quality Act, Case No. S00-062/UP0-138/CP0-207 is subject to a Mitigated Negative Declaration based on numerous issues. Any impacts associated with the proposed development will be brought to a less than significant level through the Mitigations required as conditions of approval.

Concept Plan (Conditional Use Permit) Findings

- B. That the project is an allowable use in its zoning district and is also in accordance with the certified Local Coastal Program and the General Plan for the City of Morro Bay based on the analysis and discussion in the staff reports; and
- C. The establishment, maintenance, or operation of the use applied for will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use as the project is consistent with all applicable zoning and plan requirements as indicated in the staff reports; and
- D. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City since the project, as conditioned, will be conducted consistent with all applicable City regulations, as indicated in the staff reports.

EXHIBIT B
CONDITIONS OF APPROVAL

For Concept Plan approval of S00-062/UP0-138/CP0-207

STANDARD CONDITIONS

1. This Conditional Use /Concept Plan permit is granted for the use as described in the staff report and the on plans received by the Public Services Department, (øExhibit Cø of the staff reports). The conceptual Tentative Tract Map 2870 dated March 25, 2009 is granted approval. The approval is modified, however, by the following Conditions of Approval:
2. Inaugurate Within Two Years: If the approved use is not established within two (2) years of the effective date of this approval, this approval will automatically become null and void. However, upon written request by the applicant prior to the expiration date of this approval, up to two (2) one-year time extensions may be granted. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an amendment subject to Planning Commission review.
4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval. This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the

Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Utility Services: All water and sewer impact fees shall be paid at the time the building permit is issued.
8. Property Line Verification. It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.
9. Park In-lieu Fee. Prior to recordation of the Final Map requirements of the City of Morro Bay for dedication of land for park purposes and/or payment of fee-in-lieu thereof shall be met (MBMC Section 16.13.005).

PUBLIC WORKS CONDITIONS

10. Sewer Master Plan Impact Fee: Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee toward the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan.
11. Tract Map: \$1,100 fee. The City Master Fee Schedule requires the Applicant/Developer pay a Tract Map Fee of \$1,100 + direct costs for checking, inspection, and other provided work performed by contracted engineering services. The final map shall be furnished on Mylar and in electric format. The files need to be in the format of .dwg or .dxf. PDFs are not required but may be submitted in addition to confirm record of original drawings. The Applicant/Developer shall submit a current title report.
12. Public Improvements: \$404 Plan Check Fee + additional costs. Public Improvements are required as set forth in MBMC Section 14.44.
13. Public Improvement & Grading Plans Submittal: The Public Improvement Plans shall be titled as such shall and submitted to the Engineering Division of the Public Services Department. The Improvement plans shall be separate of the Grading Plans. The Grading, Drainage, and Retaining Wall Plans shall be submitted to the Building Department for their approval and issuance of a "Grading or Building Permit".
14. Erosion and Sedimentation Control Plan: The Tentative Map shall make reference to control measures for protection against erosion of adjacent property and prevent sediment or debris from entering adjacent properties, waterway, or ecologically sensitive area. Such control also serves as an aid in meeting the National Pollutant Discharge Elimination System (NPDES) Permit Program as Authorized by the Clean Water Act and administered by the State of California. The Plan shall be approved by the City prior to building permit issuance.

15. PLANNING CONDITIONS

16. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Director of Public Services.

17. Building Envelopes shall be shown on the Final Map at a maximum of 5600 square feet.

18. Open Space Easement shall be recorded on the final map with uses restricted to natural vegetation preservation. Cultivated landscaping shall be prohibited from the open space area in order to protect the natural resources..

19. Covenants, Codes and Restrictions (CC&Rs) and design manual shall be submitted with the final Tract Map for review and approval by planning staff and the City Attorney. An easement over each lot will also be provided for the common open space area. The Tract Map, easement and CC&Rs shall clearly indicate the common open space area. The CC&Rs shall include clear provisions for the continued maintenance of the common open space area and shall include provisions for the City to force maintenance of common area if the owners of the parcels fail to do so voluntarily. CC&Rs shall also restrict all landscaping, fencing and buildings throughout the project to continued consistency with plans hereby approved, unless otherwise approved by the Planning Commission or staff. CC&Rs shall include, but not be limited to:
 - a. Site Design :
 - i. Setback requirements shall be : Side yard 5ø minimum from property line, front yard 20ø minimum measured from back of paving, rear yard defensible space 30ø minimum from building envelope (20ø exception for lots 9 and 10).
 - ii. Lighting shall be shielded and downcast to not provide glare.
 - iii. Parking on site for guests shall be provided within the building envelope.
 - iv. Fencing limited to within building envelope with same height limitations as per City codes.

 - b. Open Space:
 - i. Open Space easement: no development or landscape other than natural vegetation is to be located within the open space easement.

 - c. Grading and Drainage:
 - ii. Grading shall not occur outside the building envelope with the exception of grading required for entry drives. Drainage shall be directed away from open space and toward the street for collection in the detention basin.

- d. Building Design:
 - i. Building height shall be a maximum of 18ø-6ö calculated by City standards and no more than two stories. Second stories shall be limited to 75% of footprint.
 - ii. Massing, size, foundations, color, and character shall be compatible with the surrounding neighborhood and rural setting.
 - iii. Passive solar systems and other energy saving design are encouraged.
 - e. Landscape palettes: fenced private area and unfenced private transition area shall not include invasive species or trees over 18ø-6ö. Only natural existing vegetation is permitted with the open space easement.
 - f. Fire Management:
 - i. Locate 30ø defensible zone from structures within building envelope, 70ø fire management practices located within open space easement as determined by the fire department and qualified biologist.
 - g. Maintenance:
 - i. Provision for an HOA or similar entity to hold responsibility for maintenance of common areas.
 - ii. Maintenance responsibilities, schedules, routine and standards, and fee sharing shall be established in the maintenance agreements. Agreements shall include provisions to maintain all common facilities by qualified professionals including roads, drainage and detention structures, tract landscaping, and mitigation and monitoring for conservation areas.
20. Colors and Materials: Prior to issuance of a building permit, the Planning and Building Director shall ensure compliance of all exterior colors and materials, including fencing materials as approved on the attached Exhibit(s). All other colors and materials not so specifically approved may be approved by the Director according to the following objectives: achieve compatibility with colors and materials used in the on-site improvements; achieve compatibility with the architectural design of the improvements; achieve compatibility with surrounding land uses and properties; preserve the character and integrity of the zone.
21. Undergrounding of Utilities: Pursuant to MBMC Section 17.48.050, prior to final occupancy clearance, all on-site utilities including electrical, telephone and cable television shall be installed underground.
22. Common Driveway Access and Maintenance: An easement or covenant consistent with Section 17.44.030 E shall be recorded for all parcels to have access to the common driveway and backing areas over parcels to allow for access to the parking provided. The easement or covenant shall include the responsibilities of maintaining the roadway.
23. Landscape and Irrigation Plan: Prior to the issuance of a building permit, a final tract landscaping plan, prepared and stamped by a licensed Landscape Professional, (i.e., Landscape Architect,

Architect, or Landscape Contractor) shall be submitted for review and approval by the Director of Public Services in accordance with all requirements of Section 17.48.290 of the MBMC. Said plan shall be consistent with the preliminary landscape plan and include a planting plan showing the species, number, size, and location of all plant materials. An irrigation plan shall include the proposed method and location of irrigation. Native and/or drought tolerant plant and tree species shall be used to the maximum extent feasible. Trees shall be selected from the Master City Street Tree List prepared by the Public Works Department. The landscape plans shall also include fencing details, utility meter screening, and screening of the trash enclosure.

24. Timing of Landscaping: Prior to issuance of a final Certificate of Occupancy or final grading or public improvements, all required tract plantings, groundcover and irrigation systems shall be in place to the satisfaction of the Director of Public Services. The landscape consultant shall provide a watering schedule and certify that all plantings and irrigation systems have been installed pursuant to the approved plans prior to issuance of the final Certificate of Occupancy.
25. Maintenance of Landscaping: All required plant materials shall be maintained in accordance with the watering schedule as specified in the approved landscape plan notes. All landscaping shall be cared for, maintained, watered, pruned and kept in a healthy growing condition for the life of the project. Where required plant(s) have not survived, it shall be promptly replaced with new plant materials of similar species, functional, size, and characteristics as specified in the approved landscape plant notes.
26. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.
27. The applicant is required to pay the Department Fish and Game fee for a Negative Declaration filing of No Effect Finding along with a fee of to the County Clerk. The funds shall be made payable to the County of San Luis Obispo and delivered to the Public Services Department within five days of the approval. The funds will be forwarded along with the Environmental Determination to the County Clerk in accordance with California Code of Regulation Title 14, Division 1, Subdivision 3, Chapter 4, Section 753.5. Filing the Notice of Determination along with the fee is required within 10 days of the project approval and has the effect of starting a 30-day statute of limitations period for challenges to the decision in place of 180-day period otherwise in effect.

ENVIRONMENTAL CONDITIONS

28. SUMMARY OF MITIGATION MEASURES

Aesthetics

1. No structure shall obstruct or silhouette the ridgeline when viewed from the Highway.
2. The materials and house colors shall blend with the hillside so that future homes do not

- dominate the view or cause attention to them.
3. The building envelopes shall be as small as possible and protection of the natural vegetation and riparian habitat preserved to greatest extent.

Biological Resources

1. A pre-construction survey by a qualified biologist shall occur prior to development on each of the lots and/or issuance of a coastal permit to determine if bunchgrass community or special status plant species exist on the property.
2. If bunchgrass community, Blochman's dudleya, Cambria Morning glory, or other special status plant species are determined to be found onsite, then mitigation shall be as follows for any loss of habitat, one to one replacement or preservation of these habitats on shall be required and an onsite mitigation and monitoring program shall be determined by a qualified biologist, and shall include fire management provisions.
3. To reduce the potential harm to the adjacent serpentine bunchgrass and riparian habitat development of the proposed home sites shall be limited in the landscape palette to non-invasive exotic species and landscape planting within the building envelopes only.
4. To protect the riparian habitat, the following measures are required:
 - a. Minimize the building envelopes. Impacts to native vegetation shall be calculated prior to development permits and utilized to determine mitigation requirements by a qualified biologist.
 - b. A 50-foot setback from top of bank of natural drainage shall be implemented on Lots 1-3.
 - c. Minimize impact to the riparian vegetation as much as possible. Ensure that riparian habitat adjacent to construction areas are protected during project construction by implementing protective measures such as marking the area with construction fencing. Any loss to riparian habitat shall be mitigated by developing a restoration plan. The restoration plan may consist of: enhancement of degraded portions of the onsite intermittent stream.
 - d. Prevent grading equipment from crossing, depositing excavated material in or otherwise disturbing, the stream channel. Equipment shall be stored and refueled within designated areas located and/or designed to avoid impact to creeks or tributaries.
 - e. Apply mulching, seeding or other suitable soil stabilization measures to protect exposed critical areas from erosion as soon as feasible after final grading.
 - f. Implement soil erosion control plan with Best Management Practices (BMPs).
5. The following mitigation measures shall reduce construction related impacts to less than significant:

- a. To ensure that the project does not impact nesting migratory birds or special status birds, construction should be performed between June 15 and October 15. If construction cannot be conducted during this time or extends beyond this time frame, a pre-construction survey shall be conducted to ensure that birds are not nesting in the work area. If special status birds are nesting in the work area, the work shall be delayed until the chicks have fledged and left.
- b. To ensure that the project does not impact ground nesting birds, construction should be performed between August 15 and March 15. If construction cannot be conducted during this time or extends beyond this time frame, a pre-construction survey shall be conducted to ensure that birds are not nesting in the work area. If special status birds are nesting in the work area, the work shall be delayed until the chicks have fledged and left.
- c. Fire Management: Weed mowing and construction activities should be restricted to be performed between August 15th and March 15th in order to avoid nesting birds. Weed mowing between March 15th and August 15th to avoid impacts to the Cambria Morning Glory should be cut no shorter than 6 inches. Mowing during this time requires a nesting bird survey performed by a qualified biologist within 100 feet of the work area. If no birds are present within this area work, may proceed.
- d. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on-site by readily identifiable barriers that will protect the intended and surrounding native habitat areas.
- e. The boundaries of the project and equipment access routes shall be minimized and clearly demarcated by flagging or other means to prevent workers or equipment from inadvertently straying from the project area. The number of access routes, number and size of staging areas, and the total area of activity shall be limited to the minimum necessary to achieve the project goals.
- f. Heavy equipment and other machinery shall be cleaned when necessary to reduce the risk of introducing any weedy species into the project area.

Geology/Soils

- 1. The applicant shall provide project-specific soils and geotechnical reports required by the Building Official. Project design and construction shall be consistent with recommendations contained in soils and geology reports, as required by the Building Official. This report shall consider alternatives to foundation design other than slab-on-grade. The goal would be to minimize cut and fill operation, loss of habitat mitigated by other sections to be preserved to greatest extent possible, maintaining the lowest profile and roof heights as possible.

Hazards/Hazardous Materials

- 1. The City Engineer shall review and approved the typical drive sections on plans for compliance with City standards.

2. Two fire hydrants shall be installed along the southern side of the private road and cul-de-sac proposed as required by the Fire Department.
3. The applicant understands that at the time of building construction fire sprinklers shall be required in the new buildings.
4. The applicant shall work with the Fire Department to meet the intent of the code requirement to buffer around the structures.

Hydrology/Water Quality

1. Apply for a grading permit and prepare plans that will protect water quality by reducing the discharge of pollutants (such as siltation to the maximum extent practicable) and satisfies the appropriate water quality requirement of the Clean Water Act.
2. Individual house plans and site development plans shall, to the maximum extent possible, limit impervious surfaces and direct all runoff in accordance with City standards to the detention basin. Evaluation of the detention basin capacity shall occur prior to tract improvements.

Land Use/Planning

1. The applicant shall pay the in-lieu-housing mitigation fee of 20% of the estimated construction cost for a typical house design on one of the lots. (Maximum size 3,600 sqft @ \$200 per/sqft = \$720,000 X 20% = \$144,000).
2. The prior mitigation set in the Geology; Biology and Aesthetic sections shall be followed to be consistent with policies.

Noise

Project construction within 500 feet of any existing residences shall be limited to the hours of 7 a.m. to 7 p.m. on weekdays and 8 a.m. to 7 p.m. on weekends. All large construction equipment will be equipped with "critical" grade noise mufflers. Engines will be tuned to insure lowest possible noise levels. Back up "beepers" will also be tuned to insure lowest possible noise levels. All necessary measures to muffle, shield or enclose construction equipment shall be implemented in order to insure that noise levels at the property line of the nearest parcels do not exceed 75 dBA.

Public Services

1. The Developer shall pay a pro-rata fair share to the City as an impact fee toward the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Water and Sewer System Master Plan.

Recreation

1. Park in-lieu fees are required to be paid by the Subdivision Ordinance in an amount calculated as established in that ordinance.

Transportation/Circulation

1. Traffic impact fees shall be paid proportionate to the net percentage increase in peak hour traffic flows generated by the proposed project. Or reimbursement for the projects fair share shall be paid for the roadway improvements made at the intersection of Quintana and South Bay Blvd.

2. Sidewalks shall be installed that runs along both sides of the private road.
3. In order to maintain a safe condition while construction activity occurs the applicant shall work with the City Engineer to determine what specific improvements shall be completed before grading and construction activity begins.

Utilities & Service Systems

1. The Developer shall pay a pro-rata fair share to the City as an impact fee toward the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Water and Sewer System Master Plan.

EXHIBIT C

Project Exhibits

For Conceptual Approval of S00-062/UP0-138/CP0-207

- **Vesting Tentative Map exhibit**
- **Sea Shell Estates Deign Manual**
- **Mitigated Negative Declaration Additional Information**
 - **Althouse & Meade survey**
 - **Central Coast Archaeology**
 - **Heritage Discoveries**

- **Planning Commission Agenda, minutes and Staff Report 2/4/08**
- **Planning Commission Agenda, minutes and Staff Report 9/4/07**
- **Subdivision Review Board Minutes 3/15/06 and 10/20/04**



AGENDA NO: _____

MEETING DATE: 4/13/09

Staff Report

TO: Honorable Mayor and City Council

DATE: April 1, 2009

FROM: Rob Schultz, City Attorney

SUBJECT: Introduction and First Reading of Ordinance No. 546 Establishing the Morro Bay Tourism Business Improvement District (MBTBID), Fixing the Boundaries Thereof, and Providing for the Levy of a Business Assessment to Be Paid by the Hotel Businesses in Such District

RECOMMENDATION:

Staff recommends that you conduct a public hearing to receive testimony regarding the Council's intention to establish a citywide Tourism Business Improvement District; then rule upon any protests; and if a legally sufficient protest showing is not made, introduce Ordinance No. 546 establishing the Tourism Business Improvement District in the City of Morro Bay.

MOTION: I move for introduction and first reading of Ordinance No. 546, by number and title only.

FISCAL IMPACT:

Based on TOT revenues, each percentage of assessment would generate approximately \$165,000 per annum for the purpose of tourism marketing and promotional efforts. Since the assessment is directly tied to gross room revenue, the funds generated would fluctuate with the citywide room rates and changes in room inventory.

BACKGROUND:

The discussion to form a tourism business improvement district (TBID) in San Luis Obispo surfaced approximately three years ago, when the San Luis Obispo Visitors and Conference Bureau (SLOVCB) initiated efforts to establish a countywide district to generate much needed funding for tourism promotion and marketing efforts for the County.

In November 2006, the City of Morro Bay passed a resolution of consent to allow its lodging establishments to participate in the countywide TBID discussion, subject to certain limitations.

Prepared By: _____

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

In December 2007, the City Council reconsidered its involvement in the San Luis Obispo County TBID because the district was originally proposed for the County of San Luis Obispo's unincorporated areas and the cities of Atascadero, Arroyo Grande, Grover Beach, Morro Bay, San Luis Obispo, Paso Robles and Pismo Beach. At that time, the only other organizations that passed a resolution consenting to a countywide formation were the County of San Luis Obispo, the City of Atascadero and the City of Morro Bay (Arroyo Grande has since adopted a resolution for inclusion). There was a concern by the City of Morro Bay regarding the lack of cities participating. After reconsideration, the City Council approved a motion to continue with the countywide BID by a 4-1 vote.

However, in January 2009, the City Council again reconsidered its involvement in the SLOCTBID since the countywide BID had yet to be instituted and the original conditions adopted by the City Council were not met in the draft ordinance presented by the County. After reconsideration, the City Council approved a motion to discontinue with the countywide BID and initiate the process to form a City-wide TBID.

DISCUSSION:

In order to initiate the process to form a City-wide TBID, the City Council on February 23, 2009 adopted a Resolution of Intention indicating its intention to establish a TBID for the benefit of tourism promotion and marketing in the City of Morro Bay. Included in this Resolution was the proposal by City hoteliers to establish the citywide TBID with a three percent (3%) assessment of gross room rates for the initial year and two percent (2%) for years thereafter. Following the adoption of the Resolution of Intention and consistent with statutory requirements, notification was published and mailed to area businesses and property owners, notifying the owners and other interested members of the public of the following key actions:

- 1. Public Meeting.** A public meeting to hear testimony supporting or opposing the proposed citywide TBID was held at the March 23, 2009 City Council meeting.
- 2. Protest Hearing.** The April 13, 2009 TBID Protest Hearing, which is the subject of this report.
- 3. Introduction of Ordinance to Establish the Assessment.** Absent valid protests, the April 13, 2009 Introduction of the Ordinance to establish the citywide TBID (Attachment 1).
- 4. Final Adoption of Ordinance to Increase Assessment.** The final adoption of the proposed Ordinance to establish a citywide TBID, scheduled to occur on April 27, 2009, assuming no valid protest.
- 5. Ordinance Effective.** If all actions are taken as described above, the anticipated effective date of the Ordinance will be June 1, 2009. Under the proposed ordinance, the assessment will become effective June 1, 2009.

The required public meeting was held, as scheduled, on March 23, 2009. It provided the opportunity for the Council to receive input from the public. No written correspondence was received and no public testimony was given in opposition.

The Council's next procedural step, prior to considering the establishment of a citywide TBID, is to conduct a public protest hearing to hear any opposition from area business owners to the proposed district. As set forth in Sections 36524 and 36525 of the California Streets and Highways Code, the Council has the ability to approve the proposed citywide TBID at this public hearing, unless oral or written protests are received from City hoteliers that will pay 50% or more of the proposed assessments. In that event, the Council cannot consider a proposal to establish a TBID in the City of Morro Bay for at least one year.

Oral protests can be made at the April 13, 2009 public hearing. Written protests must be received by the City Clerk at or before the public hearing and must include a sufficient description of the business to identify the owner and assure that it is a lodging establishment in the City of Morro Bay. If a legally sufficient protest is not made at the April 13, 2009 public hearing and if Council continues to support the proposed TBID, the proposed Ordinance establishing the district must be introduced. Final City Council adoption of the ordinance will be scheduled for April 27, 2009. If the City Council approves final adoption at that time, the district will become effective on June 1, 2009. Prior to the effective date of the assessment, staff will begin the process of preparing the bylaws and recruiting for the TBID Advisory Board.

CONCLUSION:

Staff recommends that Council move for introduction and first reading of Ordinance No. 546, by number and title only.

ORDINANCE NO. 546

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY ESTABLISHING THE
MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT
(MBTBID), FIXING THE BOUNDARIES THEREOF, AND PROVIDING FOR
THE LEVY OF A BUSINESS ASSESSMENT TO BE PAID BY
THE HOTEL BUSINESSES IN SUCH DISTRICT**

WHEREAS, on February 23, 2009, the City Council of the City of Morro Bay adopted Resolution No. 08-09 entitled, "Resolution of the City Council of the City of Morro Bay, California Declaring Its Intention to Establish the Morro Bay Tourism Business Improvement District (MBTBID), Declaring Its Intention to Levy an Assessment on Lodging Businesses Within Such District, and Fixing the Time and Place of a Public Meeting and a Public Hearing Thereon and Giving Notice Thereof"; and

WHEREAS, as specified in such Resolution, the boundaries of the district encompass the City of Morro Bay and there are no separate benefit zones within the district; and

WHEREAS, said Resolution was published and copies thereof were duly mailed and posted, all as provided by state law and specified in the Resolution; and

WHEREAS, pursuant to Resolution No. 08-09 a public meeting concerning the formation of said district was held before the City Council on March 23, 2009 at 6 p.m. in the City Council Chambers at the Veterans Hall located at 209 Surf Street in Morro Bay; and

WHEREAS, pursuant to Resolution No. 08-09 a public hearing concerning the formation of said district was held before the City Council on April 13, 2009 at 6 p.m. in the City Council Chambers at the Veterans Hall located at 209 Surf Street in Morro Bay; and

WHEREAS, all written and oral protests made or filed were duly heard, and testimony for and against the proposed action was received and considered; and

WHEREAS, the City Council determined that there was no majority protest within the meaning of Streets and Highways Code Section 36525, as written protests were not received from owners of businesses in the proposed district which would pay fifty percent (50%) or more of the assessments proposed to be levied; and

WHEREAS, protests are weighted based on the assessment proposed to be levied on each hotel. For purposes of the initial formation of the district, the proposed assessment to be levied was calculated based on the assessment rate multiplied by the most recent available data for the hotels' rental revenues.

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

SECTION 1. Pursuant to authority granted under the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., the City of Morro Bay Tourism Business Improvement District (MTBID) is hereby established in the City of Morro Bay as herein set forth and all hotel establishments in the district established by this ordinance shall be subject to any amendments made hereafter to said law or to other applicable laws.

SECTION 2. The City Council of the City of Morro Bay finds that hotel establishments within the Morro Bay Tourism Business Improvement District will be benefited by the improvements and activities funded by assessments to be levied.

SECTION 3. Chapter 3.60 (Tourism Business Improvement District) is hereby added to Title 3 (REVENUE AND FINANCE) of the Morro Bay Municipal Code to read as follows:

3.60.010 Title.

This chapter shall be known as the "City of Morro Bay Tourism Business Improvement District Law."

3.60.020 Definitions.

- A. "City Council" shall mean the City Council of the City of Morro Bay.
- B. "City Advisory Body" shall mean the Advisory Body appointed by the City Council, pursuant to this chapter.
- C. "District" shall mean the City of Morro Bay Tourism Business Improvement District (or "MTBID") created by this chapter and as delineated in Section 3.60.040.
- D. "Hotel" shall mean any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, motel, or bed and breakfast that pays Transient Occupancy Tax. For purposes of this chapter the definition of "hotel" shall not include RV parks and vacation homes.
- E. "Law" shall mean the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., as amended.
- F. "Operator" shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- G. "Transient" means any person who exercises occupancy or who is entitled to occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

3.60.030 Authorized Uses.

This ordinance is made and enacted pursuant to the provisions of the Parking and Business Improvement Area Law of 1989 (Sections 36500, et. seq., of the Streets and Highways Code) (the *ölawö*). The purpose of forming the district as a business improvement area under the Parking and Business Improvement Area Law of 1989 is to provide revenue to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination. It is the intent of this chapter to provide a supplemental source of funding for the promotion of tourism in the district. The specific services, activities and programs to be provided by the district are as follows:

- A. The general promotion of tourism within the district is to include costs as specified in the business plan to be adopted annually; and
- B. The marketing of conference, group, and film business that benefits local tourism and the local hotel industry in the district; and
- C. The marketing of the district to the travel industry in order to benefit local tourism and the local hotel industry in the district.

3.60.040 Boundaries.

The boundaries of the MBTBID shall be the boundaries of the City of Morro Bay.

3.60.050 Levy of assessment and exemptions.

The MBTBID shall include all hotel businesses located within the MBTBID boundaries. Commencing June 1, 2009, the assessment to be levied on all hotel businesses within the MBTBID boundaries shall be based upon 3% of the rent charged by the operator per occupied room per night for all transient occupancies. Commencing on June 1, 2010, and from year to year thereafter, the assessment to be levied on all hotel businesses within the MBTBID boundaries shall be based upon 2% of the rent charged by the operator per occupied room per night for all transient occupancies. The assessment shall be collected monthly, based on percent (%) of the rent charged by the operator per occupied room per night in revenues for the previous month. New hotel businesses within the boundaries shall not be exempt from the levy of assessment authorized by Section 36531 of the law. Assessments pursuant to the MBTBID shall not be included in gross room rental revenue for the purpose of determining the amount of the transient occupancy tax. The value of extended stays of more than thirty (30) consecutive calendar days shall be exempt from the levy of assessment.

3.60.060 Annual review of assessment.

All of the assessments imposed pursuant to this chapter shall be reviewed by the Morro Bay City Council annually, based upon the annual report prepared by the Advisory Board appointed pursuant to this chapter and Sections 36530 and 36533 of the law. After approval of the annual report, the Morro Bay City Council shall follow the hearing process as outlined in Section 36534 of the law. At the public hearing the Morro Bay City Council shall hear and consider all protests. If written protests are received from hotel businesses in the district paying fifty percent (50%) percent or more of the annual assessment, no further proceedings to continue the levy of assessments shall take place. The protests shall be weighted based upon the annual assessment for the prior year by each hotel business.

3.60.070 Imposition of assessment.

The Morro Bay City Council hereby levies and imposes and orders the collection of an additional assessment to be imposed upon hotel businesses in the district described above, which shall be calculated pursuant to Section 3.60.050 above. Such levy shall begin on June 1, 2009.

3.60.080 Use of revenue.

The activities to be provided by the MBTBID will be funded by the levy of the assessments and any voluntary contributions. The total revenue from the levy of assessments and any other voluntary contributions within the MBTBID shall not be used to provide improvements or activities outside the MBTBID or for any purpose other than the purposes specified in the resolution of intention. The proceeds of the hotel business assessment and any other voluntary contributions shall be spent to administer marketing and visitor programs to promote the City of Morro Bay as a tourism visitor destination. All funds shall be expended consistent with the purposes of this Section. Funds remaining at the end of any MBTBID term may be used in subsequent years in which MBTBID assessments are levied as long as they are used consistent with the requirements of this Section. The Morro Bay City Council shall consider recommendations made by the Advisory Board created by Section 3.60.100 of this ordinance as to the use of assessment revenue.

3.60.090 Delinquency, penalty and interest.

Any hotel business that fails to remit any assessment imposed by this ordinance within the time required shall pay a penalty of ten percent (10%) of the assessment amount in addition to the assessment. Any and all remedies available to the City of Morro Bay for non-payment of assessment or taxes shall be applicable in the event of non-payment of an assessment under this chapter. Any penalty and interest fees collected from a hotel business due to delinquency shall go to the City of Morro Bay.

3.60.100 Advisory board.

The City Council shall appoint an Advisory Board pursuant to Section 36530 of the California Streets and Highways Code in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on proposed improvements and activities, and on the method and basis of levying assessments. The City Council may, by resolution, adopt bylaws governing the membership and operations of the Advisory Board.

3.60.110 Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Morro Bay City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

3.60.120 Modification or disestablishment.

The City of Morro Bay, by ordinance, may modify the provisions of this chapter and may disestablish the district or parts of the district, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the district, and shall state the time and place of a hearing to be held by the Morro Bay City Council to consider the proposed action. If the operators of hotels which pay fifty percent (50%) or more of the assessments in the district file a petition with the City Clerk of the City of Morro Bay requesting the Morro Bay City Council to adopt a resolution of intention to modify or disestablish the district, the Morro Bay City Council shall adopt such resolution and act upon it as required by law. Signatures on such petition shall be those of a duly authorized representative of the operators of hotels in the district. In the event the resolution proposes to modify any of the provisions of this chapter, including changes in the existing assessments or in the existing boundaries of the district, such proceedings shall terminate if protest is made by the operators of hotels which pay fifty percent (50%) or more of the assessments in the district, or in the district as it is proposed to be enlarged.

In the event the resolution proposes disestablishment of the district, the Morro Bay City Council shall disestablish the district, unless at such hearing protest against disestablishment is made by the operators of hotels paying fifty percent (50%) or more of the assessments in the district.

3.60.130 Effective date.

The City Clerk of the City of Morro Bay shall certify to the passage of this ordinance by the Morro Bay City Council and cause it to be posted in three conspicuous places in the City of Morro Bay and it shall take effect on the thirty-first day after it is approved by the Morro Bay City Council.

SECTION 4. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the city in accordance with Section 36933 of the Government Code.

INTRODUCED at the regular meeting of the City Council of the City of Morro Bay held on the 13th day of April 2009, by motion of Councilmember _____ and seconded by Councilmember _____.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay on the ____ day of _____, 2009 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Janice Peters, Mayor

ATTEST:

Bridgett Bauer, City Clerk



AGENDA NO:

MEETING DATE: April 13, 2009

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 2, 2008
FROM: Rob Schultz, City Attorney
SUBJECT: Introduction and First Reading of Ordinance No. 547 Prohibiting the
Establishment of Medical Marijuana Dispensaries

RECOMMENDATION:

It is the recommendation of the City Attorney's Office that the City Council ban medical marijuana dispensaries until such time as the tension between State and Federal law is resolved. Ordinance No. 547 would prohibit Medical Marijuana Dispensaries (MMD) but would not preempt California law governing medical marijuana and would not impact qualified patients' and caregivers' rights to cultivate and possess medical marijuana for their own medical use, provided they maintain compliance with State law.

MOTION: I move for introduction and first reading of Ordinance No. 547 by
Number and title only.

FISCAL IMPACT:

None at this time.

SUMMARY:

In 1996 California voters enacted Proposition 215, the Compassionate Use Act, which protects qualified patients and their primary caregivers from prosecution under California laws for possession or cultivation of marijuana to treat serious illness pursuant to a doctor's recommendation. Several years later, in 2003, the state legislature enacted implementing legislation to allow qualified patients and caregivers to obtain identification cards that insulate them from arrest for cultivation and/or use of marijuana for authorized medical purposes. Although not expressly authorized under these laws, some people used this legal backdrop to set up medical marijuana dispensaries where qualified patients and caregivers could purchase marijuana for medical use.

However, under federal law, marijuana has no currently accepted medical use and the cultivation,

Prepared By: _____ Dept Review: _____
City Manager Review: _____
City Attorney Review: _____

possession, or distribution of marijuana is prohibited. Congress has not changed this prohibition despite the passage of medical marijuana laws in a number of states. The ongoing conflict between federal and state law on this subject has created a dilemma for local governments and their law enforcement agencies, particularly with regard to medical marijuana dispensaries.

After reviewing the current status of federal and state law and the associated risks and possible consequences of establishing an ordinance allowing medical marijuana dispensaries, the City Council on December 12, 2009 instructed the City Attorney to prepare an ordinance that would eliminate the possibility of storefront medical marijuana sales in the City. Pursuant to Council's direction, Ordinance No 547 is attached hereto.

BACKGROUND AND LEGAL ANALYSIS

Under the Controlled Substances Act enacted by Congress in 1970, marijuana is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," passed in 1972.

On November 5, 1996, California voters passed Proposition 215, the "Compassionate Use Act of 1996," with the stated intent of ensuring that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. This voter initiative exempts patients and their primary caregivers from prosecution under State laws that otherwise prohibit the cultivation or possession of marijuana. A "primary caregiver" is defined as "the individual, designated by a qualified patient or person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person...." (H&S Section 11362.7(d))

Shortly after Proposition 215 passed, medical marijuana dispensaries began appearing in Oakland, San Francisco and Santa Cruz. Although one of the Act's stated purposes is "To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," to date this plan has not been forthcoming, although the Attorney General recently released guidelines which are discussed below. This vacuum and lack of direction from the Legislature left communities to guess at how the Act was intended to be implemented, particularly as it concerns the distribution of medical marijuana through dispensaries. In response, the federal Drug Enforcement Agency (DEA) took an aggressive role to close these businesses as being in violation of federal law. This enforcement activity resulted in a number of significant court decisions. The first of these decisions was *United States v. Oakland Cannabis Buyers Cooperative, et al.* (2001) 532 U.S. 483. In that case, the United States Supreme Court held that there is no medical necessity exception to the prohibition against possession and use of marijuana under federal law, even when the patient is "seriously ill" and lacks alternate sources of relief. In *People v. Mower* (2002) 28Cal.4th 457, the California Supreme Court held that although Proposition

215 exempts qualified individuals from certain State marijuana laws, it does not grant an absolute immunity from arrest. Instead, it provides a limited immunity from prosecution and may provide a basis for a pretrial motion to set aside an indictment or a defense at trial.

In 2003, the State legislature passed Senate Bill 420, effective January 1, 2004, which established the Medical Marijuana Program. This legislation creates a voluntary system for qualified patients and their caregivers to obtain identification cards issued by counties that will insulate them from arrest for violations of State law relating to marijuana. It does not expressly authorize establishment of medical marijuana dispensaries. Nevertheless, after passage of SB 420, a number of people opened or attempted to open medical marijuana dispensaries in cities throughout the state.

In June 2005, the United States Supreme Court rendered an opinion in the case of *Gonzales v. Raich* (2005) 125 S.Ct. 2201. In the *Raich* case, federal agents seized and destroyed marijuana plants that were being grown for personal medical use. The plaintiffs sued to prohibit enforcement of the Controlled Substances Act to the extent that it interfered with their medical use of marijuana as permitted under California law. The Ninth Circuit Court of Appeals held that federal law enforcement authorities could not enforce the Controlled Substances Act against these individuals because it exceeded Congressional authority under the commerce clause of the United States Constitution. The Supreme Court reversed, holding that the commerce clause does allow Congress to prohibit cultivation or use of marijuana for medical purposes authorized by California law. Although the Supreme Court's analysis focused narrowly on the scope of Congressional authority under the commerce clause, the practical effect of the *Raich* decision is that federal law enforcement officers may continue to enforce federal drug laws against Californians who cultivate or use medical marijuana. The Supreme Court in *Raich* did not go so far, however, as to invalidate California law permitting the medicinal use of marijuana. No appellate court has as yet invalidated the California law. What resulted was a substantial controversy over the validity of state law permitting medicinal use of marijuana when federal authorities may legally raid medical marijuana dispensaries, shut them down, and prosecute those persons dispensing or using marijuana inside them. The *Raich* decision cast a cloud of uncertainty over the Compassionate Use Act.

In August 2008, California Attorney General (AG) Jerry Brown for the first time issued guidelines for the operation of California's medical marijuana laws (as he is required to do under those laws). The AG guidelines are attached hereto and are an important step towards fully clarifying the legal landscape and towards implementing medical marijuana law in California. They advise patients on how to stay within the confines of state law. They advise law enforcement on how to approach encounters with medical marijuana patients. They advise patients, law enforcement, and local communities on what is allowed and what is not allowed with regards to medical marijuana under California law. Although the AG guidelines are recommendations and are not binding on any court, they do provide powerful direction to state and local law enforcement, judges, and other public officials.

Perhaps most importantly, the AG guidelines provide recommendations for operating medical marijuana dispensaries in accordance with state law. Specifically, the Attorney General states:

“ a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver and then offering marijuana in exchange for cash donations are likely unlawful.”

The AG guidelines also contain a provision requiring medical marijuana dispensaries to operate on a not-for-profit basis.

On November 24, 2008, the California Supreme Court, in a unanimous decision, defined the term “primary caregiver” as used in the Compassionate Use Act (CUA) of 1996. In the case of *People v. Mentch, S148204*, the Court held that the CUA “provides partial immunity for the possession and cultivation of marijuana to two groups of people: qualified medical marijuana patients and their primary caregivers. We hold that a defendant whose care giving consisted principally of supplying marijuana and instructing on its use, and who otherwise only sporadically took some patients to medical appointments, cannot qualify as a primary caregiver under the Act....”

According to the evidence presented by Mentch, he opened a care giving and consultancy business in March 2003 called the Hemporium, the purpose of which was to give people safe access to medical marijuana. He provided the drug to approximately five different people, each of whom possessed a valid recommendation for the use of marijuana. He did not profit from his sales of marijuana, he counseled his customers about the best strains of marijuana to use for their ailments, and he took “a couple of them” to medical appointments on a sporadic basis.

The Supreme Court in *Mentch* held that “the statutory definition has two parts: (1) a primary caregiver must have been designated as such by the medical marijuana patient; and (2) he or she must be a person “who has consistently assumed responsibility for the housing, health, or safety” of the patient.” The Court concluded “a defendant asserting primary caregiver status must prove at a minimum that he or she (1) consistently provided care giving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana.” The Court went on to note, “primary caregiver status requires an existing, established relationship. In some situations, the formation of a bona fide care giving relationship and the onset of assistance in taking medical marijuana may be contemporaneous, as with a cancer patient entering chemotherapy....” However, the Court held, “what is not permitted is for an individual to establish an after-the-fact care giving relationship in an effort to thereby immunize from prosecution previous cultivation or possession for sale.” One who merely supplies a patient with marijuana has no

defense under the CUA, said the Court, and one has to be a caregiver before he or she provides the marijuana.

The Supreme Court in *Mentch* discussed the purpose of the CUA as one to help those who were seriously ill and who could benefit from the use of marijuana for medical purposes. It pointed out that the CUA's focus is on the seriously and terminally ill, [and] logically the Act must offer some alternative for those unable to act in their own behalf; accordingly, the Act allows "primary caregivers" the same authority to act on behalf of those too ill or bedridden to do so. To exercise that authority, however, one must be a "primary" principal, lead, central "caregiver" one responsible for rendering assistance in the provision of daily life necessities for a qualifying seriously or terminally ill patient. In a footnote, the Court stated that "the Act is a narrow measure with narrow ends. As we acknowledged only months ago, "the proponents' ballot arguments reveal a delicate tightrope walk designed to induce voter approval, which we would upset were we to stretch the proposition's limited immunity to cover that which its language does not."

CONCLUSION:

The AG guidelines and the *Mentch* California Supreme Court decision seem to finally resolve a major dispute in regard to the state's medical marijuana laws. It is now clear that to be classified as a "primary caregiver," one must be able to prove that he or she provided for the qualified patient's needs prior to providing medical marijuana. Furthermore, those needs are now clearly articulated and include the rendering of assistance in the provision of daily life necessities to a seriously ill person. That includes assisting such a person with his or her housing, health and/or safety needs and does not mean just providing medical marijuana.

Based upon the AG guidelines and the *Mentch* decision, it is the City Attorney Office's recommendation that City Council should adopt Ordinance No. 547 prohibiting MMDs but not preempting California law governing medical marijuana and qualified patients' and caregivers' rights to cultivate and possess medical marijuana for their own medical use, provided they maintain compliance with State law.

ORDINANCE NO. 547

**AN ORDINANCE OF THE CITY OF MORRO BAY
ADDING SECTION 9.06 TO THE MORRO BAY MUNICIPAL CODE
PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES
IN THE CITY OF MORRO BAY**

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

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 *et. seq.* and entitled the "Compassionate Use Act of 1996") legalizing the use of marijuana for specific medical purposes; and

WHEREAS, the State of California adopted SB 420 which clarified the scope of the Compassionate Use Act and allowed cities and other governing bodies to adopt and enforce rules consistent with SB 420; and

WHEREAS, the City of Morro Bay Municipal Code is silent with regard to the regulation and location of medical marijuana dispensaries; and

WHEREAS, the City of Morro Bay has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries; and

WHEREAS, on June 6, 2005, the Supreme Court decided in *Gonzales v. Raich* that Congress's constitutional authority to regulate the interstate market in drugs extends to doctor-recommended marijuana consumed under the Compassionate Use Act; and

WHEREAS, the *Gonzales v. Raich* ruling clarified that those who try to use marijuana as a medical treatment risk legal action by the U.S. Drug Enforcement Agency or other federal agencies, and that state law provides no defense; and

WHEREAS, the Federal Government maintains that the distribution and consumption of marijuana for any purpose is a violation of federal law; and

WHEREAS, the California Attorney General has stated that Medical Marijuana Dispensaries "are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law"; and

WHEREAS, the conflict between federal and state law on medicinal marijuana calls into question the City's ability to permit medical marijuana dispensaries as a legally permitted use; and

WHEREAS, permitting a use that is illegal under federal law could result in detrimental impacts for City residents, businesses, visitors, and medicinal marijuana patients and their caregivers; and

WHEREAS, the Morro Bay City Council, at a duly noticed public meeting on April 13, 2009, considered oral comments and written information concerning the proposed amendment to the Municipal Code.

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:

SECTION 1. A new chapter 9.06 of the Morro Bay Municipal Code is hereby added to read as follows:

Chapter 9.06

MEDICAL MARIJUANA DISPENSARIES

Sections:

- 9.06.010 Definitions.**
- 9.06.020 Medical Marijuana Dispensary – prohibited.**
- 9.06.030 Violation – separate offense.**
- 9.06.040 Penalties.**

9.06.010 Definitions

A. A medical marijuana dispensary is defined as any facility in a single fixed location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical marijuana or cannabis for medical purposes to two or more qualified patients or persons with an identification card in accordance with Health and Safety Code Section 151362.

B. A medical marijuana dispensary shall not include the following uses as long as the location of such uses area is otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility license pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 301 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 32 of the Division 2 of the Health and Safety Code; a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code; as long as any such use complies strictly with applicable California and federal law.

C. "Primary Caregiver" shall have the same definition as in California Health and Safety Code Section 11362.7(d) as it may be amended from time to time.

D. "Qualified Patient" shall have the same definition as in California Health and Safety Code Section 11362.7 (f) as it may be amended from time to time.

E. "Identification Card" shall have the same definition as in California Health and Safety Code Section 11362.7(g) as it may be amended from time to time.

F. "Person with an Identification Card" shall have the same definition as in California Health and Safety Code Section 11362.7(h) as it may be amended from time to time.

9.06.020 Medical Marijuana Dispensary – prohibited.

A medical marijuana dispensary shall not be permitted within the City.

9.06.030 Violation – separate offense.

Any person who violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

9.06.040 Penalties.

Violation of any provision of this chapter is a misdemeanor unless the city attorney authorizes issuance of an infraction citation or files a complaint charging the offense as an infraction or the court upon the prosecutorial recommendation of the city attorney determines that the offense is an infraction.

SECTION 2. This ordinance is consistent with protection of the public interest, health, safety, convenience, and welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 3. This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law including without limitation the Constitution of the State of California or of the United States of America. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION 4. This ordinance shall become effective on the thirtieth day following passage and adoption hereof.

SECTION 5. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation printed, published, and circulated in the city in accordance with Section 36933 of the Government Code.

INTRODUCED at the regular meeting of the City Council held on the 13th day of April 2009, by motion of Councilmember _____ and seconded by Councilmember _____.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay on the ____ day of _____, 2009 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

JANICE PETERS, Mayor

ATTEST:

BRIDGETT BAUER, City Clerk

APPROVED AS TO FORM:

ROBERT W. SCHULTZ, Esq.
City Attorney



AGENDA NO: _____

Meeting Date: April 13, 2009 Action: _____

Staff Report

TO: Honorable Mayor and City Council **DATE:** APRIL 6, 2009

FROM: Dylan Wade, Utilities/Capital Projects Manager

SUBJECT: Review of Site Generator Project for Dial-a-Ride, City Hall and Public Services Department Offices

RECOMMENDATION:

Staff recommends the City Council consider this item and provide further direction to staff.

FISCAL IMPACT:

The Project is funded by two transit grants totaling \$22,308.45, and \$95,000 from the General Fund. To date, \$18,136.17 has been expended for design and preparation of plans and specifications.

SUMMARY:

Staff has been directed to return this item to the Council for discussion and consideration.

BACKGROUND:

In November 2004 the City Council authorized Staff to seek a Rural Transit Fund (RTF) grant from San Luis Obispo Council of Governments (SLOCOG) in the amount of \$15,000 for a backup emergency generator Project for Dial-a-Ride, City Hall and Public Services Department offices. An additional \$2,308.45 of RTF remaining from two other grants was also allocated for the work, which has not yet been finalized. The Project was originally intended to provide emergency power during periods of extended power outages so that City Staff at the three offices could continue operations.

In April 2006 Thoma Engineering of San Luis Obispo was hired for the development and preparation of plans and specifications and they submitted an initial estimate of probable construction costs in the amount of \$80,000 to power the three buildings with an 80 kilowatt (80kW) total electrical load.

Prepared By: _____

Dept Review: _____

City Manager Review:

City Attorney Review: _____

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In November 2006 the City Council authorized application for an additional \$5,000 RTF grant to help fund the work. The conditions of the grant required that expenditures could not commence until July 2007. With the additional funding from the RTF grant, Thoma Engineering was directed to proceed to prepare engineering plans and specifications for the generator project. In order to lower the cost of the project in January 2007, Staff looked to reduce the scope of the work to focus solely on the Dial-a-Ride function. With our minimal staffing levels competing work priorities and the need to obtain additional Project funding, this Project was slow moving.

In January 2008, Thoma Engineering submitted a set of plans and specifications for a 35kW generator unit to provide backup power to the Dial-A-Ride building and the transit functions at City Hall. Staff reviewed the plans and specifications and started preparing a complete set of bid documents. After a number of area-wide power outages the City Council allocated \$95,000 from the General Fund to the Project during the fiscal year 2007/08 mid-year budget adjustments on March 24, 2008 to provide additional backup power for the City Hall and Public Services buildings.

Staff directed Thoma Engineering to perform another electrical load survey (see attached) to provide only the essential amount of power needed for the three buildings, including Dial-a-Ride communications, Finance Department functions and City Hall and Public Services computer servers and operations critical during a power outage. The high electrical demand heating units in City Hall and Public Services were excluded to reduce electrical demand. The result of this analysis was that a 65 kW unit would be needed.

Upon Staff review of this analysis in November 2008, it was found that a significant portion of City Hall, including the Finance Department, was supplied by an electrical panel hidden behind artwork in the front section of the building. Thoma was directed to incorporate this power demand into their load analysis (see attached), which resulted in the now-current demand load estimate of 71.4 kW. In addition, it was recently found that the City Hall computer server's air conditioning unit is under-sized and the server has been subject to automatic over-heat shutdowns, creating the need for an up-sizing of cooling capacity, which results in another increase in electrical demand. These factors led to an 85kW generating unit to operate all three buildings, excluding non-computer heating/air conditioning but allowing for incremental increases for additional electrical demand during the emergency power switch over and power surges.

The engineering plans and specifications were prepared using the updated information, and the 85kW generator Project is now ready to be advertised for competitive bids. The proposed generating unit would be primarily powered by natural gas with a propane backup supply, since these fuels have significantly lower emissions than a similarly-sized diesel unit.

With the existing Project expenditures, there remains approximately \$96,000 to complete the preparation of bid documents, printing, copying, and construction.

The Project construction is intended to be pursued in three separate but inter-related phases:

- Installation of the generating unit, all switchgear, conduits and conductors and connections to the three buildings by an electrical contractor.
- Construction of a small structure to house the generator and to make the necessary building modifications to the Dial-a-Ride office to accommodate the electrical system installation by a

building contractor.

- Installation of a larger natural gas service pipeline/meter and propane service to the generating unit.

The building portion of the Project is estimated to cost \$20,000. We are awaiting an estimate from the Gas Company for the cost to install the natural gas service but anticipate this cost to be approximately \$3,000, based upon the cost to do similar work at the new Fire Station Apparatus Bay. We are currently awaiting the completed version of an estimate of probable costs from Thoma Engineering for the generator and related electrical work. This estimate should arrive on or before April 10 and will be incorporated into an overall Project cost estimate and forwarded to the Council as soon as possible.

The Project requires both a building permit and a Coastal Development Permit (CDP). The building permit is ready to be issued pending the CDP approval. We are not pursuing issuance of the CDP until Council direction is received.

DISCUSSION:

There are several Project components that have led to the direction to have Council review the Project, including General Fund impacts and the potential for the use of alternative energy sources, discussed below.

Use of Alternative Power Sources

Discussion has risen about the feasibility of using alternative power sources to provide backup power for the three buildings. Due to the heavy electrical demand of the three buildings being serviced by the generator, alternative energy sources, such as wind or solar power, are not feasible. Alternative energy sources work well for small electrical demands or to supplement power to a large demand source but not to solely power heavy demand sources.

The proposed project was designed to provide power to selected electrical panels and provide enough capacity to power a percentage of the maximum demand of the panel. This approach was taken to prevent extensive electrical work inside the three buildings. The electrical distribution system inside the City Hall Building was installed with the original building in the 1950s and is not likely to meet with the current electrical code. In order to reduce the electrical demand of the project, electrical work would have to be performed to the electrical distribution system in order to isolate individual circuits to be powered by the emergency generator. This work would require bringing the existing electrical systems inside the buildings up to the current electrical code, which has the potential to cost more than the additional cost of a larger capacity generator to power the existing panels.

Generator Fuel Source

The proposed backup generator system is comprised of a dual-fuel natural gas/propane generator located in a new, small building at the rear of the Dial-a-Ride office with connections to Dial-a-Ride, City Hall and Public Services buildings. The proposed system is primarily fueled by natural gas fed by a gas service line, which is proposed to be shared with the existing Dial-a-Ride office. The system would automatically operate upon interruption of normal electric

service and shut down when normal electrical service returns. In the event of an interruption of gas service, the generating unit would automatically switch to the propane fuel source, which is fed by a 100 gallon propane tank that is to be installed adjacent to the unit.

Project Discussion

Staff is recommending Council to consider this item and direct staff accordingly. Options the Council may want to consider for the next step of the Project include:

- 1.) Going out to bid with the current construction documents and determining if the bids are acceptable to the Council. If the lowest bid comes in higher than the acceptable project budget Council may decide to reject the bids.
- 2.) Change the scope of work to only provide emergency backup power for Dial-A-Ride operations. The change would incur additional cost to prepare revised construction documents and bid packages for the newly defined project. Funding in addition to the transit grants would need to be obtained.
- 3.) Hold off on advertising for competitive bids until the General Fund becomes less impacted or other funding alternatives become available. The existing 35 kW diesel backup generator currently located at the temporary Fire Station at 695 Harbor Street could become available to use as a backup power source for Dial-A-Ride operations once the Fire Station 53 Administration Building is completed, anticipated for completion sometime in 2010. Depending upon timing, the remaining transit grant funding would be lost.
- 4.) Decide to not provide emergency backup power to the three buildings and close the project. The remaining General Funds could be used for other General Fund expenses or to pursue alternative energy sources that could provide supplemental power to the buildings. The remaining transit grant funding would be lost.

CONCLUSION: Staff recommends the City Council consider this item and direct Staff accordingly.



AGENDA NO:	D-1
MEETING DATE:	4/13/09

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 13, 2009

FROM: Harbor Director

SUBJECT: Letter from Dave Gill Representing the Sea Scouts Requesting a Fee Waiver for the Vessel St. Joseph

RECOMMENDATION:

Staff recommends that if the City Council considers granting a waiver of fees for the St. Joseph it would be for a limited period of time to enable the Sea Scouts to complete their efforts towards making the vessel seaworthy so that they can take it to Stockton.

FISCAL IMPACT:

The current balance on the account through March 31, 2009 is \$617.30. Average monthly fees for the St. Joseph have been \$450.00. Fiscal impact would vary depending upon how long the fee waiver would be granted for. For example, waiving the fees for a 3-month period, including the current balance, would be a loss of approximately \$1900.00 to the Harbor Fund.

SUMMARY:

The Sea Scouts took ownership of the St. Joseph from L.V. Jones. The vessel is an 80ø steel trawler that dates from the 1970s and since the new trawl regulations, has very little value as a commercial vessel. The Sea Scouts have been working on the vessel with the goal of making it seaworthy and taking it up to the Sacramento River area as a training/work vessel for the Sea Scouts.

BACKGROUND:

The original owner of the St. Joseph, L.V. Jones, is in his 80s and is in poor health. He was unable to keep up with the dockage fees and was unable to sell the vessel as the permits have very little value under the current trawl regulations. The City was in the process of proceeding with a Federal Maritime Lien (a very costly and lengthy procedure) when Mr. David Gill of the Sea Scouts approached Mr. Jones about taking over ownership of the vessel. As the cost of proceeding with the Federal Maritime Lien and the cost of disposing of the vessel would have exceeded \$30,000 the decision was made to write off Mr. Jones' past due account and allow the Sea Scouts to take over

Prepared By: _____	Dept Review: _____
City Manager Review: _____	
City Attorney Review: _____	

ownership of the vessel, with the understanding that they would remove the St. Joseph from Morro Bay Harbor.

DISCUSSION:

Mr. Gill and the Sea Scouts took ownership of the St. Joseph in August 2008 and to date have paid approximately \$2700 in dockage fees. They are incurring more out of pocket expenses recently and anticipate more expenses to get the vessel to a point where it can safely leave the harbor and make the trip to a dry dock in Stockton. Per the attached correspondence, the Sea Scouts are requesting a waiver of dockage fees with the intent of being able to leave Morro Bay Harbor for Stockton by late June or July.

CONCLUSION:

It is in the best interest of the City to have the St. Joseph removed from Morro Bay Harbor and taken to a dry dock that has facilities to deal with an 80ø steel vessel. Staff requests that the City Council review the attached correspondence from Mr. Gill to consider a fee waiver for the St. Joseph. Staff recommends that should the City Council allow for a fee waiver, it should be for a limited time, no more than 90 days. The 90-day fee waiver should provide adequate time for Mr. Gill to finish the needed work to prepare the vessel for travel and removal from Morro Bay Harbor. Dockage fees would start to accrue at the end of 90 days should the St. Joseph still be docked at any City facility.



AGENDA NO: D-2

MEETING DATE: April 13, 2009

Staff Report

TO: Mayor and Councilmembers **DATE:** April 8, 2009
FROM: Bruce Ambo, Public Services Director
Christine Rogers, Housing Programs Coordinator

SUBJECT: Reduced Fee Incentive for Green Building and Low Impact Development

RECOMMENDATION:

It is recommended that the City Council offer green building incentives in reimbursed building plan check and inspection fees for the following:

- A. \$3,000 upon successful completion of *nationally* recognized "Leadership in energy and environmental design" (LEED Certification) on new homes, and
- B. \$2,000 upon successful completion of *California* "GreenPoint rated" project certification on new homes, and
- C. 40% permit fee reimbursement for all residential remodels achieving GreenPoint rated certification and all other projects including remodels, multi-family and commercial buildings that achieve LEED Certification; and
- D. direct staff to return to the Council with a resolution implementing the changes to the building fees and review procedures.

FISCAL IMPACT:

Staff estimates a slight reduction in fee revenues, which will vary to the degree to which people participate in the program. The cost of administering these green building codes will continue to increase as the green requirements become more complex and structured into building and planning codes.

BACKGROUND:

This item was identified as a Future Agenda Item at the January 12, 2009 Council meeting. The concept of reducing fees as a green building incentive was raised by Councilmember Smukler during a discussion on planning fees for waterfront projects earlier at that same meeting. Please refer to Attachment 1, which is a memo from staff on "Green Building Certification" for additional details on the certification programs.

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Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

The trend of administering these green programs will grow considerably and be far reaching in program components across a broad spectrum of building, planning, storm water/water quality, green house gases, and more areas. There are significant benefits and implications on building and development processes and planning in general. This also means that the training and time demand requirements in administering these codes and programs will continue to increase for building, planning and engineering staff. In fact several communities are now charging an added fee for the heightened green review elements that are and will become more commonplace in our building and planning codes.

Several key green building standards have already been codified in the California Building Code, which becomes effective August 1, 2009 and make many of the elements of green building construction mandatory. Further requirements will be incorporated in the 2010 California Building Code that is to go into effect in January 2011. Please refer to the table on Attachment 2 ó öGreen Building Features and Requirementsö for an itemization on the green programs that are currently being implemented and additional programs that are in development and to be added to the code.

Low Impact Development Incentives

The City's State mandated Storm Water Management Plan that was approved by the Regional Water Quality Control Board requires mandatory low impact development components, and there is no need to offer incentives because the basic program requirements are already quite rigorous and protective from a water quality perspective.

DISCUSSION:

Staff has reviewed and carefully considered successful green building incentive programs including a öSummary of Government LEED Incentives (USGBC), Municipal Green Building Policies (Environmental Law Institute), and Green Building Incentives that Work (Yudelson).ö It is important to note that in many cases, those municipalities offering substantial financial incentives have populations over 100,000 and the associated funding resources. Counties offering grant programs include Santa Barbara, Pasadena and King County (Washington). The grants range from \$15,000 - \$30,000 based upon the level of LEED Certification achieved.

Cities having a smaller population base and limited resources, generally offer incentives in the form of a fee rebate or property tax credit upon achievement of certification. These rebates range from \$3,000 to \$5,000 based upon a variety of calculation methods (refund of actual certification cost, percentage of permit fees).

Reimbursed Fee Incentive

Staff is recommending a flat fee reimbursement from building plan check and inspection fees for new ögreenö homes of \$3,000 for LEED Certification and \$2,000 for GreenPoint rated certification. This means the project actually needs to successfully achieve and provide documentation that the project has satisfied these certification requirements, and that the reimbursement would occur when the project is built and completed its final inspection. As you may know from a review of our previous memo on Green Building Certification, the commissioning process for LEED Certification must occur at the early stages of project inception, and not after design is underway. Please refer to Attachment

3 ó ðGreenPoint Rated and LEED for Homesö for additional details on the differences between the two certification programs.

Since the majority of the building activity in the community involves residential remodels, staff is also recommending a 40% GreenPoint rated certification for residential remodels (LEED is generally not applicable on small residential remodels but is approved for major renovations). Similarly, staff is recommending a 40% building plan check and inspection fee reimbursement upon documented LEED or GreenPoint rated certification for all other projects including multi-family, commercial, major renovations and existing building-certifications.

Certification Program Details

The **U.S. Green Building Council** is a 501(c)(3) non-profit community of leaders working to make green buildings available to everyone within a generation. LEED certification provides independent, third-party verification that a building project meets the highest green building and performance measures. All certified projects receive a LEED plaque, which is the nationally recognized symbol demonstrating that a building is environmentally responsible, profitable and a healthy place to live and work. Commercial buildings are eligible for certification under the following LEED rating systems: New Construction, Existing Buildings, Commercial Interiors, Retail, Schools, and for Core & Shell rating systems.

Residential buildings are eligible for certification under LEED for Homes rating system which promotes the design and construction of high-performance green homes. A green home uses less energy, water and natural resources; creates less waste; and is healthier and more comfortable for the occupants.

Build It Green is a non-profit membership organization working with mainstream stakeholders in the housing industry to accelerate the adoption of green building practices. The GreenPoint Rating process is a non-invasive physical examination of residential building systems, structures, materials and components to assess energy and water efficiency, indoor air quality, resource efficiency of materials and construction methods, and construction quality.

The key difference being that LEED for Homes is a national program standard that awards to the greenest of the green builders. (By way of example, LEED has 15 mandatory requirements, and the GreenPoint Rated Program has three.) GreenPoint Rated is a California program that provides a credible and acceptable point of entry for a builder that needs to take smaller steps. Both programs require professional oversight (LEED Associate Professional, GreenPoint Rater).

While local resources are available through the California Central Coast Chapter of the U.S. Green Building Council (C4), and SLO Green Build (Build It Green), both of which have active programs within San Luis Obispo County, the City planning and building staff as the first point of contact will need to be well versed in the certification requirements.

The adopted CalGreen Code (California Green Building Standards) incorporates verbatim the majority of the LEED rating system requirements. Though many of the improvements were related to streamlining and improved consistency among the various rating system, it is unknown at this time

whether the requirements will remain consistent with Building Code updates. This consistency will have an impact on future plan check review processes.

SLO Green Build currently offers a complimentary Peer Review program to assist applicants in sustainable design decisions. Planning and building staff make use of these resources by referring applicants. Additional plan checking will be required to ensure the correct application and implementation of these sustainable strategies and methods.

Strategic Plan for Implementing Green Initiatives

Due to the numerous and continuously expanding green building initiatives it has become necessary for staff to track the mandatory, preferential and optional green programs and policies. As discussed above, many of the green code requirements have been codified and many are still forthcoming. Due to our limited staffing and financial resources, staff believes it is imperative to develop a strategy for managing this "greening" process. A simple five-year strategic plan would help identify what projects and programs are on the horizon that will be, need to be, or can be implemented on a successful and effective basis. A good example of an attractive and yet optional program is the AB811 "Solar Energy Financing District" program that staff is already working on. Staff strongly believes that this strategic plan should be in place before further staffing resources are allocated towards additional "optional" green programs.

CONCLUSION:

It is recommended that the City Council offer a green building incentive in reimbursed building and plan check fees of \$3,000 for LEED Certification and \$2,000 for GreenPoint rated certification on new homes, and 40% reimbursement of building and plan check fees on major remodels or reconstruction, and all other projects (multi-family, commercial and industrial) achieving LEED or GreenPoint rated certification including new buildings and remodels to existing buildings. Furthermore, it is recommended that a resolution for subsequent Council approval prepared those implements these changes.

Since many of these green building and planning components are being added to codes as mandatory requirements, the City may want to consider adding fees to cover the additional review costs associated with the green building requirements. This means that further refinements to the fee structure will likely be necessary as the green code upgrade process evolves and we see more of the built green products coming through the review, certification, inspection process. It would also be extremely helpful to staff and beneficial from the standpoint of allocating limited resources to work from a more structured format of a strategic plan for managing the greening process.