



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting - Tuesday, October 11, 2016 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

RECOGNITION

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- Presentation of Proclamation of Appreciation to Assembly Member Katcho Achadjian
- CHC Health Care Update for North County

PUBLIC COMMENT PERIOD

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

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 city of residence 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.

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FROM THE SEPTEMBER 27, 2016 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE SEPTEMBER 27, 2016 JOINT CITY COUNCIL, PLANNING COMMISSION AND HARBOR ADVISORY BOARD MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE OCTOBER 3, 2016 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC WORKS)

RECOMMENDATION: Receive and file.

A-5 ADOPTION OF RESOLUTION NO. 71-16 APPROVING AMENDMENT #2 TO THE CURRENT LEASE AGREEMENT, APPROVING A NEW LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC, AND APPROVING AN ASSIGNMENT AND ASSUMPTION OF THE LEASE OWNERSHIP FOR LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO, AND COMMONLY KNOWN AS THE BOATYARD; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 71-16.

A-6 APPROVAL OF PROCLAMATION IN RECOGNITION AND APPRECIATION OF THE SERVICE OF ASSEMBLY MEMBER KATCHO ACHADJIAN; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 APPROVAL OF THE MEMORANDUM OF UNDERSTANDING FOR FUTURE PURCHASE OF THE SOUTH BAY BOULEVARD WATER RECLAMATION FACILITY (WRF) SITE; (PUBLIC WORKS)

RECOMMENDATION: Receive the report and authorize execution of the Memorandum of Understanding.

C-2 DISCUSSION AND DIRECTION REGARDING USE OF PROCEEDS FROM THE SALE OF REAL PROPERTY AT 2783 CORAL AVENUE; (FINANCE)

RECOMMENDATION: As recommended by the Citizens Oversight/Finance Advisory Committee, use the proceeds from the sale of vacant City-owned Real Property, located at 2783 Coral Avenue, to pay down the 2011 USDA Certificate of Participation for the construction of the Fire Administration Building.

C-3 STREETS SUMMIT UPDATE; (PUBLIC WORKS)

RECOMMENDATION: Receive the report and recommendations by the Public Works Advisory Board, and provide direction to staff.

C-4 ADOPTION OF RESOLUTION NO. 70-16 REAUTHORIZING THE USE OF INTERIM RESIDENTIAL DESIGN GUIDELINES; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt Resolution No. 70-16.

C-5 APPROVAL OF PARTICIPATION IN 2017 AMGEN EVENT; (ADMINISTRATION)

RECOMMENDATION: Approve Morro Bay's participation in the 2017 AMGEN Tour of California with City financial participation limited to \$25,000 of TBID revenue and support staff services.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, October 25, 2016 at 6:00 pm** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

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 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION 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 REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

MINUTES – MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
SEPTEMBER 27, 2016
CITY HALL CONFERENCE ROOM–2:30 P.M.

AGENDA NO: A-1

MEETING DATE: October 11, 2016

PRESENT:	Jamie Irons John Headding Christine Johnson Noah Smukler	Mayor Councilmember Councilmember Councilmember
ABSENT:	Matt Makowetski	Councilmember
STAFF PRESENT:	Dave Buckingham Joe Pannone Susan Slayton Eric Endersby Rob Livick Mike Nunley	City Manager City Attorney Administrative Services Director Harbor Director Public Works Director WRF Program Manager

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order with all but Councilmember Makowetski present.

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

CLOSED SESSION PUBLIC COMMENT - Mayor Irons opened the meeting for public comment for items only on the agenda; seeing none, the public comment period was closed.

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

CS-1 CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representative: Susan Slayton, Administrative Services Director
Unrepresented Employees: City Manager, Deputy City Manager, Administrative Services Director, Harbor Director, Police Chief, Fire Chief, Public Works Director, Management Employees, and Confidential Employees.

Employee Organizations: Morro Bay Firefighters' Association; Morro Bay Police Officers' Association; Service Employee's International Union - SEIU Local 620

CS-2 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: Lease Site 89/89W, The Boatyard, 845 Embarcadero

Property Negotiators: Cliff Branch and Paul Parker

Agency Negotiators: Dave Buckingham, City Manager, Eric Endersby, Harbor Director, Joseph W. Pannone, City Attorney

Negotiation: Price and Terms of Payment

Property: A portion of APN No. 073-101-017

Property Negotiators: Tri-W Enterprises Inc.

Agency Negotiators: Dave Buckingham, City Manager and Joseph W. Pannone, City Attorney

Negotiation: Price and Terms of Payment

RECONVENE IN OPEN SESSION - The City Council reconvened in Open Session. The Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 3:44 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES – SEPTEMBER 27, 2016
JOINT MEETING OF THE MORRO BAY
CITY COUNCIL, PLANNING COMMISSION
AND HARBOR ADVISORY BOARD
MORRO BAY VETERAN'S HALL
209 SURF STREET – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Noah Smukler	Councilmember
	Robert Tefft	Planning Commission Chair
	Gerald Luhr	Planning Commissioner
	Michael Lucas	Planning Commissioner
	Joseph Ingraffia	Planning Commissioner
	Richard Sadowski	Planning Commissioner
	Bill Luffee	Harbor Advisory Board Chair
	Dana McClish	Harbor Advisory Board Member
	Gene Doughty	Harbor Advisory Board Member
	Lynn Meissen	Harbor Advisory Board Member
	Joe Conchelos	Harbor Advisory Board Member
ABSENT:	Matt Makowetski	Councilmember
	Ron Reisner	Harbor Advisory Board Member
	Neal Maloney	Harbor Advisory Board Member
STAFF:	David Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Scot Graham	Community Development Director
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established by the City Council with all but Councilmember Makowetski present.

A quorum was established by the Planning Commission with all members present.

A quorum was established by the Harbor Advisory Board with all but Members Reisner and Maloney present.

SPECIAL MEETING AGENDA ITEM:

I. REVIEW OF THE CENTENNIAL PARKWAY AND EMBARCADERO DRAFT DESIGN PLANS

https://youtu.be/CX_6qrVd2_8?t=28s

Community Development Director Graham introduced Debbie Rudd and Scott Martin of RRM Design Group, who presented the draft design plans and responded to questions from the Council and advisory boards. (The slide presentation can be found [here.](#))

Following the presentation, Planning Commission and Harbor Advisory Board members had an opportunity to provide individual input.

https://youtu.be/CX_6qrVd2_8?t=47m26s

PUBLIC COMMENT

https://youtu.be/CX_6qrVd2_8?t=1h20m49s

Fred Brown, Morro Bay, spoke on behalf of chess club participants and requested at least three chess tables be added to Centennial Park.

Rigmor, Morro Bay, suggested a simple design with rounded stairs and no funicular.

Lynda Merrill, Morro Bay, asked for clarification on proposed use of street ends and suggested the design be sensitive to maintenance needs.

Sean Green, Morro Bay, spoke on the importance of improving the view corridor in the central Embarcadero area.

Larry Truesdale, Morro Bay, appreciated the plan was more amenable to pedestrian traffic. He favored the boardwalk design, fire pits, a concert venue, and eliminating vehicle traffic along that portion of the Embarcadero, possibly with a one-way trolley route. He opposed a funicular due to maintenance concerns.

Fred Brown, Morro Bay, asked if the restrooms would be eliminated.

The Public Comment period was closed.

The Council and advisory board members provided closing comments and staff reviewed proposed next steps. It was agreed RRM Design Group would take input received at both the joint and regular meetings and consolidate that information into a single draft plan. That draft plan would be reviewed by the Harbor Advisory Board and Planning Commission to allow further community input, then forward recommendations to the Council.

No formal action was taken by the Council or advisory boards.

ADJOURNMENT

The joint meeting of the City Council and Planning Commission concluded at 5:49 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-4

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 30, 2016
FROM: Mike Nunley, PE – Water Reclamation Facility (WRF) Program Manager
SUBJECT: Water Reclamation Facility (WRF) Program Update

RECOMMENDATION

Staff recommends the City Council review the current status of the Water Reclamation Facility (WRF) program.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update. All work is proceeding within the City's fiscal year budget for the WRF. A quarterly budget update will be provided at the December 6 Council meeting.

DISCUSSION

With the denial of the permit for the WWTP project in its current location, the City has embarked on a process for a new WRF. This staff report provides the following:

- Review of what has occurred to date. See the list of major milestones or accomplishments since the last update to City Council below. This summary is typically provided each month.
- Update on property negotiation
- Update on project financing
- Update on environmental review and permitting
- Schedule Update

Accomplishments and Milestones

The City's Program Management team and technical consultants performed the following tasks since the August program update:

- Conducted the Environmental Impact Report (EIR) Scoping Meeting on Tuesday, August 16, 2016 at 4 PM at the Morro Bay Veterans Memorial Building
- Completed evaluation of alternatives to modify the collection system and reduce the size of the planned influent lift station. Concluded that capital costs to upgrade Lift Stations 2 and 3 to pump directly into the influent force main would not result in a significant decrease or a reasonable payback period for power costs.
- Developed preliminary pipeline alignments, field notes, and maps with utility conflicts for use by the Facility Master Plan team
- Prepared preliminary groundwater model of lower Morro Valley and completed initial assessment of water reclamation opportunities in Chorro Valley. This work will be summarized within and will supplement the Master Water Reclamation Plan.
- Continued compiling water quality and flow data for use by design/construction teams

Prepared By: MN

Dept Review:

City Manager Review: DWB

City Attorney Review: JWP

- during the proposal process for the Phase I WRF
- Prepared and reviewed internal administrative draft of the Facility Master Plan
 - Internally reviewed draft site plans for Phase I WRF. Draft site plan includes potential layout and area required for facilities to meet stated City goals, including City Corporation Yard facilities, solar power generation, and Phase II advanced water purification systems, as well as expansion area for future upgrades and/or to serve Cayucos Sanitary District. These other elements will be clearly identified and differentiated from the Phase I WRF in the draft Facility Master Plan to allow Council to understand the areas required for future phasing and for the other potential community facilities (solar and corporation yard). Since the operations center for the WRF and some other WRF facilities can share space with other Public Works uses (water, wastewater collections, streets, and maintenance), the shared facilities will also be clearly identified for Council consideration in the draft Master Plan. It is assumed costs for “non-shared” corporation yard facilities would be paid from General Fund, whereas solar panels could be added to the WRF Program or could be installed through a power purchase agreement or other contract vehicle.

At this time, the City has not budgeted for a new corporation yard so that planning process would proceed separately under direction of the Public Works Department. The purpose of including the area required for the Corporation Yard in the Facility Master Plan is to ensure adequate area is purchased, to allow for these facilities to be programmed as appropriate.

- The Staff completed MOU negotiations.
- Completed final Salinity Control Plan and began development of draft ordinance, outreach materials, and draft report for future WRFCAC and Council consideration
- Prepared and reviewed initial draft architectural simulation of the property, incorporating architectural elements and themes discussed in City community workshops
- Met with Regional Water Quality Control Board staff to discuss status of draft discharge permit for the existing Wastewater Treatment Plant, as well as status of the City’s WRF Program. The importance of salinity control in meeting future reuse goals was specifically discussed during the meeting and RWQCB staff expressed support for the City’s efforts to manage salinity in the wastewater collection system.

Coordinated with EIR consultant team relative to the FMP progress, and began description of existing conditions on the project site to frame the context of the proposed project analysis once FMP is completed.

Project Financing Update

The City has applied for a State Revolving Fund (SRF) Planning Loan for \$10.3M and according to the State Water Resource Control Board (SWRCB) Project Manager, a draft agreement should be available in October.

The City intends to pursue an SRF Construction Loan for the balance of the Ph I WRF program. The SRF Construction Loan application cannot be completed until the Environmental Impact Report is certified. In the 2016/17 Intended Use Plan for Clean Water State Revolving Fund, Small Community Grant and Water Recycling Funding Programs, SWRCB reviewed the list of projects that have been submitted for SRF funding and have concluded that additional bond sales or other revenues may be required to fund them all. The Program Management team will continue to monitor status of the SRF program in case alternative financing approaches are required. Funding programs continually evolve in response to their commitments and availability of resources, so the situation could be considerably different in a year when EIR certification is eminent.

The City also intends to identify and apply for state and federal construction grants. Completion of the California Environmental Quality Act (CEQA) program is often required to receive funding or to be competitive for many of these grant programs. The City's grant and funding strategist, Kestrel Consulting, continues to monitor grant and funding opportunities in anticipation of the City's completion of the Facility Master Plan, Master Reclamation Plan, and Environmental Impact Report. A detailed project description is critical to identification and successful pursuit of funding opportunities.

Project Environmental Review and Permitting Update

A Notice of Preparation (NOP) for the Environmental Impact Report (EIR) was released on August 7, 2016, which began a 30-day review period during which public comments could be received to fame the scope of the study. The required EIR Scoping Meeting was held on August 16. As a result of the NOP release and the Scoping Meeting, staff received many comment letters that will be used to help better define the issues to be examined in the EIR. At this time, it is expected that the EIR consultant's budget and scope of work anticipated these issues. The consultant has begun work on the EIR, framing the existing conditions with respect to these issues, and is coordinating with staff and the FMP consulting team, because the FMP will be a central component of the project description analyzed in the EIR. The EIR will also analyze the Master Reclamation Plan, which is currently under development. It is anticipated that the EIR is on schedule, with an expected release of the Draft EIR in summer 2017, with Final EIR certification in November 2017.

Program management staff and the EIR consultant are coordinating closely with outside agencies that would have potential permitting authority over one aspect or another of the project, including the Coastal Commission, Regional Water Quality Control Board, and a variety of regulatory resource agencies such as the California Department of Fish and Wildlife. Their input will be useful to help guide the EIR analysis. The EIR itself will be used to support permitting efforts, once the Final EIR is certified by the City.

Schedule Update

FY 16/17 activities are primarily planning, permitting, and procurement of consultants for elements of the Phase I WRF. Specific objectives include completion of the Facility Master Plan, Master Water Reclamation Plan, technical studies and initial drafts of the Environmental Impact Report, and procurement of the State Revolving Fund Planning and Design Loan. The updated program schedule is provided as Attachment 1. Revised schedule items have been highlighted to facilitate review of changes.

The most significant items are as follows:

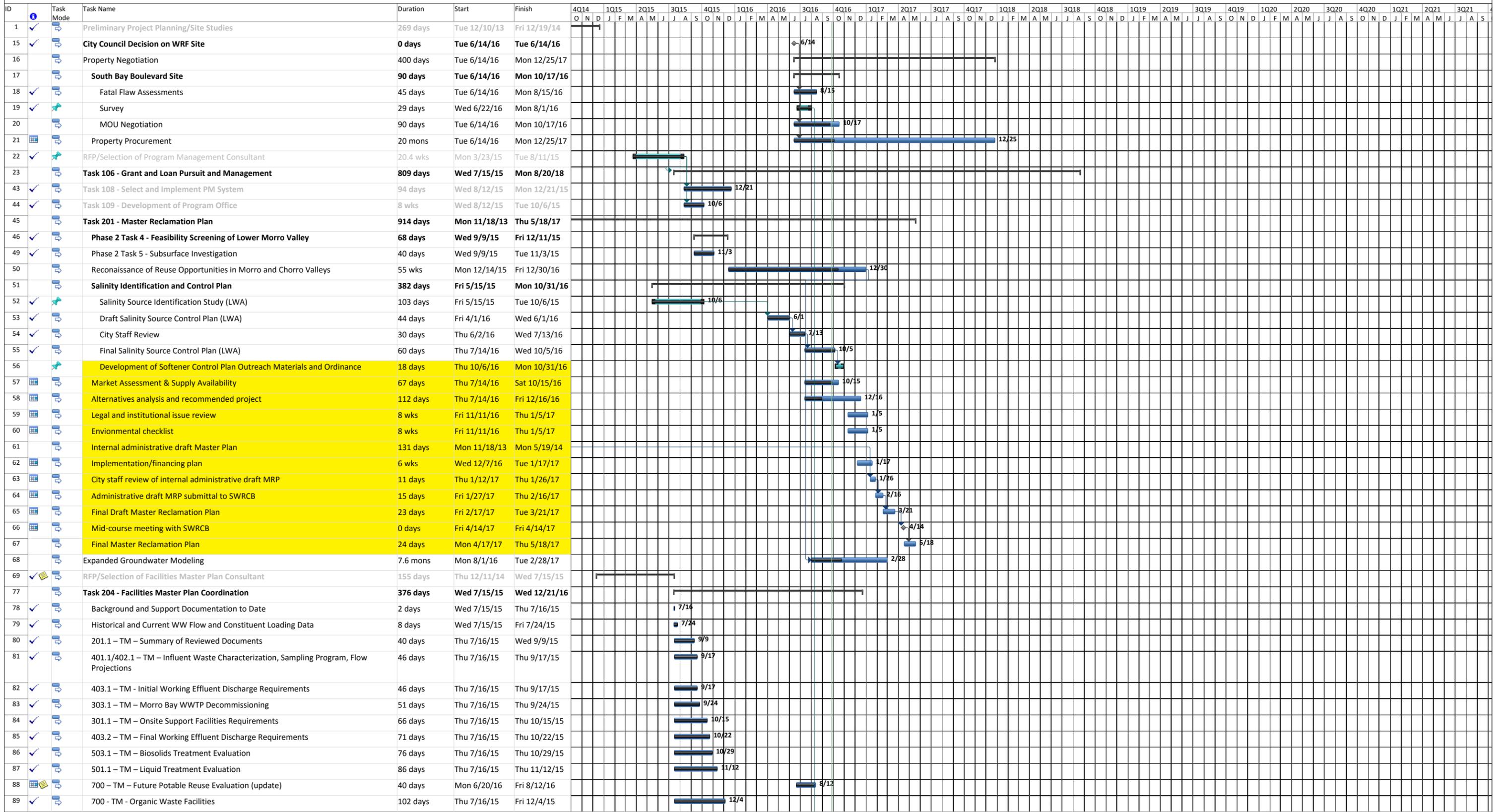
- November 10 release date for the Public Draft Facility Master Plan
- Additional details for work efforts within the Master Reclamation Plan

The anticipated schedule for significant milestones was reported to Council on August 9, and all critical path efforts are on schedule.

ATTACHMENTS

1. Updated Program Schedule

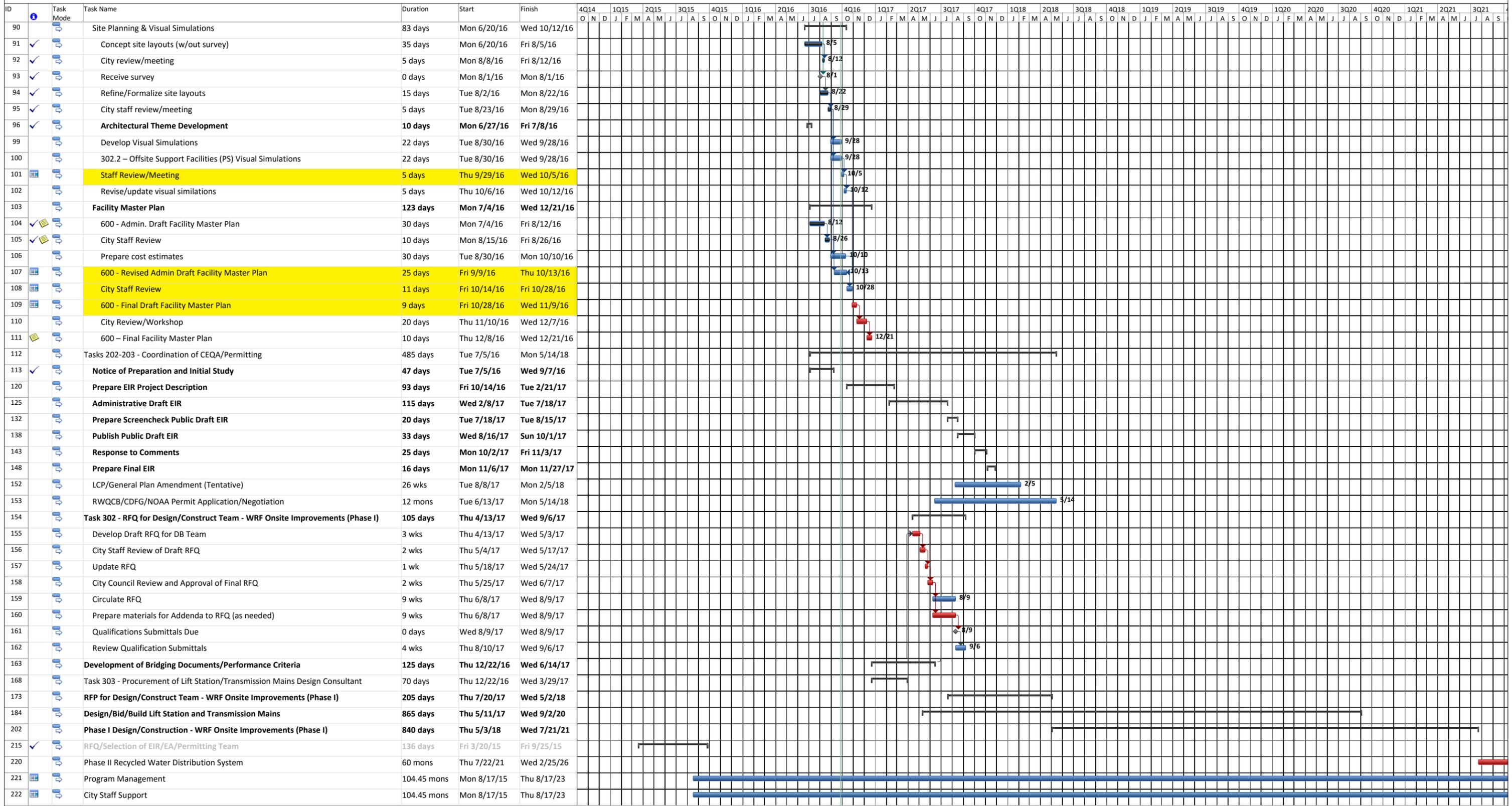
Morro Bay Water Reclamation Facilities Project
Program Schedule



MB Reclamation Program Schedule
Date: Tue 9/27/16

Task	External Tasks	Manual Task	Finish-only	Path Successor Normal Task	Path Driving Predecessor Summary Task	Critical Split
Split	External Milestone	Duration-only	Deadline	Path Driven Successor Normal Task	Path Predecessor Normal Task	Progress
Milestone	Inactive Task	Manual Summary Rollup	Path Successor Milestone Task	Path Predecessor Milestone Task	Path Driving Predecessor Normal Task	
Summary	Inactive Milestone	Manual Summary	Path Successor Summary Task	Path Driving Predecessor Milestone Task	Path Driven Successor Milestone Task	
Project Summary	Inactive Summary	Start-only	Path Driven Successor Summary Task	Path Predecessor Summary Task	Critical	

Morro Bay Water Reclamation Facilities Project
Program Schedule



MB Reclamation Program Schedule
Date: Tue 9/27/16

Task	External Tasks	Manual Task	Finish-only	Path Successor Normal Task	Path Driving Predecessor Summary Task	Critical Split
Split	External Milestone	Duration-only	Deadline	Path Driven Successor Normal Task	Path Predecessor Normal Task	Progress
Milestone	Inactive Task	Manual Summary Rollup	Path Successor Milestone Task	Path Predecessor Milestone Task	Path Driving Predecessor Normal Task	Critical
Summary	Inactive Milestone	Manual Summary	Path Successor Summary Task	Path Driving Predecessor Milestone Task	Path Driven Successor Milestone Task	
Project Summary	Inactive Summary	Start-only	Path Driven Successor Summary Task	Path Predecessor Summary Task	Critical	



AGENDA NO: A-5

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 3, 2016
FROM: Eric Endersby, Harbor Director
SUBJECT: Adoption of Resolution No. 71-16 Approving Amendment #2 to the Current Lease Agreement, Approving a New Lease Agreement Between the City of Morro Bay and Boatyard LLC, and Approving an Assignment and Assumption of the Lease Ownership for Lease Site 89/89W, Located at 845 Embarcadero, and Commonly Known as The Boatyard

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 71-16, approving Amendment #2 to the current Lease Agreement, approving a new Lease Agreement for Lease Site 89/89W, and approving an Assignment and Assumption of the lease ownership to a new LLC comprised of the same ownership principals as the current lease ownership, as-proposed.

ALTERNATIVES

Council may elect not to approve Resolution No. 71-16 for the proposed lease agreement, and direct staff accordingly.

FISCAL IMPACT

Under this proposal, the Harbor Fund will see an approximate \$15,000 per year decrease in total rent paid on this site for 20 years, whereinafter the rent will revert to typical rent levels. That is in recognition of the Lessee expending at least \$1.4M for site rehabilitation and the parties agreeing to release each other from any and all potential liability that could have likely resulted from the seawall failure and associated legal.

BACKGROUND

The current 40-year master lease for this site expires at the end of November, 2041. That lease was the result of a complete site tear-down and redevelopment in the late 1990's and early 2000's by then-tenant Josef Steinmann, including work on the ~70-year-old seawall. Steinmann sold the lease and the City approved the assignment to Clifford Branch/Clifford Branch Trust and James and Beverly Smith/Smith Family Trust (hereafter "Tenant") in 2006.

Last summer, a large portion of the seawall at this site suffered a major failure, the cause of and legal responsibility for which is of significant dispute. To prevent the wall from completely failing, the Tenant obtained emergency repair permits and Associated Pacific Constructors effected a temporary repair.

Over the past ~12 months, the City Manager, City Attorney, Harbor Director and Tenant and their legal team negotiated a cooperative and beneficial "package" to deal with the seawall failure and provide a global resolution of all legal claims resultant of that failure and other disputed lease management issues. The Council was kept aware of and provided input for those negotiations during several closed sessions.

Prepared By: EE Dept Review: EE
City Manager Review: DWB City Attorney Review: JWP

DISCUSSION

The Tenant has agreed to invest at least \$1.4M in site rehabilitation improvements (hereafter the "Project") consisting of:

- An engineered repair and reinforcement of the failing seawall section.
- Rebuilding of the rock revetment from the failing seawall to the adjacent lease site property line to the north, from the toe of the revetment slope to the patio elevation.
- Installing new and/or refurbished docks, floats and hardware.
- Installing new and/or refurbished dock kiosks.
- Installing a new and/or refurbished gangway.
- Installing new and/or refurbished railing and brickwork at the patio/deck area above the revetment, including new signage around the dock areas.

The Project elements are as indicated on Exhibit B to the Lease Agreement being proposed below.

In exchange, the following three items are presented to the Council for final public approval:

1. A new 45-year Lease Agreement (currently 25 years remain on the existing lease agreement, which "credit" is being given for in this new lease agreement) with the following summary of significant terms:
 - The 45-year Lease term will commence upon approval of all necessary land permits and approvals for the Project, including, but not limited to, the City, Coastal Commission, Army Corps of Engineers and Regional Water Quality Control Board.
 - Begin permitting process for the Project by filing with the City for Concept and Precise Plans approvals on or before June 30, 2017, commence construction within 60 days after receipt of all necessary permits, and completion of Project within 180 days of receiving all necessary permits.
 - Initially annual minimum rent will be \$58,000, with CPI increases/decreases limited to a maximum 2.5%, unless CPI is over 6%, wherein the increase will be 2.5% plus half the increase over 6%.
 - Five-year minimum rent recalculation based on the higher of 6% of the appraised value of the leases premises or 65% of the average of the last five years' total rent (minimum plus percent) paid for the first 20 years of the lease, then after 20 years the higher of 8% of the appraised value or 65% of the last five years' average total rent paid.
 - Percent rent of 3% for the first 20 years of the lease, then 5% thereafter.
 - Global resolution and settlement of all claims and potential litigation resulting from the seawall failure and other disputed lease management issues.

The new proposed Lease Agreement is included with this staff report as Attachment 1.

2. Amendment #2 to the current Lease Agreement, with the following summary of significant terms:
 - Minimum rent based on the higher of 6% of the appraised value of the leased premises or 65% of the average of the last five years' total rent paid, effective June 1, 2016, and reappraised every five years as standard.
 - Percent rent of 3%, effective October 1, 2016 through October 1, 2036.
 - Continuing to make available one of the two public restrooms on the site to unisex public use, and retaining the second restroom for unisex employee/customer use.
 - Release of any claim for overcharged rent due to inaccurate appraisal

- The existing lease will terminate upon the commencement date of the new Lease Agreement.

The proposed Amendment #2 to the current lease is included with this staff report as Attachment 2.

3. Approval of an Assignment and Assumption Agreement of the lease ownership from the current Branch and Smith trusts to a Branch-Smith "Boatyard LLC," with the underlying principal owners, Clifford Branch and James and Beverly Smith, remaining unchanged.

CONCLUSION

Approval of a new Lease Agreement, amendment to the current lease and assignment and assumption for this lease site will provide for improvements to the lease site and a global resolution and settlement of numerous issues and potential litigation resulting from the failure of a significant portion of a seawall and other matters related to the current lease.

As such, staff recommend the City Council approve Resolution No. 71-16 so the Tenant will pursue repairing the seawall and completing other improvements as quickly as possible. Such improvements will be a positive redevelopment of an important portion of the City's harbor.

ATTACHMENTS

1. Resolution No. 71-16
2. New Master Lease Agreement
3. 2. Amendment #2 to the current Master Lease Agreement
4. 3. Assignment and Assumption document

RESOLUTION NO. 71-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #2 TO THE CURRENT LEASE AGREEMENT,
APPROVING A NEW 45-YEAR LEASE AGREEMENT,
AND APPROVING AN ASSIGNMENT AND ASSUMPTION
OF THE LEASE OWNERSHIP FOR
LEASE SITE 89/89W LOCATED AT 845 EMBARCADERO**

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

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

WHEREAS, James Edmund Smith and Beverly Elder Smith, Trustees of the Smith Family Trust, and Clifford Branch, Trustee of the Clifford Branch Trust (collectively "Tenants") have been the lessees of Lease Site 89/89W since 2006 and are a tenants in good standing; and

WHEREAS, City and Tenant wish to resolve the Tenant's contention the City has incorrectly appraised the value of the Lease Site for minimum rent-setting purposes by approving Amendment #2 to the Lease Agreement; and

WHEREAS, City and Tenant wish to resolve issues over a failing portion of the seawall on the Lease Site by approving a new 45-year Lease Agreement for Lease Site 89/89W; and

WHEREAS, Tenant wishes to assign their interests in Lease Site 89/89W to the Boatyard LLC, a California limited liability company comprised of the same ownership individuals as the current trust ownerships.

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

1. The attached Amendment #2 to the Lease Agreement for Lease Site 89/89W is hereby approved.
2. The attached new 45-year Lease Agreement for Lease Site 89/89W is hereby approved.
3. The attached Assignment and Assumption Agreement for Lease Site 89/89W is hereby approved.
4. The Mayor is hereby authorized to execute said Amendment #2, 45-year Lease Agreement and Assignment and Assumption Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 11th day of October, 2016 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

L E A S E

This LEASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY and BOATYARD, LLC, a California limited liability company herein called TENANT.) (CITY and TENANT are sometimes referred to herein separately as Party and collectively as Parties.)

WHEREAS, on or about November 19, 2001, CITY and Josef Steinmann (“Steinmann”) entered into that certain lease agreement for all of the following premises (herein collectively referred to as the "Premises") in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows: Lease Site 89/89W (the Premises is delineated on Parcel Map of CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference) (the “Lease Agreement);

WHEREAS, on or about December 12, 2005, CITY and Steinmann amended the Lease Agreement by executing that certain Amendment #1 to Lease Agreement for Lease Site 89/89W;

WHEREAS, CITY, as landlord, and James Edmund Smith and Beverly Elder Smith, Trustees of the Smith Family Trust, dated September 13, 2004 (“Smith Trust”), Clifford Branch, Trustee of the Clifford Branch Trust dated January 11, 2006 (“Branch Trust”), as tenants, were parties to the Lease Agreement due to an authorized assignment and assumption of the Lease Agreement signed by Steinmann and the Smith and Branch Trusts and approved by CITY on or about January 27, 2006;

WHEREAS, CITY, as landlord, and BOATYARD, LLC, a California limited liability company, are now parties to the Lease Agreement due to an authorized Amendment #2 and that certain Assignment and Assumption Agreement signed by TENANT, Smith Trust and Branch Trusts and approved by CITY, both concurrently with this Lease on or about October 11, 2016 (the Lease Agreement, Amendment #1 and Amendment #2 are collectively referred to herein as the “Current Lease Agreement”);

WHEREAS, disputes have arisen over the Parties' obligations arising out of the Current Lease Agreement that terminates on or about November 30, 2041, including but not limited to the repair and replacement of the seawall/revetment that began collapsing in 2015;

WHEREAS, during the Summer of 2015, CITY issued emergency permits and TENANT paid Associated Pacific Constructors, Inc. ("APC") in excess of \$90,000.00 to install two temporary steel pile girders and interconnections to stabilize the failing section of the seawall/revetment from further collapse on the Premises;

WHEREAS, in addition to the \$90,000 paid by TENANT to APC, TENANT has paid in excess of \$180,000 to TENANT'S attorneys and consultants in connection with the failing seawall/revetment on the Premises;

WHEREAS, pursuant to APC's August 25, 2016, letter to TENANT, additional temporary and/or emergency repairs to the seawall/revetment on the Premises are needed at a significant additional cost before a permanent repair of the seawall/revetment can be made; and

WHEREAS, TENANT proposed a permanent repair of the seawall/revetment and improvements to the dock and adjoining areas on the Premises, as well as other improvements for the Premises, set forth and depicted in the Sea Wall and Dock Repair Site Plan (the "Site Plan"), attached hereto and made a part hereof as Exhibit B (the "Rehabilitation Project"), in exchange for a new 45-year master lease agreement in order to assist with the financing of that project.

NOW, THEREFORE, pursuant to all of the conditions set forth in this Lease, and in consideration of the covenants to be performed by the Parties and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, the Premises.

Article 1 FIXED TERM

Section 1.01 Incorporation of Above Recitals.

The above "Whereas" clauses are true and correct and are incorporated herein as part of this Lease by this reference. Notwithstanding any other provision of this Lease, if this Lease is terminated pursuant to Section 1.02, below, then nothing in this Lease shall be considered an admission or used by either Party or any party in any litigation that may arise related in any way to the Current Lease or seawall/revetment failure.

Section 1.02 Lease Contingency.

If all Permits (as defined in Section 1.03) are not obtained for the Rehabilitation Project without material increase in cost and/or the Rehabilitation Project is not reasonably expected to

be constructed by TENANT without material increase in the cost, then, prior to receipt of the Permits, as defined in Subsection 13.03 A., below, TENANT may deliver written notice to CITY of termination of this Lease, and neither Party shall have any further obligation to the other Party and this Lease shall be null and void, and the Current Lease Agreement shall continue in full force and effect. For purposes of this provision, "material increase in cost" shall be defined as an increase of more than Sixty Thousand Dollars (\$60,000.00) over One Million Three Hundred Ninety Four Thousand Dollars (\$1,394,000) to complete the Rehabilitation Project, including all soft and hard costs.

Section 1.03 Effective Date and Term.

The effective date of this Agreement shall be the date it has been signed on behalf of CITY, as long as it has also been signed on behalf of TENANT. The term of this Lease shall be a period of 45 years (the "Term"), commencing on the first day of the complete calendar month following TENANT'S receipt of all of the Permits, as defined in Section 13.03 below (the "Permits") (the "Commencement Date"). The Term shall terminate without notice on forty-fifth (45th) annual anniversary after the Commencement Date, unless sooner terminated as herein provided. Within 5 days after the Commencement Date, the parties agree to sign a Commencement/Termination Date Memo, substantially similar to Exhibit C, attached hereto.

Section 1.04 No Extensions.

The Term shall not be extended nor shall this Lease be renewed without a mutually agreeable amendment signed by the Parties.

Section 1.05 Hold Over.

If TENANT holds the demised Premises after the expiration of the Term with the consent of CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month-to-month, terminable on thirty-days' written notice from either party to the other, at a monthly rental equal to one hundred fifty percent (150%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of the Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Section 1.06 Replacement.

As of the Commencement Date of this Lease, this Lease shall extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by CITY or TENANT pursuant to any existing lease with respect to the Premises

which is not granted pursuant to this Lease shall be extinguished as of the Commencement Date of this Lease.

Section 1.07 Termination of the Previous Lease Agreement.

CITY, Smith and Branch agree the Current Lease Agreement shall terminate on the Commencement Date.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$58,000.00 per year (the "Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT shall pay, on the Commencement Date, then the proportionate amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of Minimum Rent shall be proportionate to the time remaining in the term. All Rent, including the Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

The Parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in Section 2.03 hereof, the annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the then current Consumer Price Index from the Consumer Price Index applicable on the Commencement Date (Base Index), but, in partial consideration of completion of the Rehabilitation Project and Release in Section 7.10, that increase or decrease shall not exceed 2.5% in any one year; provided, that the parties agree, if:

(1) the CPI increases or decreases over 6%, then the maximum CPI increase or decrease shall be 2.5%, plus half of the increase or decrease over 6%. As an illustration only, if the CPI increase is 8%, then the new CPI rent calculation would be one half of the difference between 6% and 8%, or 1%, added to the maximum 2.5% for a new 3.5% CPI. The percentage

adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles - Anaheim - Riverside, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index"); and

(2) the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another index in its place, then said substituted index shall be used for the purpose of adjusting the Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, then the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

Section 2.03 Calculation of New Minimum Rent.

At the end of the initial five years and of each five-year (5-year) period thereafter, a new Minimum Rent shall be calculated for the following five- (5-year) period (each, a "Subsequent Rental Period") as follows:

A. The Minimum Rent shall be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY'S appraiser in writing and within thirty days after CITY'S notice of its determination, then the Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY'S appraiser within thirty (30) days following CITY'S notice to TENANT, then within fifteen days after such 30-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a Party does not appoint an appraiser within fifteen days after the other Party has

given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty days after appointment. If the Parties are unable to agree on the Minimum Rent for the Subsequent Rental Period within thirty days after receiving the appraisal(s), then each Party shall select one member of a three-member committee. The two so selected members shall select the third member, and that committee shall by majority vote select one or the other of the appraisals. The Minimum Rent determined on the basis of the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

B. In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out herein below when said appraisal process is completed.

C. The total Rent payable, including both the Minimum Rent and the Percentage Rent for each year within the applicable previous five (5) year period, shall be averaged to produce the average annual total Rent payable for such previous period.

D. In partial consideration of completion of the Rehabilitation Project and release in Section 7.10, the new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of sixty-five percent (65%) of the average of the total yearly Rent payable during the previous five-year period (as set out in paragraph C. above) or six percent (6%) of the fair market value of the Premises (as established in paragraph A. above) for the twenty (20) years following the Commencement Date and then that will increase to eight percent (8%) for the remainder of the Term. The new Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. That new Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

Section 2.04 Percentage Rent.

A. In addition to the Minimum Rent, in partial consideration of completion of the Rehabilitation Project and Release in Section 7.10, commencing on the Commencement Date and continuing until the twentieth (20th) annual anniversary of the Commence Date TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to three percent (3%) of TENANT'S Gross Sales, hereinafter defined, less the amount of the Minimum Rent paid pursuant to this Lease (the "Percentage Rent"). Thereafter, for the remainder of the Term, the Percentage Rent applicable

and due will be five percent (5%) of TENANT'S Gross Sales less the amount of Minimum Rent paid for the fiscal year pursuant to this lease.

B. The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold, full-filled and paid for from business entirely conducted/transacted at Premises, either in person or through the internet or other media; and the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

C. Notwithstanding the other provisions of Section 2.04, the term "Gross Sales" shall not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

- (1) Credits and refunds made to customers for merchandise returned or exchanged;
- (2) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed; and
- (3) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S credit card acceptance agreement, and
- (4) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

D. TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting and commercial practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are recorded in accordance with standard commercial practices. The records, books of account and cash register tapes, including any sales tax reports TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of

CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of CITY in determining Gross Sales for TENANT in, on or from the Premises.

E. By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT, as current, true and accurate, which shall set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom (“Statement” or “Statements”); and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby.

F. Except as provided in this subsection F., CITY shall be entitled at any time within five years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and the accuracy of any Statement or Statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any Statement or Statements, TENANT shall for said period of five years after submission to CITY of any Statement or Statements keep all of TENANT'S records commercially necessary to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom, as shown by any Statement or Statements, and shall upon request make the same available to CITY for examination for periodic auditing purposes.

Except as provided in this subsection F, although it is the policy of CITY to audit Tideland Trust tenants once every approximate five years, CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection.

Notwithstanding the foregoing provisions of this Section 2.04 and in partial consideration of completion of the Rehabilitation Project and Release in Section 7.10, (i) CITY agrees not to conduct any audit of TENANT for any reason for a period of five years after the Commencement Date, unless CITY'S City Manager has substantial evidence to believe TENANT'S annual Gross Sales reporting during that period is not accurate and (ii) CITY agrees no auditing for any reason will be conducted or required for the period prior to December 31, 2016. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available any and all sales tax reports TENANT and each subtenant has filed with the California Franchise Tax Board for the period being audited. If any or all of the sales tax reporting are not timely provided or are not reasonably adequate for auditing purposes, then TENANT shall deliver and make available all commercially necessary records to the public or certified public accountant selected

by CITY. In addition, for any and all business transactions made by or on behalf of TENANT or any subtenant at the Premises not subject to sales taxes, all commercially necessary records shall be made available for auditing purposes.

In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent or more, CITY shall be entitled to recover from TENANT a penalty equal to one and one-half (1.5) times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY therefore as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums being due to CITY upon demand as additional Rent.

Section 2.06 Penalty and Interest.

(1) If any Rent is not received within ten days following the date on which the Rent first became due, then TENANT shall pay a late penalty of ten percent of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by CITY and any unpaid amounts due from TENANT to CITY.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises shall, during the Term, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with, Conditional Use Permit Number 30-99 and 15-99 (and any new CUP number(s) if issued), as it may be amended from

time to time, and for no other purpose. On the Commencement Date, such uses include retail sales, boat excursion ticket sales, boat rental and berthing, boatels in dock slips, one live-aboard unit on the Premises; provided, that as to the live-aboard, only to the extent permitted by Morro Bay Municipal Code (“MBMC”) section 15.40. Notwithstanding the foregoing, it is acknowledged and agreed by the Parties, TENANT has had under the Current Lease Agreement one live-aboard permit issued by the CITY and that TENANT’s right to a live-aboard permit from the CITY shall be “grandfathered” and continue even in the event that the CITY amends the MBMC.

Section 3.02 Unauthorized Use.

TENANT agrees to allow only those uses authorized in Section 3.01 hereinabove and any unauthorized use thereof shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

Failure to actively and diligently conduct the business authorized herein constitutes a breach of the agreement and shall, at the option of CITY, terminate this lease. TENANT shall during the Term conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year except one day each week and legal holidays. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT and/or for any longer period as reasonably necessary to complete the Rehabilitation Project. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by CITY’S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for the death or illness of an officer, member or employee of TENANT, any subtenant, or officer, member of employee of any subtenant.

Section 3.04 Competition.

During the Term, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of five (5) miles from the location of the Premises; provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing

revenue to CITY by diverting business from the operation at the Premises to another similar business owned by TENANT within CITY but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Hazardous Materials.

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be conducted strictly in accordance with all applicable laws and regulations. If TENANT shall transport any hazardous waste from the Premises, such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, then TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten days after demand, or direct TENANT to perform such remediation.

If CITY directs TENANT to perform the remediation, then TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT fails to comply with CITY'S direction given pursuant to this Section within five (5) days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

(4) Notwithstanding anything contained in this Section 3.05, TENANT and all subtenants of the Premises shall have the right to use oil, gas, diesel, and other Hazardous Material, but only in connection with motorized water craft at or near the docks on the Premises, as an integral part of the approved use of the Premises.

Section 3.06 Tidelands Trust.

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

Section 3.07 Compliance with Law.

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal, county, state and federal statutes, laws, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements"); provided, that TENANT shall not be required to comply with any Legal Requirement imposed by CITY that would substantially deprive TENANT of a material benefit under this Lease, unless the Legal Requirements have been imposed or required by a county, state or federal authority or to preserve public health and safety and the latter are applied to similar businesses within CITY'S jurisdiction. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, TENANT has violated any of the Legal Requirements in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

Section 3.08 Waste or Nuisance.

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

Section 3.09 Use by CITY.

(1) Subject to TENANT'S rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor, so long as no license or other interest over or to the Premises is conveyed, granted, or otherwise transferred for any commercial purpose, except for a public right-of-way to the docks and bay waters or that may otherwise be reasonably approved by TENANTS; provided, that the Parties understand the following applies to this and all Tidelands Trust lands pursuant to the Tidelands Trust Grant: There is hereby reserved, however, in the people of the State of California the absolute right to fish in the waters of said harbor with the right of convenient access to said waters over said lands for said purposes.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed Ten Thousand Dollars, without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from the Harbor Director, or CITY'S designee, for CITY. If the Harbor Director or any future successor to the duties of CITY'S Harbor Director, or CITY'S designee, gives such consent to proceed, then it is understood such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes. Once the Permits are issued for the Rehabilitation Project, CITY will be deemed to have provided written consent for that project.

(2) Where required by the MBMC, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars, TENANT shall file with the Morro Bay CITY Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. The estimate must be submitted to CITY'S City Engineer for approval. TENANT shall file with CITY'S City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of one hundred percent of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with CITY'S City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the construction.

(3) In lieu of the above referenced bonds, TENANT must: (i) demonstrate, to CITY'S reasonable satisfaction, TENANT'S reasonable financial liquidity of uncommitted and totally accessible assets equal to One Million Three Hundred Ninety Four Thousand Dollars (\$1,394,000.00), (ii) post cash deposits equal to 100% of the soft and hard actual construction costs, or (iii) make other mutually agreeable arrangements to guarantee the completion of construction projects. In the event the contractor bonds the construction, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the Term, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the

Premises to be released from such liens or claim of liens within ten days after the filing of such lien or levy, TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and the Premises from such liens. TENANT shall give CITY notice at least twenty days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than one hundred eighty (180) days prior to the termination of the Lease, of its decision to require the improvements be removed. The Parties agree if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have one hundred twenty (120) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises, except the seawall/revetment, structural piers, pilings and posts, bulkheads, retaining walls, underground utilities and/or sewer and water lines, docks and dock improvements that are attached to piers, pilings, and posts, and/or the permanent foundations to any improvements. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY, as evidenced by a resolution of CITY'S City Council. Notwithstanding the forgoing, CITY shall not unreasonably withhold,

condition, or delay consent for TENANT to secure any mortgage against the Premises for up to seventy-five percent (75%) of the then current fair market value of the leasehold interest in the Premises, as long as the proceeds from such mortgage are used for improvements to the Premises or to reduce the interest applicable to then existing debt secured by the leasehold interest in the Premises.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the Term and subject to the percentage limitation set forth in Section 6.07, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the Term the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

At all times during the Term and subject to the percentage limitations set forth in Section 6.07, TENANT shall at TENANT'S own cost and expense repair, maintain, replace and rebuild as necessary, the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT shall at TENANT'S own cost and expense conduct maintenance surveys at reasonable intervals to locate and determine needed repairs. The parties agree and understand, if TENANT takes benefit of the percentage limitations set forth in Section 6.07, then CITY has no obligation to TENANT or TENANT'S subtenants, assignees or successors-in-interest to repair, maintain replace or rebuild the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises.

Section 6.03 Legal Requirements.

At all times during the Term and subject to the percentage limitations set forth in Section 6.07, TENANT, at no cost to CITY, shall:

(1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07 above) now or hereafter made or issued;

(2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon; and

(3) Obtain all required permits pursuant to the MBMC or State law prior to the initiation of any repair or maintenance activity.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten business days after written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense and TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent subject to the percentage limitations set forth in Section 6.07 below. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of any of the provisions of this Article and CITY may at any time enforce all of the provisions of this Article.

Section 6.05 Inspection by CITY.

Except in the event of an emergency, CITY or CITY'S agents, representatives, or employees may enter the Premises, upon at least 48-hours' prior written notice, at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07 below, if, at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY (the "Repair and Restoration"). TENANT shall pursue, with all due diligence and dispatch, obtaining the permitting required from all applicable public agencies for the Repair and Restoration (the "Repair Permits"), shall commence the Repair and Restoration within thirty (30) days after entitlement to issuance of the Repair Permits and shall use reasonable efforts to complete the

Repair and Restoration not later than three hundred sixty five (365) days after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the Repair and Restoration shall be done in accordance with the requirements for construction work on the Premises, set forth in Article 4 of this Lease. Subject to Section 6.07, any failure by TENANT either to commence or to complete the Repair and Restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the Term because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Extraordinary Repairs.

Notwithstanding the provisions of this Article, in partial consideration of completion of the Rehabilitation Project and the Release in Section 7.10, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if: any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost of ten percent (10%) or less than the fair market value of all the improvements on the Premises immediately prior to the damage or destruction. It is further agreed by the Parties:

(1) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty (180) days following damage or destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice. If TENANT exercises TENANT'S option under this Section 6.07, then TENANT shall have no obligation to CITY or subtenants, assignees or successors-in-interest to repair, maintain replace or rebuild any of the improvements, pilings, bulkheads, retaining walls, any underground utilities and/or sewer and water lines, seawalls, revetment, piers, posts, docks, dock structures, and any other structures or improvements located on the Premises.

(2) If TENANT does not exercise the above option and fails to commence or complete repair and restoration as required by Section 6.06, then CITY shall have all rights and remedies with respect to TENANT'S default, including, but not limited, to termination of this Lease pursuant to Article 11.

(3) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to each lender whose loan is secured by the leasehold interest in this Lease, then

(b) to the demolition of the improvements and removal of all demolition debris, then

(c) to any accrued and unpaid Rent as of the effective date of the termination, then

(d) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in this Article of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds ten percent (10%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY, RELEASE AND INSURANCE

Section 7.01 Indemnity Agreement.

TENANT shall defend, indemnify and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and each of CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, arising from any act or omission of TENANT or any of its officers, agents, representatives, subtenants, employees, contractors, subcontractors, invitees or anyone for whom TENANT may be liable related to this Lease; provided, that the obligation to indemnify and hold harmless shall only be to the extent Damages are caused by TENANT or any of its officers, agents, representatives, subtenants, employees, contractors, subcontractors, invitees or anyone for whom TENANT may be liable.

Section 7.02 Liability Insurance.

During the Term, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled “City of Morro Bay Insurance requirements for Lessees”, Certificate of Insurance – City of Morro Bay”, and “Additional Insureds – Managers or Lessors of Premises” attached hereto as Exhibit D and made a part hereof as may be updated or changed from time to time at the sole discretion of CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars per occurrence for bodily injury, personal injury and property damage; provided, that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. All coverages for subtenants shall comply with all requirements of this Article 7.

Section 7.03 Worker's Compensation.

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the Term, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of One Million Dollars per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the Term keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Notwithstanding the foregoing, TENANT shall, as soon as possible, meet the obligations of this Section 7.04 with regard to the insurance for the seawall/revetment; provided, that CITY shall not hold TENANT in breach or default of this Lease if TENANT is unable to procure such insurance prior to or within sixty days after Completion of the Rehabilitation Project.

Section 7.05 Additional Coverage.

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT'S personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by CITY as a material breach of contract. TENANT shall forward CITY specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but not more than by ten percent over any ten-year period and every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions greater than \$25,000, which amount shall be adjusted annually by the increase/decrease in the CPI, must be declared to and approved by CITY.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and any endorsements effecting the coverage required by this Lease. The endorsements shall be on forms reasonably approved by CITY or on other than forms reasonably approved by CITY, provided those endorsements or

policies conform to the requirements of this Lease. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S gross negligence or willful misconduct. TENANT agrees, to the extent TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 Insurance Not a Limit.

The insurance requirements of this Article 7 are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

Section 7.10 Tolling.

CITY hereby agrees to toll the period in which the Smith Trust, the Branch Trust, and TENANT, as the assignee and successor-in-interest of the Smith Trust and Branch Trust, as the Lessees under the Current Lease Agreement may bring any lawsuit, arbitration and/or mediation and proffer any defense arising out of, relating to, and/or involving the construction, repair, and failure of the seawall/revetment on or about the Premises, including any breach of the Current Lease Agreement or the City's obligations, if any, relating thereto, up to and including the Commencement Date; provided, that TENANT shall have timely complied with the requirements of Section 13.03 A., unless that non-compliance is because TENANT terminated this Lease pursuant to the terms and conditions set forth in Section 1.02. CITY agrees to the foregoing tolling period contingent and in reliance on the understanding that same tolling period applies to any lawsuit, arbitration, mediation or defense that may be available to CITY regarding the foregoing.

Section 7.11 Release of Liability related to the Current Agreement.

Upon the Commencement Date, TENANT and CITY, on behalf of themselves and each of their agents, predecessors, assignors, successors, heirs, transferees and assigns, release the other and their respective officers, employees, representatives, agents, predecessors, assignors, successors, heirs, transferees, and assigns from any and all claims, damages, judgments, liability, attorney's fees and court costs known or unknown arising out of or related to the Current Lease Agreement or any other reason related indirectly or directly to the failed seawall and rock revetment that existed on the Premises prior to the Commencement Date.

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall pay all possessory interest taxes applicable to the Premises.

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises, subject to Article 13, below.

Section 8.03 Utilities.

TENANT shall pay, or cause to be paid, and hold CITY and the property of CITY, including the Premises, free and harmless from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the Term and for the removal of garbage and rubbish from the Premises during the Term.

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

In partial consideration of completion of the Rehabilitation Project and the Release in Section 7.10, any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land or water area that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT and not any of TENANT'S subtenants.

(3) All compensation or damages awarded or payable because of any improvements constructed and located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed and located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the

Premises is taken by eminent domain, shall be allocated to TENANT and not any of TENANT'S subtenants.

(5) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(6) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of TENANT.

Section 9.03 Termination for Partial Taking.

If, during the Term, title and possession of only a portion of the Premises be taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies, provided, however, that CITY may, at CITY'S option, mail written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the Term, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by

such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the Term, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. In partial consideration of completion of the Rehabilitation Project and the Release in Section 7.10, if a temporary taking extends for more than thirty-six months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive the compensation and damages awarded because of such temporary taking.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Preapproved Assignments.

Notwithstanding Sections 10.01 and 10.03, each assignment by TENANT to a trust or an entity in which Clifford Branch, Lynette Branch, James Edmund Smith, Beverly Elder

Smith or any of their heirs and beneficiaries have complete control over the trust or entity is deemed preapproved upon written notice from TENANT of such assignment and the assignees' written agreement to assume all rights and obligations of TENANT pursuant to this Lease and no application fee, transfer fee or other fee shall be due by TENANT to CITY for that assignment.

Section 10.03 Application for Assignment.

For other than any assignment described in Section 10.02, a condition of an assignment shall be TENANT shall file with CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of CITY'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable and will operate a business permitted pursuant to this Lease, all as reasonably determined by CITY; provided, that if the sublease is not approved by CITY within ten business days after CITY'S receipt of a completed request for approval from CITY, then the sublease shall be deemed disapproved. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the Premises.

Section 10.05 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the Term. Subject to Section 10.08, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.06 Consent Form Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making CITY a third party beneficiary, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT that any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.07 TENANT Remains Liable.

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant.

Section 10.08 Nondisturbance.

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease

provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

If TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the Term, CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within sixty (60) days after written notice thereof is served on TENANT, then CITY may commence legal and equitable actions to terminate this Lease immediately.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within thirty days after written notice thereof is served on the TENANT, then CITY shall have the option to commence legal and equitable actions to immediately terminate this Lease.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 5 of this Lease.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default is incurable or cannot be cured within the time period set forth in this Article above, unless TENANT commences to cure within such time period, continues to diligently cure without interruption until cured and the cure is completed as soon as reasonably practicable, then CITY may commence legal and equitable action to terminate this Lease.

Section 11.06 Cumulative Remedies.

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.08 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in a broom clean condition, reasonable wear and tear excepted. Notwithstanding anything contained in the Lease to the contrary, CITY acknowledges and agrees all the improvements located on the Premises, including, but not limited to, those certain improvements constructed by TENANT pursuant to the Rehabilitation Project, are subject to reasonable wear and tear normally experienced by structures constructed and located on or about water and in coastal areas.

Article 12 MISCELLANEOUS

Section 12.01 Notices.

Any and all notices or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally or by Fed-Ex, UPS, or other similar national carrier if signed and acknowledged by the Party representative set forth below. Any notice or demand to CITY may be given to:

Harbor Director
City of Morro Bay
1275 Embarcadero
Morro Bay, California 93442

with a copy to:

City Manager
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Cliff Branch, Lynette Branch or Tyler Jenkins
755 Santa Rosa Street, Suite 310
San Luis Obispo, CA 93401

with copy of:

Paul B. Parker, Esq.
Parker & Sander
755 Santa Rosa Street, Suite 300
San Luis Obispo, CA 93401

Such addresses may be changed by written notice by either party to the other party.

Section 12.02 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of San Luis Obispo County, and each Party waives any claim such court is not a convenient forum. Each Party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 12.04 Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.05 Sole and Only Agreement.

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT, except for the Current Lease, as amended. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, including, but not limited to the Current Lease, as amended, which are not expressly set forth in this Lease, are

null and void. The terms herein specified, except for the Current Lease Agreement, as amended, correctly set forth the obligations of CITY and TENANT as of the effective date. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.06 Modification.

This Lease shall not be modified, except pursuant to a written agreement executed by the Mayor and City Clerk, pursuant to prior approval by CITY'S City Council. TENANT understands this Lease may not be modified by oral statements by any person representing CITY. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal action of CITY'S City Council and a subsequent written modification signed by the Mayor and City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the Term, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the Term, execute a memorandum or "short form" of this Lease, which shall describe the parties, set forth a description of the leased premises, specify the Term, and incorporate this Lease by reference.

Article 13 SPECIAL PROVISIONS PECULIAR TO THE PREMISES

Section 13.01 Rehabilitation Project.

TENANT shall complete the Rehabilitation Project, which shall include the following:

- A. Repair and reinforce the failing section of seawall and rock revetment on the Premises;
- B. Remove and replace rip-rap, as necessary and allowable, from the north end of the seawall and repair starting at the toe of slope up to the patio elevation, and extending to the Premises property line;
- C. Installing new and/or refurbishing and repairing docks, floats, and hardware;
- D. Installing new and/or refurbishing and repairing existing kiosks/offices;

- E. Installing new and/or refurbishing and repairing the gangway;
- F. Installing new and/or refurbishing and repairing railing at the patio/deck (as needed), brick patio/deck areas (as needed), and signage in and around the dock areas; and
- G. Improve existing cinder block wall and install rip-rap as necessary and allowable.

The Parties acknowledge and agree TENANT is only obligated to perform the repairs and improvements depicted on the Site Plan. In the event of any discrepancy or contradiction between this Lease and the Site Plan attached as Exhibit "B", the Parties agree the Site Plan shall control and be determinative.

Notwithstanding anything contained in Section 3.07 to the contrary, TENANT and CITY agree CITY will work in good faith and as permitted by law to not require ADA improvements associated with the Rehabilitation Project, however if such improvements are required by CITY or another governmental agency or by law, then CITY will agree to reduce each Minimum Rent payment equally over a five-year period in a total amount equal to one-half of the documented costs to TENANT for such improvements.

Furthermore, all license fees, permit fees, plan check fees, and any and all other fees and costs for the Rehabilitation Project charged or imposed, solely on behalf of CITY, by CITY to TENANT shall not exceed the amount CITY is permitted to impose pursuant to Article XIIC of the California Constitution and are generally applicable to similar projects.

Section 13.02 Public Restrooms

In addition, one of the two existing unisex public restrooms on the Premises shall be unlocked and open at all times and available to the public during normal business hours of the tenants located on the Premises. The other existing unisex public restroom on the Premises Site shall be open at all times to only the tenants on the Premises, their staff and customers, and each tenant shall have a key to the restroom, which shall be available at the front counter of all the retail stores in the complex.

Section 13.03 Schedule for the Rehabilitation Project

A. TENANT shall file, on or before June 30, 2017, a complete application for review and approval of the required Concept Plan and Precise Plan from CITY for the Rehabilitation Project. Within sixty days after receipt of approval from CITY of the Concept Plan and Precise Plan, TENANT shall file a complete application for review and approval of the Project with the Coastal Commission. Then, within sixty days after receipt of all approvals of the Rehabilitation Project from the Coastal Commission, TENANT shall file complete applications for all

necessary land use approvals for the Rehabilitation Project from all other applicable governmental agencies, including, but not limited to, the Army Corp of Engineers and the Central Coast Regional Water Quality Control Board. Within thirty (30) days after receipt of all necessary land use approvals from CITY and all the governmental agencies listed above, TENANT shall file with CITY'S Community Development Department all necessary complete construction plans for CITY to issue valid building and other construction related permits for the Rehabilitation Project. All necessary building and other land use permits and approvals from CITY and all other applicable governmental agencies, including, but not limited to, the Coastal Commission, the Army Corp of Engineers and the Central Coast Regional Water Quality Control Board, are hereinafter referred to collectively as the "Permits."

B. Within one hundred fifty days after receipt of the Permits, unless TENANT is delayed through no fault of TENANT, TENANT shall have commenced the Rehabilitation Project and expended at least \$700,000 in actual hard construction costs for the Rehabilitation Project (the "Project Commencement").

C. Within one hundred eighty days after the Project Commencement, TENANT shall cause the completion of the Project. For the purpose of this Lease, completion shall mean when the Rehabilitation Project is entitled to receive final inspection approval from CITY and all other applicable government agencies, (the "Completion"). Notwithstanding the foregoing, CITY'S final inspection and approval of the Rehabilitation Project shall not be unreasonably withheld, conditioned or delayed and in no event shall such final inspection by CITY be more than ten days after TENANT'S written request.

D. Total actual expended hard and soft construction costs for the Rehabilitation Project, retail structure improvements, emergency repairs, ADA costs, if any, and any and all other improvements set forth in this Agreement shall not be less than One Million Four Hundred Thousand Dollars (\$1,400,000.00).

Section 13.04 CITY Processing Assistance.

CITY agrees to expedite all necessary CITY-approvals and Permits to allow TENANT to commence and complete the Rehabilitation Project as quickly as possible and within the timeframe of the Schedule set forth in Section 13.03. CITY also agrees, in good faith, to process and grant, if legally possible, a request from TENANT to waive any requirement TENANT comply with Sections 1803.2 through 1803.6, J 104.3 and J 104.4 of the 2013 California Building Code.

Section 13.05 Harbor Walk.

There shall be no use of the existing access by the adjacent lease site immediately to the south of the Premises to access the boat docks of the adjacent lease site (currently occupied by Off the Hook); provided, that the Parties hereby agree and acknowledge the Rehabilitation Project and the Premises will still include a harbor walk with a connection to the harbor walk on the abutting lease site.

Section 13.06. Temporary Boat Storage.

CITY will take reasonable best efforts to assist with temporary boat storage for TENANT'S subtenants at the Premises, during actual construction of the Rehabilitation Project for a period not to exceed a total of 90 days; provided, that such storage shall be provided at CITY'S then applicable rate payable by the boat owner.

EXECUTED on _____, 2016, at Morro Bay or San Luis Obispo,
San Luis Obispo County, California.

CITY OF MORRO BAY

BOATYARD, LLC, a California limited
liability company

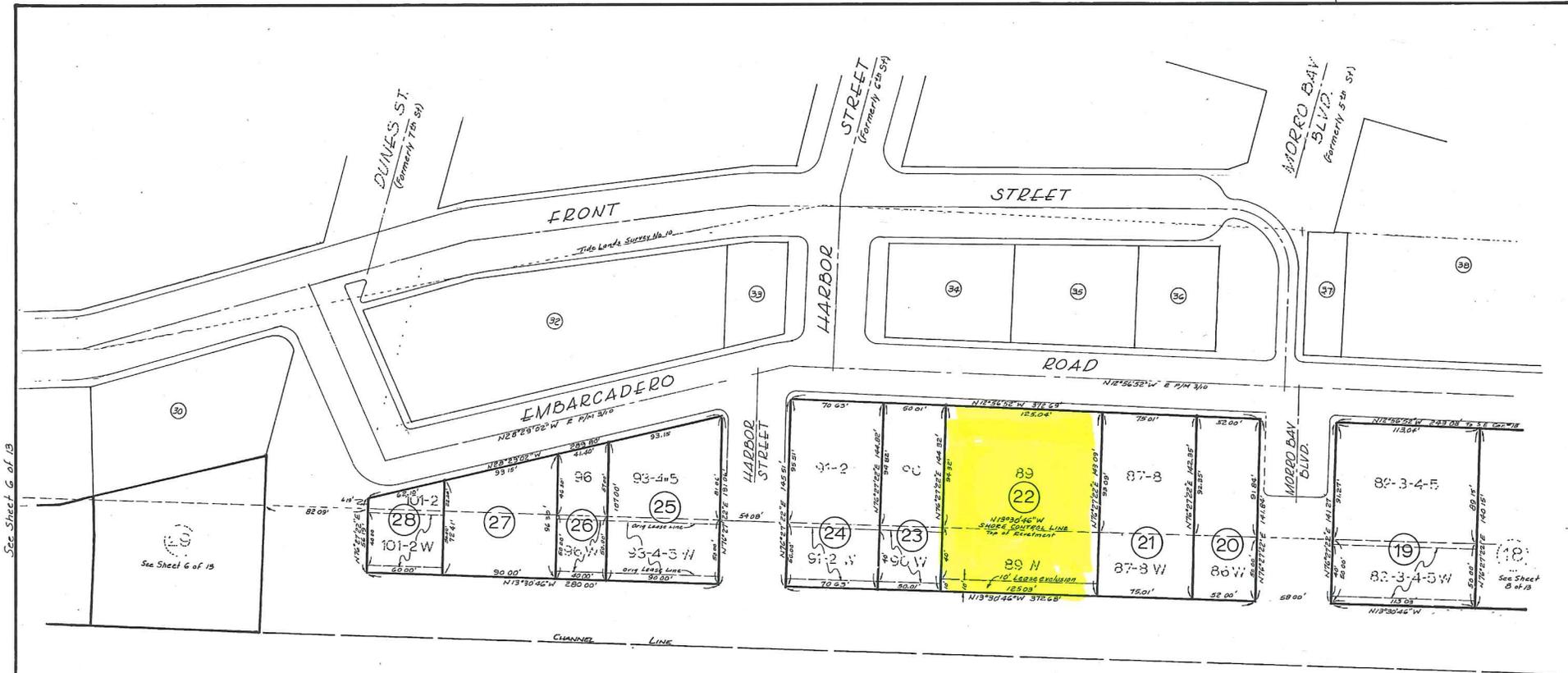
Mayor

Cliff Branch, Manager

ATTEST:

City Clerk

EXHIBIT A
COPY OF PARCEL MAP



See Sheet 6 of 13

See Sheet 8 of 13



LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.
 Scale 1" = 50'

GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov. 74
 Feb. 75

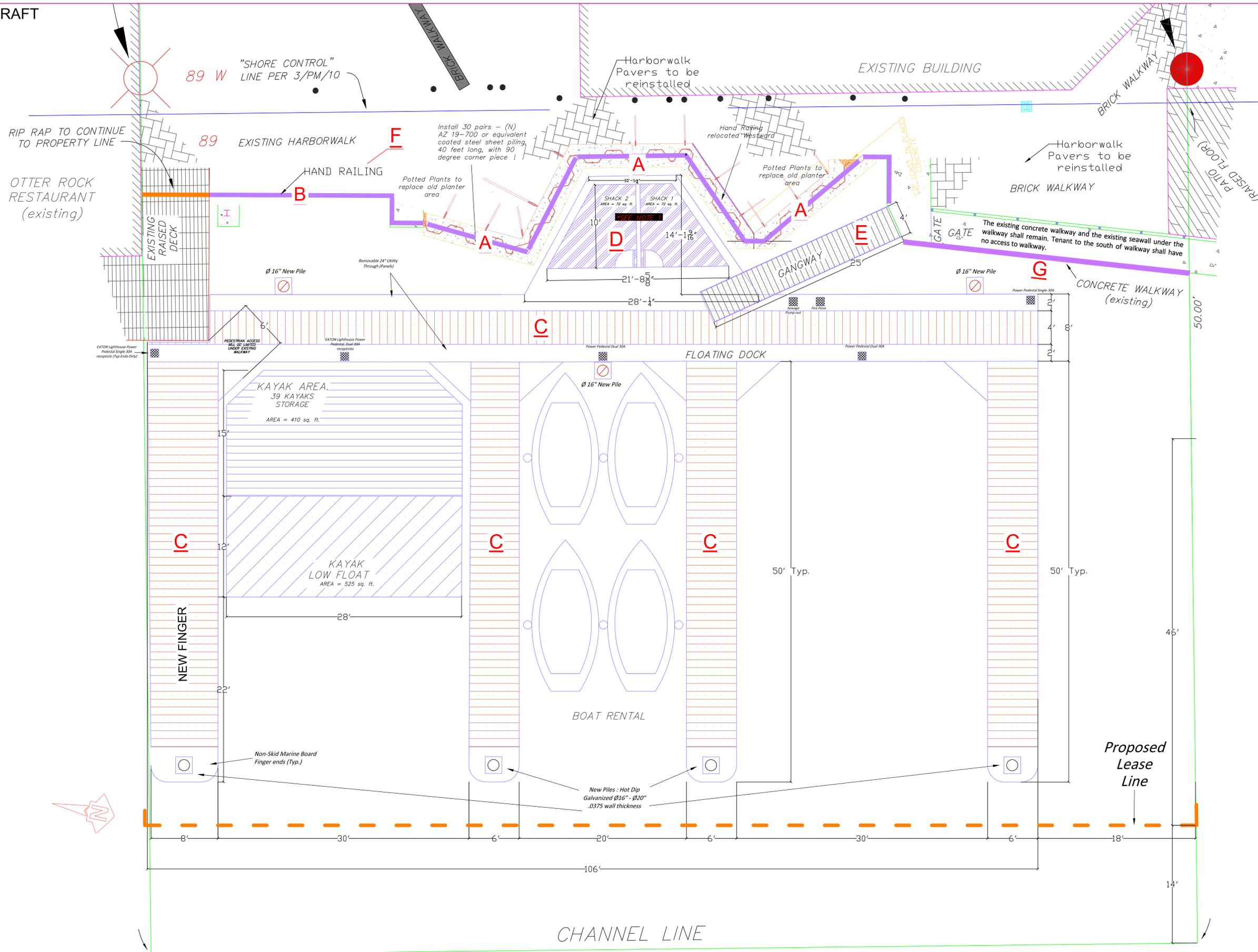
EXHIBIT B

REHABILITATION PROJECT

SITE PLAN

DRAFT

EXHIBIT B



- ### Details
- A.** - Repair and reinforce the failing section of seawall and rock revetment on the Premises;
 - B.** - Remove and replace rip-rap, as necessary and allowable, from the north end of the seawall and repair starting at the toe of slope up to within 12" of the patio elevation, and extending to the Premises property line;
 - C.** - Installing new and/or refurbishing and repairing docks, floats, and hardware;
 - D.** - Installing new and/or refurbishing and repairing existing kiosks/offices;
 - E.** - Installing new and/or refurbishing and repairing the gangway; and
 - F.** - Installing new and/or refurbishing and repairing railing at the patio/deck (as needed), brick patio/deck areas (as needed), and signage in and around the dock areas.
 - G.** - Improve existing cinder block wall and install rip-rap as necessary and allowable.

*** NOTE 1:** Each shack to have
 1 split door
 3 windows
 1 desk
 2 outlet
 copper roof

ASSOCIATED PACIFIC CONSTRUCTORS
 DATE: 5/4/16
 SCALE: 3/16" = 1'-0"

THE BOATYARD SEAWALL REPAIR & MAINTENANCE
 845 Embarcadero
 Morro Bay, CA 93442

DOCK REVISION EXHIBIT A

ASSOCIATED PACIFIC CONSTRUCTORS
 DATE: 5/4/16
 SCALE: 3/16" = 1'-0"

Site Plan

Dock Revision
 3/16" = 1'-0"

EXHIBIT C

COMMENCEMENT/TERMINATION DATE MEMO

[CITY LETTERHEAD]

The Parties have signed that certain Lease Agreement, dated _____, 2016, (the "Lease"). Pursuant to Section 1.02 of the Lease the Parties agreed to sign a memo, substantially similar to this memo, within 5 days after the Commencement Date as defined in the Lease. The Commencement Date of the Lease is _____, 201_. The Lease terminates as of _____, 205_, unless terminated earlier as provided in the Lease.

CITY OF MORRO BAY

BOATYARD, LLC

Mayor

By: _____
Clifford Branch, Manager

Dated: _____

Dated: _____

EXHIBIT D

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR TENANT (NO AUTO RISKS)

TENANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with TENANT'S operation and use of the leased premises. The cost of such insurance shall be borne by TENANT.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

City of Morro Bay
Insurance Requirements for TENANT

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to Tenant.
2. TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

TENANT shall furnish CITY with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by CITY or on other than CITY'S forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY **before** use of the Premises, unless expressly stated otherwise in the Lease. CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

City of Morro Bay
Insurance Requirements for TENANT

Sub-lessee

TENANT shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

City of Morro Bay
Insurance Requirements for TENANT

Reproduction of Insurance Services Office, Inc. Form

INSURER: ISO Form CG 20 11 11 85 (Modified)
POLICY NUMBER: Commercial General Liability
ENDORSEMENT NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

Signature-Authorized Representative

Address

**AMENDMENT #2 TO THE LEASE AGREEMENT FOR
LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO**

This Amendment #2 ("this Amendment") is made and entered into as of this 11th day of October, 2016, to the Lease Agreement for Lease Site 89/89W (the "Lease Site"). dated November 19, 2001, as amended by that certain Amendment #1 dated December 12, 2005 (collectively, the "Master Lease") by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and James Edmund Smith and Beverly E. Smith, Trustees of the Smith Family Trust, dated September 13, 2004, and Clifford Branch, Trustee of the Clifford Branch Trust, dated January 11, 2006, hereinafter collectively called "Tenants," as assignees to Josef Steinmann, pursuant to that certain assignment and assumption agreement dated January 27, 2006.

WHEREAS, the Master Lease stipulates Tenant was to pay Percentage Rent pay of 3% of Gross Receipts through June 30, 2013 and then 5% through the remainder of the term of the Master Lease;

WHEREAS, on July 1, 2013, Tenant commenced paying the 5%;

WHEREAS, the Master Lease also stipulates Tenant's base rent is currently calculated at 8% of the last appraised value of the Lease Site:

WHEREAS, Tenants now contend the appraised value of the Lease Site is incorrect because the need to repair the seawall on the Lease Site was not considered as part of that appraised value;

WHEREAS, to resolve that contention and without any express or implied admission Tenant's contention is correct, City and Tenants desire to reduce the Minimum Rent retroactively commencing June 1, 2016 through the term of the Master Lease and the Percentage Rent commencing October 1, 2016, until October 1, 2036; and

WHEREAS, Tenants desire to assign their interests in the Amended Master Lease (as defined below) to BOATYARD, LLC, a California limited liability company; and

WHEREAS, Tenants desire to amend the Master Lease to modify the insurance requirement and to allow for certain modification to the Premises.

NOW THEREFORE, Tenants and City agree, as follows:

1. The Master Lease, Amendment #1, and Amendment #2 are herein after collectively referred to as the "Amended Master Lease".
2. Unless expressly stated herein, words used in this Amendment #2 shall have the same meaning as stated in the Amended Master Lease, except to the extent the context requires otherwise.
3. Section 2.03 of the Master Lease is hereby amended so that, commencing on June 1, 2016, and for the remainder of the term of the Master Lease, the Minimum Rent shall be calculated at the greater of 6% of the appraised value of the Lease Site, based on the 2004 appraisal the City had prepared for the Lease Site, or 65% of the average of the total yearly Rent payable during the previous five-year period, as set out in paragraph C. of Section 2.03.

4. Section 2.04 of the Master Lease is hereby amended so that, commencing on October 1, 2016, the Percentage Rent shall be 3% of Gross Receipts until October 1, 2036.
5. City and Tenants agree the Master Lease shall be assigned to and assumed by Boatyard, LLC, a California limited liability company (“Assignee”), pursuant to an assignment and assumption agreement substantially in conformance to Exhibit “A”, hereof.
6. Notwithstanding anything to the contrary in the Master Lease, Tenants shall, as soon as possible, meet the obligations of Section 7.04 of the Agreement with regard to the insurance of the seawall/revetment; provided, that City shall not hold Tenants in breach and/or default of the Agreement if Lessees are unable to procure such insurance prior to or within sixty (60) days after Completion.
7. Subject to obtaining all required entitlements and permits, City governmental-approvals and other agency governmental-approvals, City, as landlord, agrees Tenants may, pursuant to the Master Lease, make the following tenant improvements to the Premises: (i) install a double exterior door at the west end of Unit C of the Premises, currently occupied by Best Kept Secret, and an exterior door near the front north side of Unit C on the Premises, (ii) install a stone veneer on the building on the Premises and to replace the round windows in front of Unit C and Unit G with square or rectangular windows and (iii) repaint the exterior of the Premises in a medium grey body color and white trim.
8. In addition, one of the two existing unisex public restrooms on the Premises shall be unlocked and open at all times and available to the public during normal business hours of the tenants located on the Premises. The other existing unisex public restroom on the Premises Site shall be open at all times to only the tenants on the Premises, their staff and customers, and each tenant shall have a key to the restroom, which shall be available at the front counter of all the retail stores in the complex.
9. In partial consideration for this Amendment #2, Tenants, on behalf of themselves, their heirs, assigns and successors-in-interest, hereby fully release City and each of its officers, employees and agents from any and all liability, damages, claims, judgements, costs and attorney’s fees arising and/or related solely from Tenant’s claims for overpayment of rent and assessments filed with the City for alleged inaccurate appraisals.
10. The Amended Master Lease shall automatically terminate, without notice, on the Commencement Date, as defined in that certain new master lease agreement between City and Boatyard, LLC approved concurrently with this Amendment #2.
11. Except as expressly stated herein, all provisions of the Master Lease shall remain in full force and effect.
12. The effective date of this Amendment #2 is the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written above.

CITY OF MORRO BAY

By: _____
Jamie L. Irons, Mayor

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney

ATTEST:

Dana Swanson, City Clerk

TENANT

Smith Family Trust, dated September 13, 2004

By: _____
James Edmund Smith, Trustee

By: _____
Beverly E. Smith, Trustee

Clifford Branch Trust, dated January 11, 2006

By: _____
Clifford Branch, Trustee

<p>This document is recorded for the benefit of the City of Morro Bay and is exempt from recording fees, pursuant to Government Code Sections 6103 and 27383.</p> <p>RECORDING REQUESTED BY: City of Morro Bay</p> <p>WHEN RECORDED MAIL TO: City of Morro Bay City Attorney 595 Harbor Street Morro Bay, CA 93442</p>	<p style="text-align: center;">Space above reserved for use of County Recorder</p>
--	--

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement is made and entered into as of the 11th day of October, 2016, by and among James Edmund Smith and Beverly Elder Smith, Trustees of the Smith Family Trust, dated September 13, 2004 (“Smith Trust”), Clifford Branch, Trustee of the Clifford Branch Trust dated January 11, 2006 (“Branch Trust”) (hereinafter referred to as “Assignors”) and BOATYARD, LLC, a California limited liability company (hereinafter referred to as “Assignee”).

1. Assignee acknowledges: (i) the City of Morro Bay (the “City”) had leased certain premises, known as Morro Bay Lease Site 89/89W, (as further described in Exhibit A) to Josef Steinmann (“Steinmann”) under a Lease that commenced on December 1, 2001 (the “Master Lease”), (ii) the Master Lease was amended effective December 12, 2005, by that certain Amendment #1 signed by City and Steinmann (“Amendment #1”), (iii) the Master Lease and Amendment #1 were assigned by Steinmann to Smith Trust and Branch Trust effective January 1, 2006, and (iv) the Amended Master Lease was further amended effective October 11, 2016, by that certain Amendment #2 signed by City, Smith Trust and Branch Trust (“Amendment #2”) (the Master Lease, Amendment #1 and Amendment #2 are hereinafter referred to as the “Current Master Lease”).
2. Assignee acknowledges any assignment of the Current Master Lease is subject to prior approval by the City’s City Council and is also subject to prior execution of this Agreement between Assignors and Assignee.
3. On the Effective Date (defined below), Assignee agrees (i) to comply with all the terms and conditions of the Current Master Lease, (ii) to assume all liabilities required under the Current Master Lease and any amendments, (iii) to defend, indemnify and hold harmless the City and its officers, employees and representatives

from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney's fees and court costs arising from, or in any way related to the Current Master Lease, in accordance with the terms set forth in the Current Master Lease, and (iv) to maintain liability insurance in the manner, form and amount required by Current Master Lease and any amendments, thereto, with the City, its officers, employees and representatives, included as an additional insureds without offset against the City's insurance.

4. Assignors hereby assign to Assignee all rights, title and interest Assignors has in the Current Master Lease, effective on the Effective Date. The "Effective Date" is the date this instrument is recorded in the Office of the San Luis Obispo County Recorder, if it has been signed on behalf the City, Assignors and Assignee.
5. Assignors confirm to the City Assignors has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Assignors' occupation of the leased premises that has not been reported pursuant to Health & Safety Code Section 253597.
6. This instrument may be executed in counterparts, each of which shall constitute an original and both of which shall constitute a single instrument.

Smith Family Trust, dated September 13, 2004

Dated: _____, 2016

By: _____,
James Edmund Smith, Trustee

By: _____,
Beverly E. Smith, Trustee

Clifford Branch Trust, dated January 11, 2006

Dated: _____, 2016

By: _____,
Clifford Branch, Trustee

The undersigned consents to and accepts, on and after the Effective Date, assignment & assumption of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations of tenant as set forth in the Current Master Lease.

BOATYARD, LLC, a California limited liability company

Dated: _____, 2016

By: _____
_____,
Its _____

The City, Lessor named in the Current Master Lease, consents to this Assignment upon the conditions set forth above. The City also consents to the agreement by Assignee to assume, on and after the Effective Date, the payment of rent, including all percentage of gross sales rent, and tenant's performance of all duties and obligations as set forth in the Current Master Lease. This Assignment has been approved by the City's City Council on or prior to the date set forth below.

City of Morro Bay

Dated: _____, 2016

By: Jamie L. Irons, Mayor
City of Morro Bay

EXHIBIT A

LEGAL DESCRIPTION

LEASE SITE 89/89W (THE PREMISES IS DELINEATED ON PARCEL MAP OF CITY OF MORRO BAY NO. 68-30, WHICH MAP WAS RECORDED ON OCTOBER 10, 1968, IN BOOK 3, PAGE 10 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER, SAN LUIS OBISPO COUNTY, CALIFORNIA.

A **notary** public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

A **notary** public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
IN RECOGNITION AND APPRECIATION OF THE SERVICE
OF ASSEMBLY MEMBER KATCHIK “KATCHO” ACHADJIAN**

WHEREAS, the Honorable California State Assembly Member Khatchik Achadjian known to his constituents as “Katcho” and will therefore be referred to as “Katcho” herein; and

WHEREAS, first elected to the California State Assembly in 2010, Assembly Member Katcho Achadjian was sworn in for his third term on December 1, 2014, to represent the 35th Assembly District, which includes the communities of Arroyo Grande, Atascadero, Grover Beach, Guadalupe, Lompoc, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, and Santa Maria; and

WHEREAS, Katcho came to California in 1971 to pursue the American dream, carrying with him a distinctive work ethic instilled in him by his Armenian parents, an ethic that has continued to serve him well in his roles as a businessman, community volunteer, and legislator. “Katcho” became a United States citizen on December 17, 1982, and graduated from California Polytechnic State University, San Luis Obispo, with a degree in Business Administration; and

WHEREAS, prior to his election to the State Assembly, Katcho served for three terms as an elected member of the San Luis Obispo County Board of Supervisors, including as Board Chair in 2001 and 2006, was appointed by Governor Arnold Schwarzenegger to the California Coastal Commission, where he served from 2006 to 2010; and

WHEREAS, Katcho’s impressive public service resume also includes his efforts to improve the quality of life for children as the founding Chair of the San Luis Obispo County First 5 Commission, and his leadership in promoting public safety as Charter Board member of the San Luis Obispo Law Enforcement Assistance Foundation, where he has also served as Secretary in 2002 and Vice President from 2004 to 2010, and as a member of the San Luis Obispo County Sheriff’s Advisory Foundation since 1989, having also served as the organization’s Chair from 1994 to 1995; and

WHEREAS, Katcho loves his Country and State, he created an Annual veteran of the Year Recognition on Armed Forces Day honoring the men and women of the Central Coast serving their country in the military; and

WHEREAS, Katcho was available, accessible, and committed to the communities of the 35th district, he attended the City of Morro Bay’s Ribbon Cutting of the Bike Pedestrian Bridge over Morro Creek on July 4, 2015, as well as numerous City and Chamber of Commerce events; and

WHEREAS, through his professional, public, and community service, Katcho has made a significant impact on the people of the 35th Assembly District, and he will be sorely missed by those individuals with whom he has been associated. The mark he has left, like the Boy Scouts Motto, “when you leave a campsite, make sure it’s cleaner or better than you found it”, truly the Central Coast is better because of Katcho, California State Assembly Member, San Luis Obispo County Supervisor, California Coastal Commissioner, friend, and gentleman.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Morro Bay, we congratulate the Honorable Katcho and extend our gratitude and thanks for your outstanding service to the people of Morro Bay, we wish you happiness and success in your future endeavors. We hope you always think of Morro Bay as your home port.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 11th day of October 2016

JAMIE L. IRONS, Mayor

The property includes an easement sufficient both for City access to the WRF site, and for the property owner to access the remainder of their property.

As noted in the MOU and discussed in previous staff reports, the final purchase price will be determined by an appraisal conducted by an independent, California-licensed appraiser. Similar property appears to be appraising now at no more than \$10,000 per acre. Thus, staff anticipates a final cost of not more than \$300,000 for the ~28 acre parcel.

The City Attorney has advised City cannot unconditionally commit to purchase the property until the Final Environmental Impact Report ("FEIR) is certified, which is anticipated in November 2017. The MOU provides the City certainty of its ability to purchase the preferred site in a pre-negotiated sale after that certification. It is important to reiterate, if, for some reason, that negotiated purchase did not go forward, then the City retains the right to acquire the property needed for the WRF through the use of eminent domain. The final purchase and sale agreement will be presented to the Council at a public meeting for approval after the FEIR is certified.

CONCLUSION

Staff recommends the City Council authorize the Mayor to sign the MOU to assist with the timely construction of the WRF.

ATTACHMENTS

1. Draft Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING BETWEEN
TRI W ENTERPRISES, INC.
AND
THE CITY OF MORRO BAY, CALIFORNIA**

This Memorandum of Understanding (“hereinafter “this Memorandum”) is entered into this __ day of _____, 2016, by and between Tri W Enterprises, Inc., a California corporation (hereinafter “Owner”) and the City of Morro Bay, a California municipal corporation (hereinafter “City”) for the potential acquisition of certain real property as herein set forth.

RECITALS:

A. City is undertaking a project that involves the development of a new water reclamation facility (the “WRF”) for City’s community.

B. The development of the WRF requires the acquisition of certain real property for the plant site, disposal site, environmental mitigation area, and for other appurtenant facilities imperative to the operation

C. A portion of the property identified as San Luis Obispo County Assessor’s Parcel Number 073-101-017, which is owned by Owner has been identified by City as one such property that is preferred for acquisition by City for use in constructing and operating the WRF.

D. Because of the overriding public necessity for the below described property, if the parties are not able to come to a negotiated agreement for City’s purchase of the below described property, then, provided the purpose of the Option Period (as defined below) is satisfactorily completed, City would have likely commenced the public review and meeting process to consider authorizing the use of its condemnation powers to acquire the property described below.

IT IS HEREBY MUTUALLY AGREED AMONG THE PARTIES AS FOLLOWS:

1. OPTION. City will have the option to acquire a fee simple interest in the real property consisting of approximately 30 acres of San Luis Obispo County Assessor’s Parcel Number 073-101-017, further described in Exhibit A-1 and shown on Exhibit A-2, and all improvements thereon (collectively, hereinafter “Property”) for construction and operation of the WRF. Owner shall reserve and retain any required utility easements including, but not limited to, power, telephone, CATV. The purpose of the Option Period is to provide City with the necessary and legally required time to complete all necessary master planning and environmental assessments before it may proceed with the purchase of the Property.

2. OPTION PERIOD. As used in this Memorandum, the Option Period shall mean the term commencing on the effective date of this Memorandum and concluding on the forty-fifth day after the earlier of (i) the statute of limitations has run on any challenge City’s approved Environmental Impact Report for the WRF, (hereinafter “EIR”) without one being timely filed, or (ii) a timely legal challenge was filed and a final court judgment has determined the EIR is valid.

3. PURCHASE PRICE. The Purchase Price shall be determined based upon a property appraisal of all of the Property that City desires to purchase, prepared by a real estate appraiser agreed to in writing by both Owner and City, based upon a scope of appraisal work also agreed to in writing by both Owner and City. Neither City nor Owner shall unreasonably delay their written approvals of either the appraiser or the scope of work. The appraisal shall be prepared after City provides written notice to Owner of its intent to exercise its right to purchase the Property during the Option Period. City shall be responsible for all appraisal costs. Owner acknowledges and agrees, when actually paid, the Purchase Price shall be full payment to Owner for the Property and for all damages of every kind and nature, including, but not limited to, just compensation, relocation benefits, pre-condemnation activities, bonus value for any leasehold interest, including for inverse condemnation and loss of goodwill by reason of the acquisition of the Property. In recognition that the sum to be paid is in lieu of any and all loss of goodwill or relocation payments to which Owner may otherwise be entitled, Owner shall also waive any and all relocation benefits and any loss of goodwill or other payments for any and all closure or relocation.

4. OPENING OF ESCROW. If City exercises its option during the Option Period, then escrow shall be opened for that purchase within 30 days after notice from City it is exercising its option.

5. CLOSE OF ESCROW. Close of Escrow shall occur within 30 days after opening of escrow.

6. OWNER'S RIGHT OF REPURCHASE. If after the Close of Escrow City does not proceed with the construction of the WRF, then, until 45 days after City provides written notice to Owner of City's decision not to so proceed, Owner shall have the right to repurchase the land for the Purchase Price paid by City.

7. ENTRY ONTO PROPERTY. Owner grants to City and its authorized agents permission to enter the Property at all reasonable times prior to the Close of Escrow for the purposes of making inspections, tests, borings, samplings, and other such investigations as City shall deem reasonable to determine the physical condition of the Property including but not limited to the geophysical condition of the property, the biological condition of the property relative to environmental mitigation issues, and the existence of any archaeological resources. City shall pay for all related costs. City shall make available to Owner copies of all public reports in its possession including all tests, borings, samplings, any other such investigations, and appraisals by City's consultants on the Property. Prior to entering the Property, City agrees to make good-faith effort to give 48-hours' advanced notice to Marshall Ochylski, the Owner's Agent at 805-441-4466 and marshall@slollegal.com prior to commencing any borings or other physical investigations upon the Property. City agrees to indemnify and hold harmless the Owner from any and all liability resulting from City's activities upon the Property excepting when such liabilities result from the gross negligence of the Owner. City further agrees, in the event City does not acquire the Property, City shall restore any impacts from its activities thereon to their original condition.

8. ANNEXATION AND SPHERE OF INFLUENCE UPDATE. City will process an annexation proposal for the Property, as well as a proposal to modify its Sphere of Influence to include the Remainder Parcel.

9. MAINTENANCE OF ACCESS AND UTILITY EASEMENT. The Access and Utility Easement to be provided over the Remainder Parcel as shown on Exhibit A-2 will be improved and maintained by the City.

10. CITY TO CONTINUE TO SUPPLY CITY SERVICES TO ADJACENT PARCELS WITHIN CITY LIMITS. The Adjacent Parcels Within the City Limits (defined as San Luis Obispo County Assessor's Parcel Numbers APN: 068-401-012 and 068-401-013) currently have water service from City meters and City hereby agrees to continue to provide that water service at rates applied to other similar users within City.

11. RESOLUTION OF EXISTING ACCESS EASEMENTS. City will provide assistance to Owner for Owner to confirm the validity of the existing access easements adjoining both the Adjacent Parcels Within the City Limits and the Remainder Parcel and will assist Owner to assure access from the City's rights-of-way to those parcels.

12. ACCESS TO REMAINDER PARCEL. To the extent City's governmental approval is necessary for vehicular access over the Adjacent Parcels Within the City Limits to the Remainder Parcel City will assist Owner in processing any and all such approvals.

13. AVAILABILITY OF RECYCLED WATER. To the extent allowed by California law, if City treats wastewater for use as recycled water, and if City intends to provide water to agricultural users, then City agrees to provide that recycled water for agricultural uses on the Remainder Parcel at rates applied to other similar users within City.

14. REIMBURSEMENT OF LEGAL FEES. City will reimburse Owner for legal fees required to prepare and implement the Memorandum in an amount not to exceed \$5,000.00.

15. COOPERATION WITH FUNDING AGENCIES. Owner agrees to cooperate with City, at no expense to City, in complying with the property acquisition requirements imposed by governmental funding agencies that may contribute funds towards the purchase of the Property or any other aspects of the WRF. Such collaboration shall include, but not be limited to, providing access to the property for appraisals and inspections

16. CONTACT PERSON. Each party's Contact Person shall be as follows:

For Owner: Marshall E. Ochylski
Attorney at Law
979 Osos Street, Suite F7
San Luis Obispo, CA 93401
805-544-4546
marshall@slollegal.com

For City: David Buckingham
City Manager
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Either party can change its above Contact Person by written notice to the other party.

18. MISCELLANEOUS TERMS.

This Memorandum is intended to be an outline to assist the parties in preparing a definitive purchase agreement. This Memorandum is not intended to contractually bind either party in any way, nor shall either party be legally bound until a purchase and sale agreement, in form and content satisfactory to both parties, is fully executed. Notwithstanding the foregoing, the parties will act in good faith to implement the understandings set forth in this Memorandum and either party may bring an action for specific performance if the other party fails to do so.

This Memorandum may be executed in counterparts, each of which so executed so irrespective of the date of the execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same instrument.

Nothing in this Memorandum is intended to conflict with Federal, State of California or local laws, rules or regulations applicable to the acquisition of property by a governmental agency or determination for location, funding and construction of the WRF (“Current Rules and Regulations”). If a term of this Memorandum is inconsistent with any Current Rules and Regulations, then that term shall be invalid but the remaining terms and conditions of this shall remain in full force and effect.

This Agreement may be modified upon the mutual written consent of the parties. A modification will become effective on the date that all parties have agreed in writing to the modification.

The Effective Date of this Memorandum shall be the date it is signed by both parties.

CITY _____ Jamie L. Irons, Mayor Date: _____, 2016 ATTEST:	OWNER _____ Tri W Enterprises, Inc. By: William McInerney Its: CFO and Vice President of Finance
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<p>_____ Dana Swanson, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____ Joseph W. Pannone, City Attorney</p>	<p>Date: _____, 2016</p>
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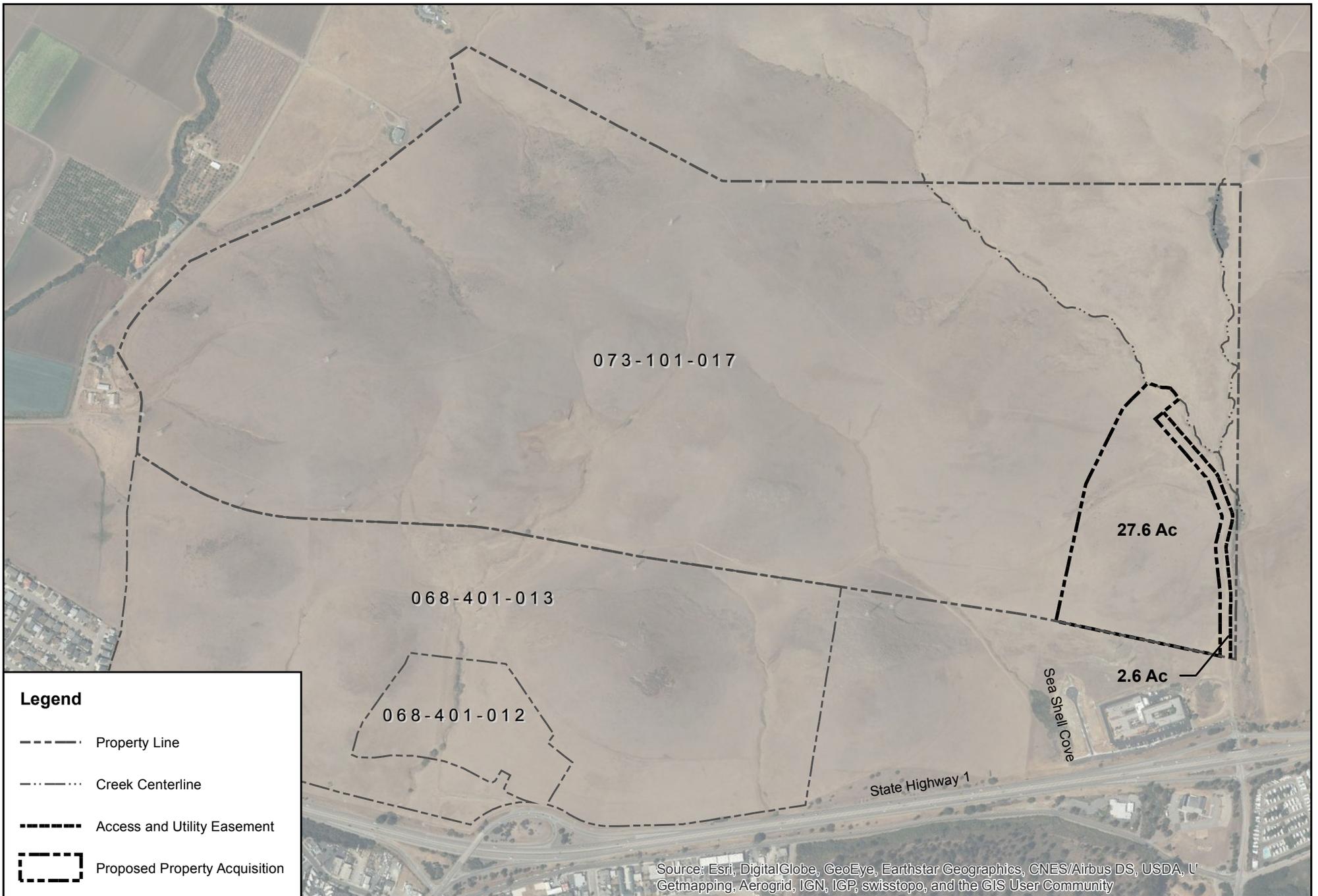
EXHIBIT A-1

LEGAL DESCRIPTION

[TBD]

EXHIBIT A-2

SITE MAP



Legend

-  Property Line
-  Creek Centerline
-  Access and Utility Easement
-  Proposed Property Acquisition

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, U Getmapping, AeroGrid, IGN, IGP, swisstopo, and the GIS User Community





AGENDA NO: C-2

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 4, 2016
FROM: Craig Schmollinger, Finance Director/City Treasurer
SUBJECT: Discussion and Direction regarding Use of Proceeds from the Sale of Real Property at 2783 Coral Avenue

RECOMMENDATION

Staff recommends the City Council approve the use of proceeds from the sale of vacant City-owned Real Property, located at 2783 Coral Avenue, in accordance with the Citizens Oversight/Finance Advisory Committee (CFAC) recommendation to pay down the 2011 United States Department of Agriculture (USDA) Certificate of Participation for the construction of the Fire Administration Building (loan repayment).

ALTERNATIVES

Several alternatives exist as outlined below:

- 1) Allocate the revenue from the sale of the subject property, either in part or whole, to an alternative source at the City Council's pleasure; or
- 2) Direct all or a portion of the proceeds from the sale of the subject property to be directed to the General Fund as an un-obligated source for future programming and utilization.

FISCAL IMPACT

On July 12, 2016, the City Council authorized the sale of the subject property through a Sale Agreement to Jeff Mayer in the amount of \$799,000, through the adoption of Resolution 59-16. The Sale Agreement stipulates that the sales price is \$799,000, less sales commission, 50% of escrow fees and closing costs. The terms of the sale agreement were modified, as approved by City Council on September 14, 2016, with changes mostly minor in nature and no change to total sales price. The City is due \$50,000 as a non-refundable down payment (less sales commission, 50% of escrow fees and closing costs). The remaining \$749,000 (less sales commission) is due to the City no later than 36 months following the close of escrow, bearing interest at a rate of 5% per year over the term of agreement. Estimates for sales commission, and City obligated escrow and closing costs, are \$30,000.

If Council follows staff's recommendation, in concurrence with CFAC's recommendation, when associated revenue is received by the City, it will be utilized to repay a portion of the aforementioned USDA loan, associated with the Fire Administration Building. A budget adjustment will be required to account for the increase in unanticipated revenue from the sale of the subject property and associated increase in use of revenue to repay a portion of the loan. This adjustment can be accommodated through the Fiscal Year 2016-17 Mid-Year Budget update process.

Funding from "Measure Q," the City's ½ cent sales tax measure, has been identified by the City for the purpose of securing the USDA loan. By utilizing the unanticipated revenue from the property sale versus strictly Measure Q funds, future Measure Q money should be freed up to utilize for

Prepared By: CS

Dept Review: _____

City Manager Review: DWB

City Attorney Review: JWP

other appropriate purposes, including street repair.

The current outstanding principal remaining on the USDA loan is \$1,386,000. By paying down roughly \$769,000 of this amount (minor interest payment may be included), the City will avoid a significant amount of interest being paid and free up the aforementioned Measure Q funding. This total does not include interest payments due to the City as identified above.

BACKGROUND/DISCUSSION

The City acquired Real Property, approximately one acre of vacant land, located at 2783 Coral Avenue, further identified as Assessor's Parcel Number (APN) 065-386-015. The property was dedicated to the City for fire station purposes in association with the Cloisters residential subdivision. The City subsequently determined the site was not well suited for a fire station, and the City Council directed sale of the property.

The City utilized Ciano Real Estate, Inc., to act as the City's broker, and Jeff Mayer submitted an offer that matched the City's asking price for the property. City Council later approved a Sale Agreement (Resolution No. 59-16) and subsequent First Amendment to Sale Agreement for the property with escrow yet to close.

The Planning Commission, on April 19, 2016, adopted Resolution No. 13-16, finding the sale of the vacant City-owned property consistent with the City of Morro Bay General Plan.

On September 20, 2016 the CFAC voted 5-0 to recommend the City Council utilize sale proceeds of the subject property to pay down the USDA loan for the Fire Administration Building.

CONCLUSION

Staff concurs with CFAC'S recommendation for the following reasons:

- 1) The property was dedicated to the City for fire station purposes, and utilizing the proceeds from the sale of the property to pay down debt related to the construction of a separate fire station is an appropriate utilization of this revenue.
- 2) By paying down a significant portion of the remaining principal loan debt on the Fire Administration Building, the City will avoid a substantial amount of interest payments, thereby reducing the overall financial obligation associated with the USDA loan.



AGENDA NO: C-3

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 3, 2016
FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Rick Sauerwein, PE – Capital Projects Manager
SUBJECT: Streets Summit Update

RECOMMENDATION

Staff recommends the City Council review the Streets Summit presentation and the current status of the paving program, including recommendation by the Public Works Advisory Board, and provide direction to staff, as necessary.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update.

DISCUSSION

On September 14, 2016, the Public Works Department hosted the third annual “Streets Summit” workshop where various aspects of the streets maintenance program were presented and staff received input from the public.

Topics included the following:

- Pavement Management 101
- 2016 Street Rehabilitation Program
- Future of the City’s Street Maintenance
- Funding scenarios and benefits of accelerated maintenance
- CDBG Sidewalk Gap Closure project
- Traffic Calming
- Bike Facility Improvements
- Signs and Pavement Marking

Following the September 14 Streets Summit, staff presented the materials to the Public Works Advisory Board (“PWAB”) at its September 21 meeting with slides updated to clarify work proposed to be completed with the 2016/2017 Pavement Program.

Prepared By: RS/RL

Dept Review: _____

City Manager Review: DWB

City Attorney Review: _____

Staff continues to work toward award of a new Street Preservation Indefinite Quantity, Indefinite Delivery Contract (“IDIQ”) which will have an initial 2-year duration with the option to extend the contract for two more 2-year terms. This will provide staff the ability to award new work as soon as additional funding becomes available. Staff met with five prospective bidders on September 15 & 16 and bids are due October 11. Staff will provide a summary of the bid results at the Oct 11 City Council meeting and bring a contract award recommendation to Council at the October 25 meeting.

The PWAB recommended the City Council consider establishment of a dedicated funding mechanism to increase annual street improvement budgets to a level that will sustain a PCI of 70. Staff should be directed to develop a matrix of possible funding options indicating how much could be raised, strengths, challenges and implementation issues. Options to be considered should include but not be limited to:

- Allocating Excess (>10%) Emergency Reserve Funds to pay for immediate street improvements
- Dedicating excess Measure Q funding after the Fire Station 53 debt is paid off
- Allocating excess yearend budget surpluses to a dedicated Street Improvement Fund
- Obtaining voter approval for a dedicated citywide street tax if Measure J fails
- Establishing Parking Fees on Embarcadero, Downtown & at Morro Rock for dedicated Street Improvement Fund
- Establish a citywide Parcel Tax dedicated to Street Improvement Fund
- Establishing Neighborhood Street Improvement Districts, and/or
- Allocating a portion of Transient Occupancy Taxes to a dedicated Street Improvement Fund

ATTACHMENT

Streets Summit Workshop PowerPoint Presentation

City of Morro Bay

Street Summit, Part 2

Update to City Council

October 11, 2016



Agenda

- Pavement Management Basics
- Future of City Street Maintenance
- Future Funding Scenarios
- 2016 Street Preservation Program
- CDBG Sidewalk Gap Closure/ ADA Access
- Other Streets Activities
 - Traffic Calming /Complete Streets
 - Bikes / Signs/ Striping
 - Sweeping
 - Storm Drainage



Goal of City's Pavement Management Program

- Improve to & Maintain Average Pavement Condition Index (PCI) from 66 to 70
- Aligned with State of California Goal
- Balances Pavement Preservation with worst first (~70/30 Split)

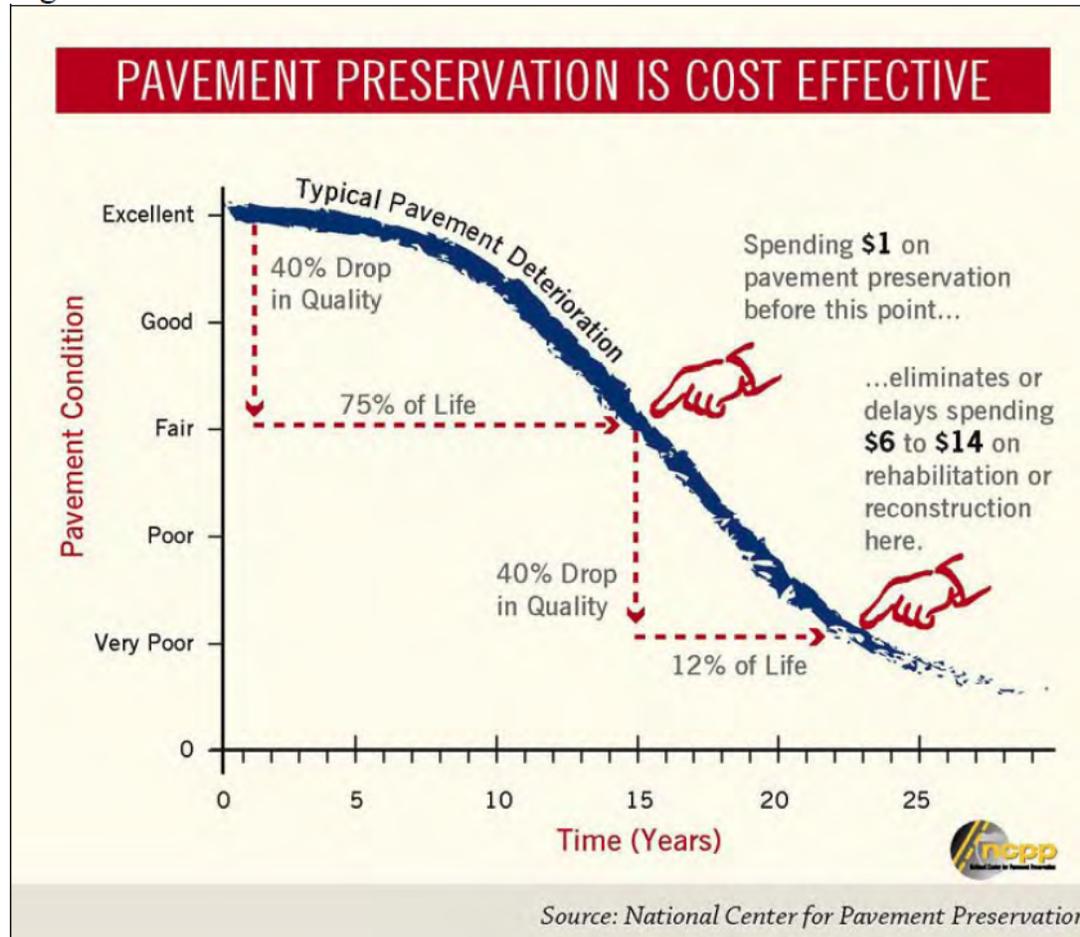


Street Maintenance Priorities

- Pavement Management (Street Repair)
- Pothole repair – In House
- ADA Sidewalk Repair
- Tree Trimming
- Storm Drain Repair/Maintenance
- Roadway Striping
- Sign & Signal Maintenance



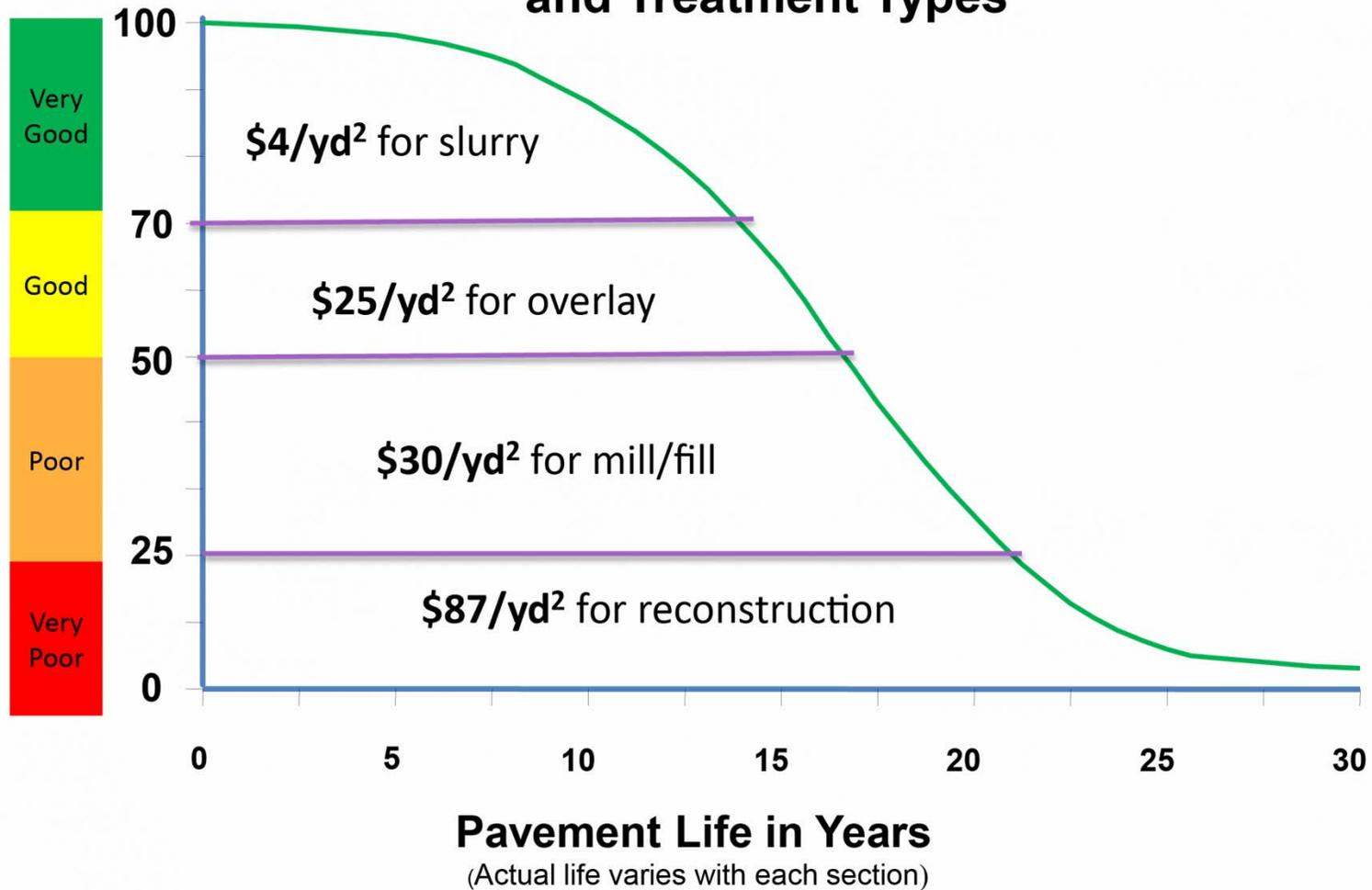
Maximizing Investment





Pavement Cost

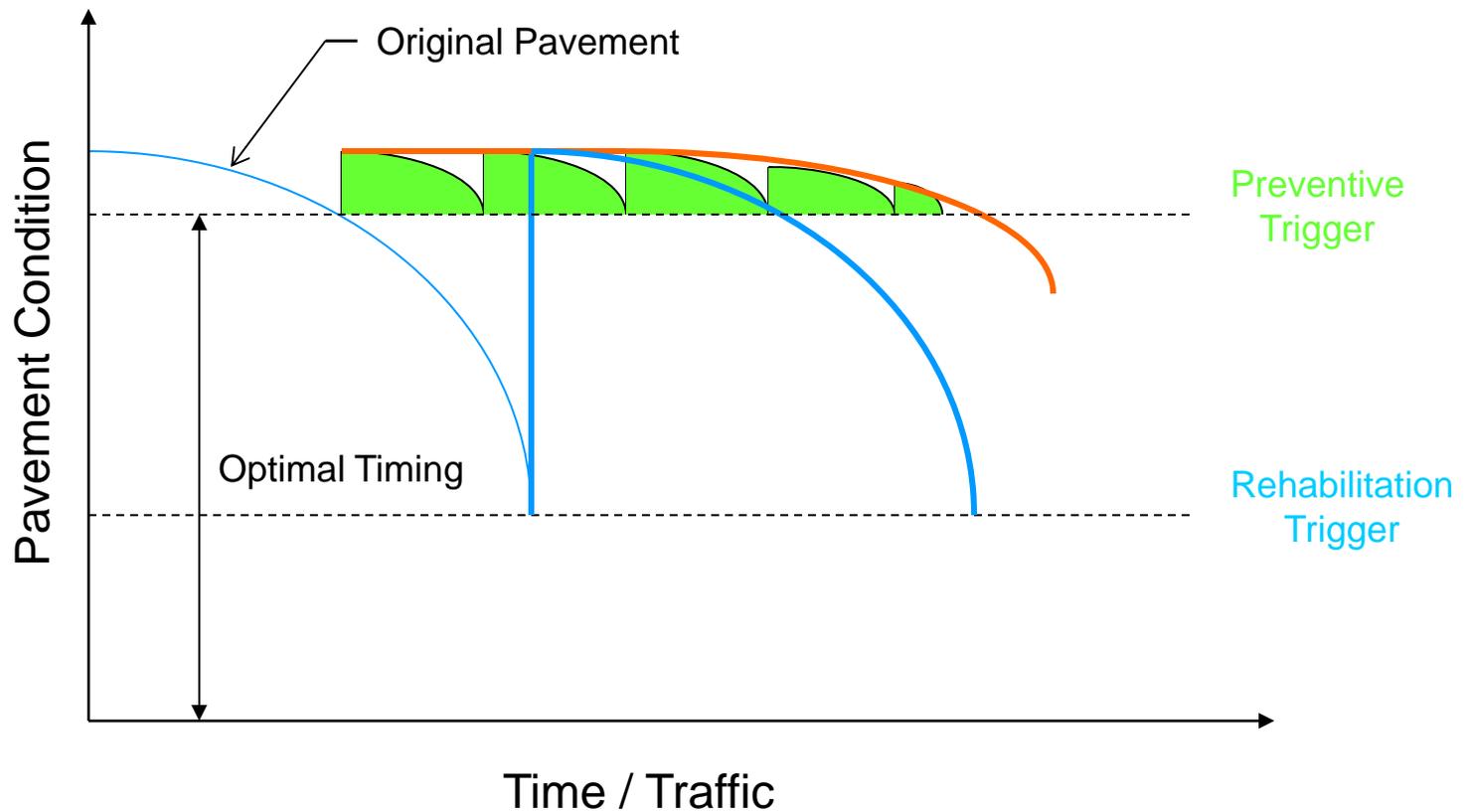
Pavement Deterioration Curve and Treatment Types





Transportation System Preservation

Concept of Preventive Maintenance for Pavements





2011-15 Street Work

- \$ 4.1M over 5 years
- Repaired / maintained 17 miles or 32%
- *PCI increased from 63 (2009) to 66 (2016)*
- *5% of street w/ no pavement life*
- Reconstructed Segments of:
 - Kings, Panorama, Andros, South Bay Blvd



Potential Improvements

- ✓ Establish Geographical Project Areas
- ✓ Implement New Rehabilitation Techniques
 - ✓ Rubberized Chip or AC improves wear and durability
 - ✓ Triple Layer v. Reconstruct
 - ✓ Lime/Cement Stabilization
 - Cold in Place Recycling
- Completing Transition to StreetSaver



StreetSaver Transition

- All street data loaded
- Renovated streets have been reevaluated
- 100% streets reinspected
- Running Treatment Scenarios for Best Value
- Working out Bugs
 - Evaluating Decision Factors
 - Assessing effectiveness of alternative repairs

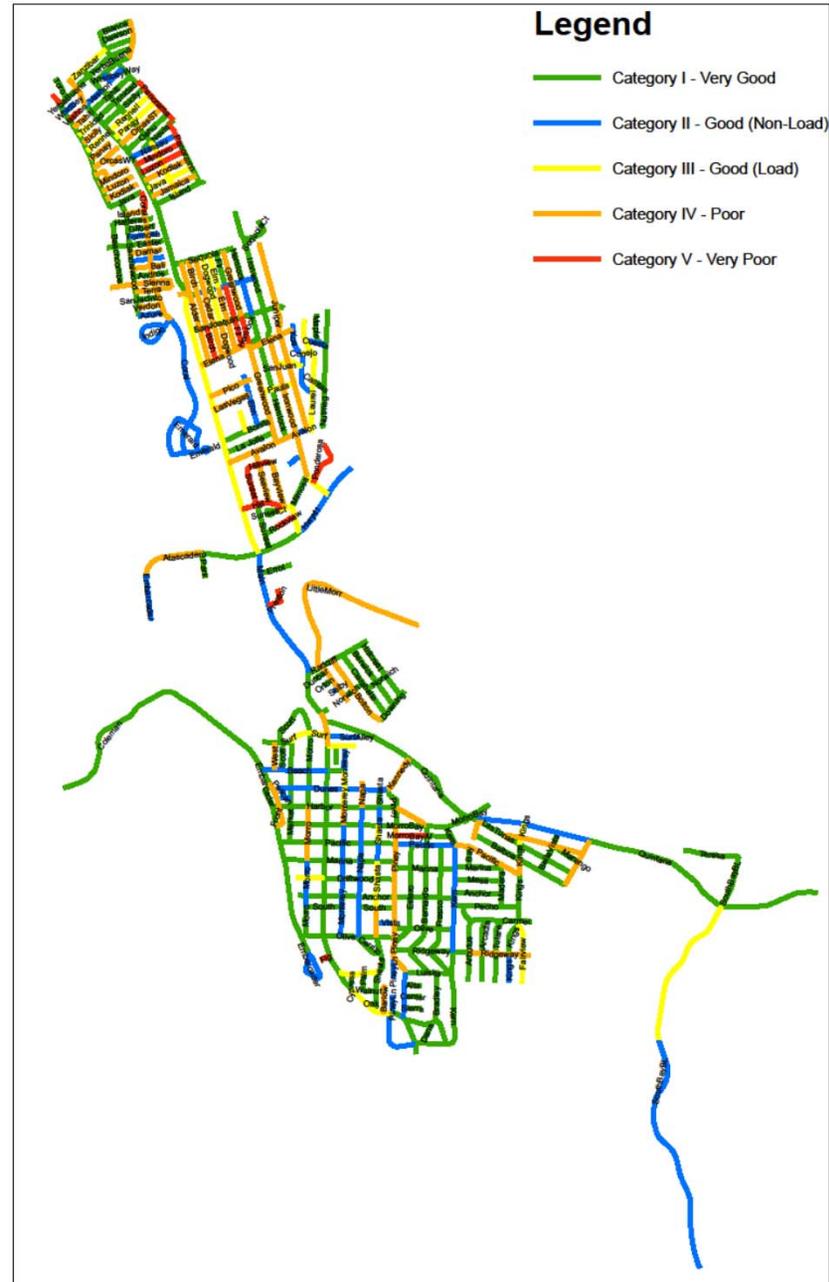


Morro Bay Street Condition

Street Category	Miles	2009 PCI	2013 PCI	2016 PCI
Minor Arterial	7.55	78	82	75
Collector	12.2	60	61	67
Local/ Residential	33.31	59	57	63
Rural Local	1.06	64	62	48
Total	54.41	63	63	66

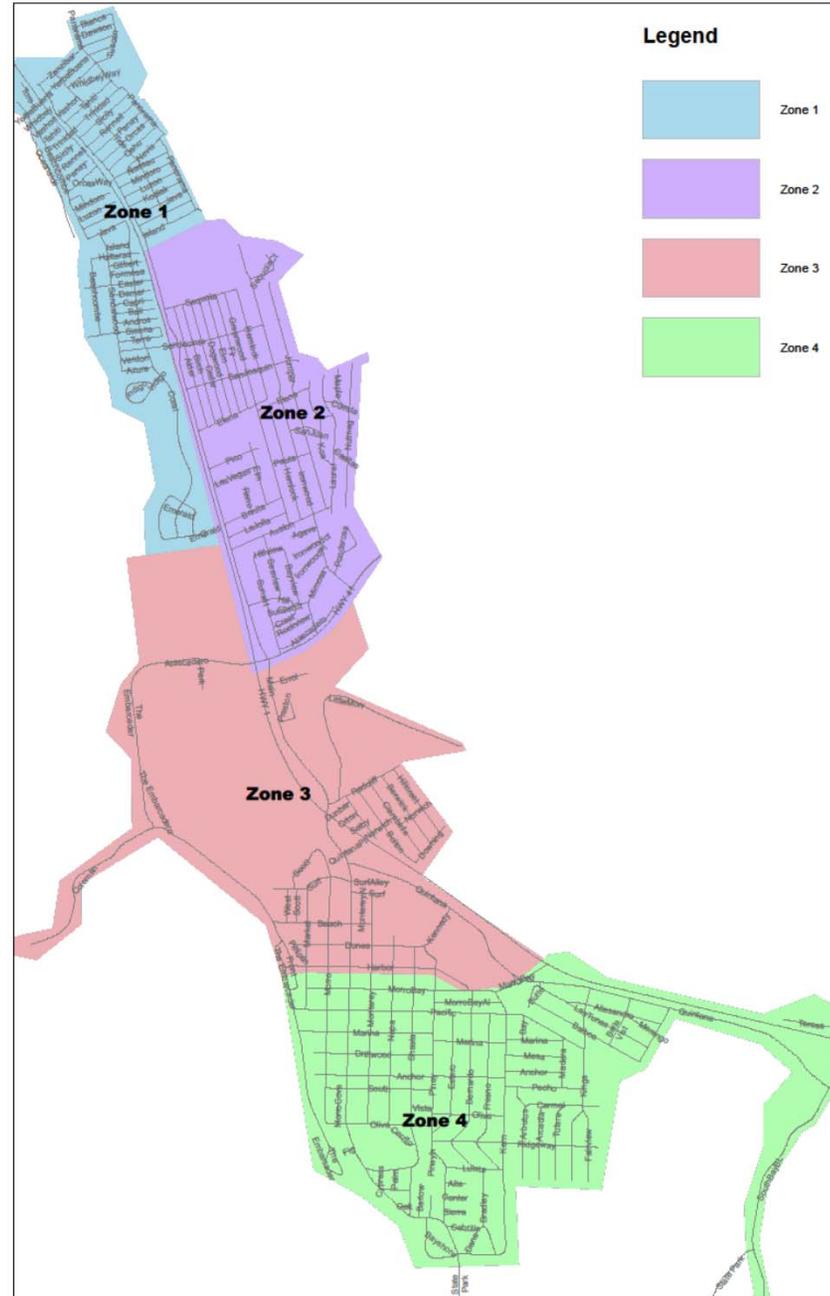


Current PCI





Geographic Areas





Unconstrained \$\$ Needs

Current PCI	Year	PM Cost	Rehab Cost	Total Cost	PCI Treated
66	2016	\$ 360,554	\$8,044,674	\$8,405,228	79
64	2017	\$ 2,162	\$ 957,779	\$ 959,941	77
61	2018	\$ 46,313	\$5,025,197	\$5,071,510	81
59	2019	\$ 109,241	\$2,159,626	\$2,268,867	81
57	2020	\$ 70,891	\$1,717,987	\$1,788,878	81
23	20yr	\$4,090,309	\$34,533,190	\$38,623,499	77

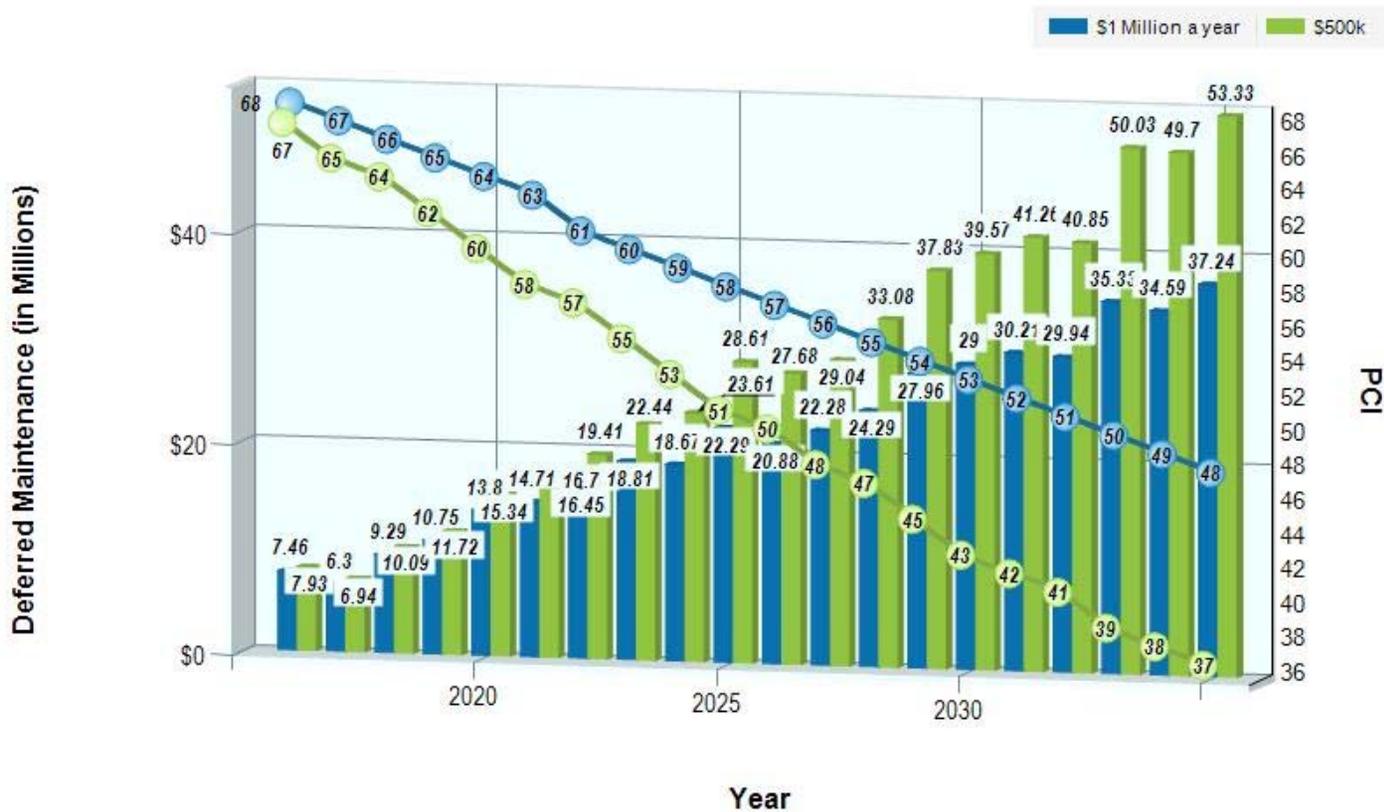
\$1,931,174 /yr required for very good roads

Budget is 25% of current M&R cost



Current Funding Measure Q + Measure J (\$1M/yr)

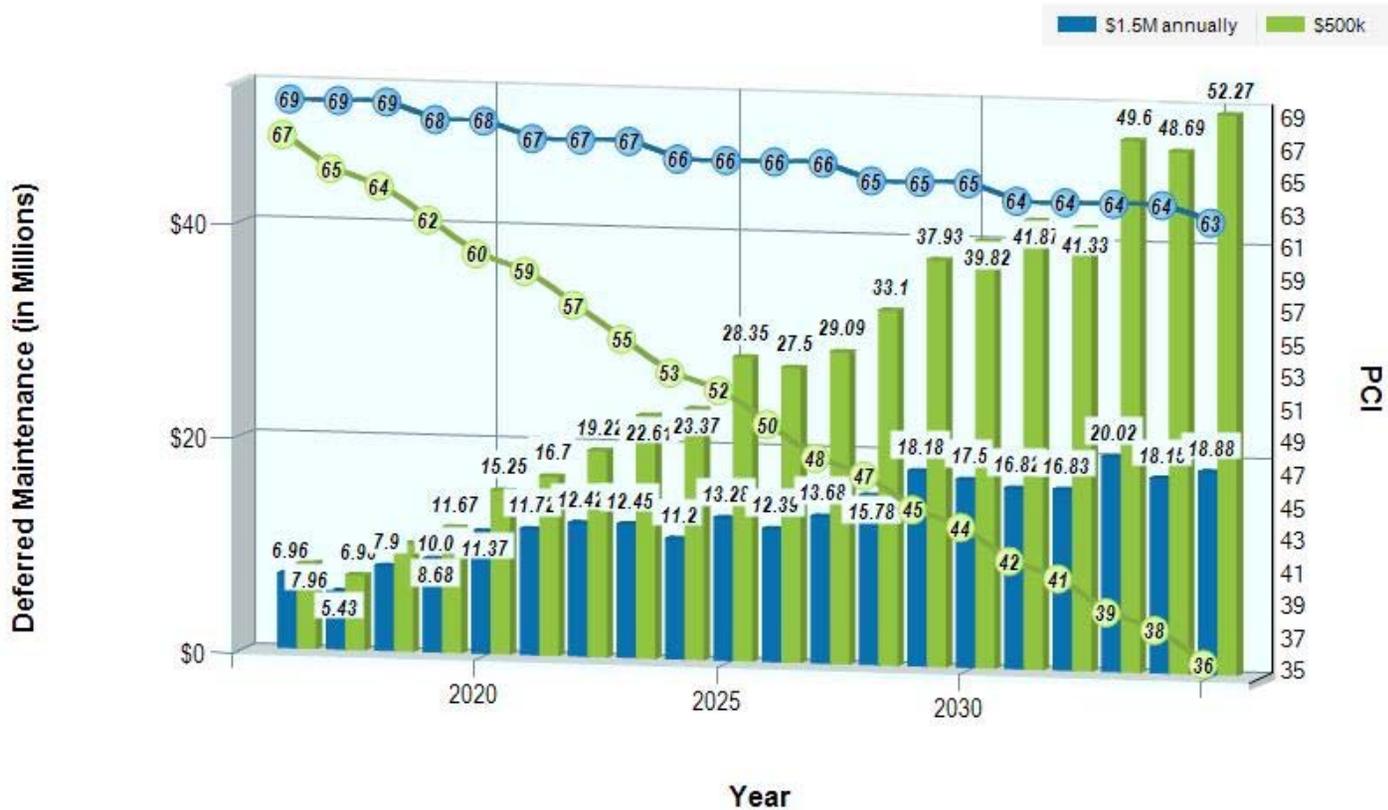
Scenario Comparison - Deferred Maintenance and PCI





Current Funding (Measure Q) + Measure J + Other (\$1.5M/yr)

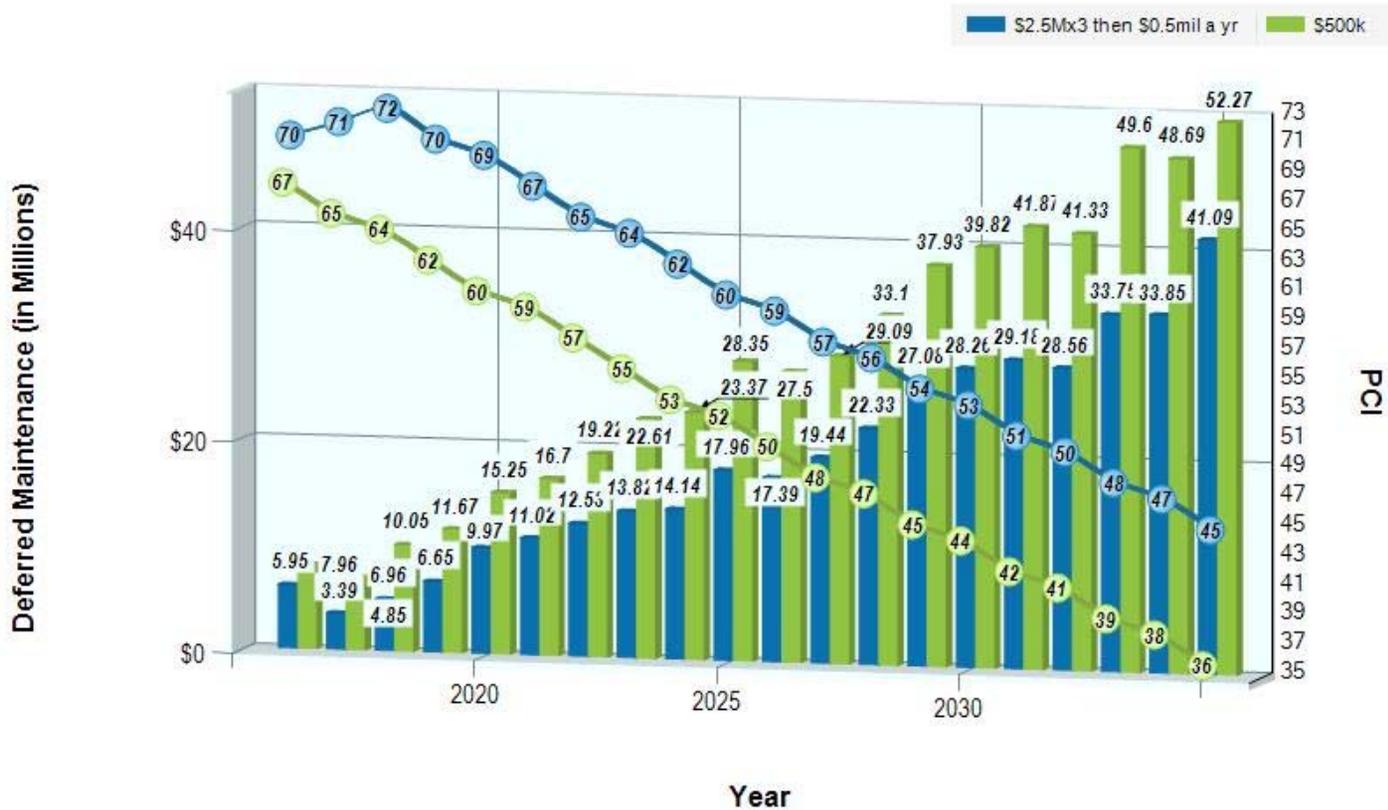
Scenario Comparison - Deferred Maintenance and PCI





Current Funding (Measure Q) +CoP w/ Measure J

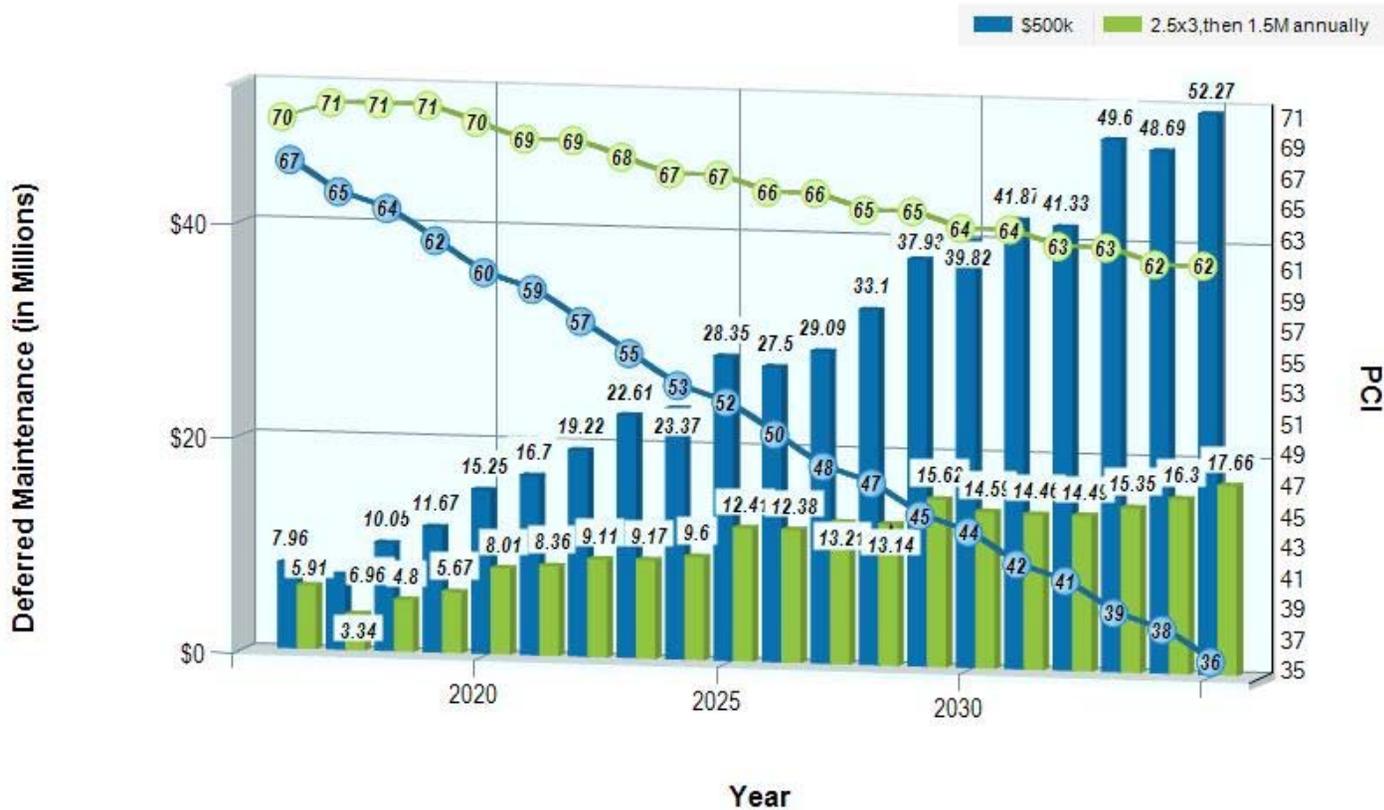
Scenario Comparison - Deferred Maintenance and PCI





Current Funding (Measure Q) +CoP w/ Measure J+Other (\$1.5M)

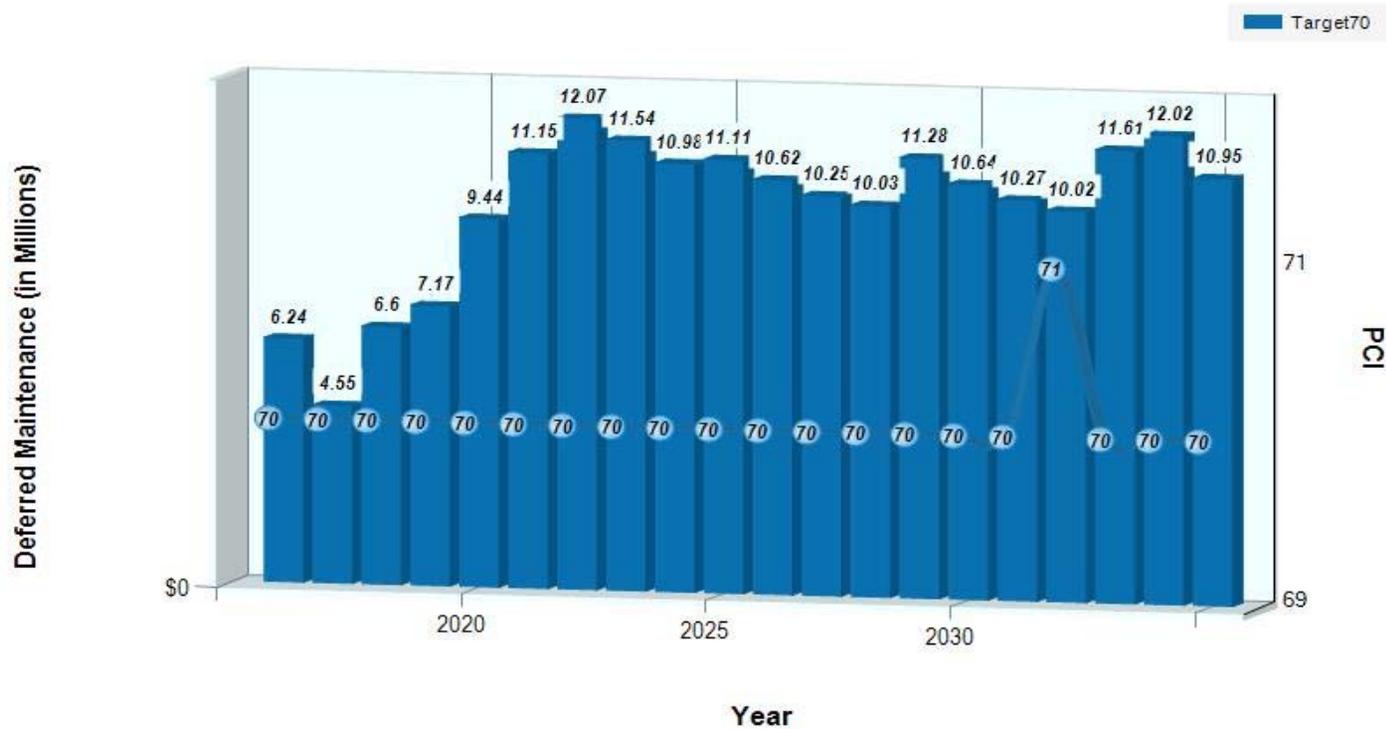
Scenario Comparison - Deferred Maintenance and PCI





Cost for PCI Target 70

Target-Driven Scenario Comparison - Deferred Maintenance and PCI



\$33,586,965 or \$1.68M /year
\$168/ resident



2016/17 Street Work

- \$986,000 Adopted Budget
- **Stretch Limits of Innovative Treatments**
 - **Preserve Poor Streets to buy time**
- Funds allocated based on Geo Area & PCI
- 5 year plan will change based on budget
- Establish Pavement Preservation IDIQ
- Maximize \$37K CalRecycle Grant
 - 1 mile sealcoat/ microsurfacing/ chip seal



Proposed 2016/17 Street Work

Triple Cape Seal

- Avalon
- Bali
- Elena
- Hill
- Harbor
- Pacific
- Panorama
- Piney
- Prescott
- San Juan
- Sienna
- Tuscan
- Zanzibar

Mill & Double Chip

- Beachcomber
- Birch
- Coral(Dead End)
- Elm
- Greenwood
- Little Morro Crk
- Luzon
- Mindoro
- Ponderosa



Proposed 2016/17 Street Work

Slurry Seal/ Chip Seal

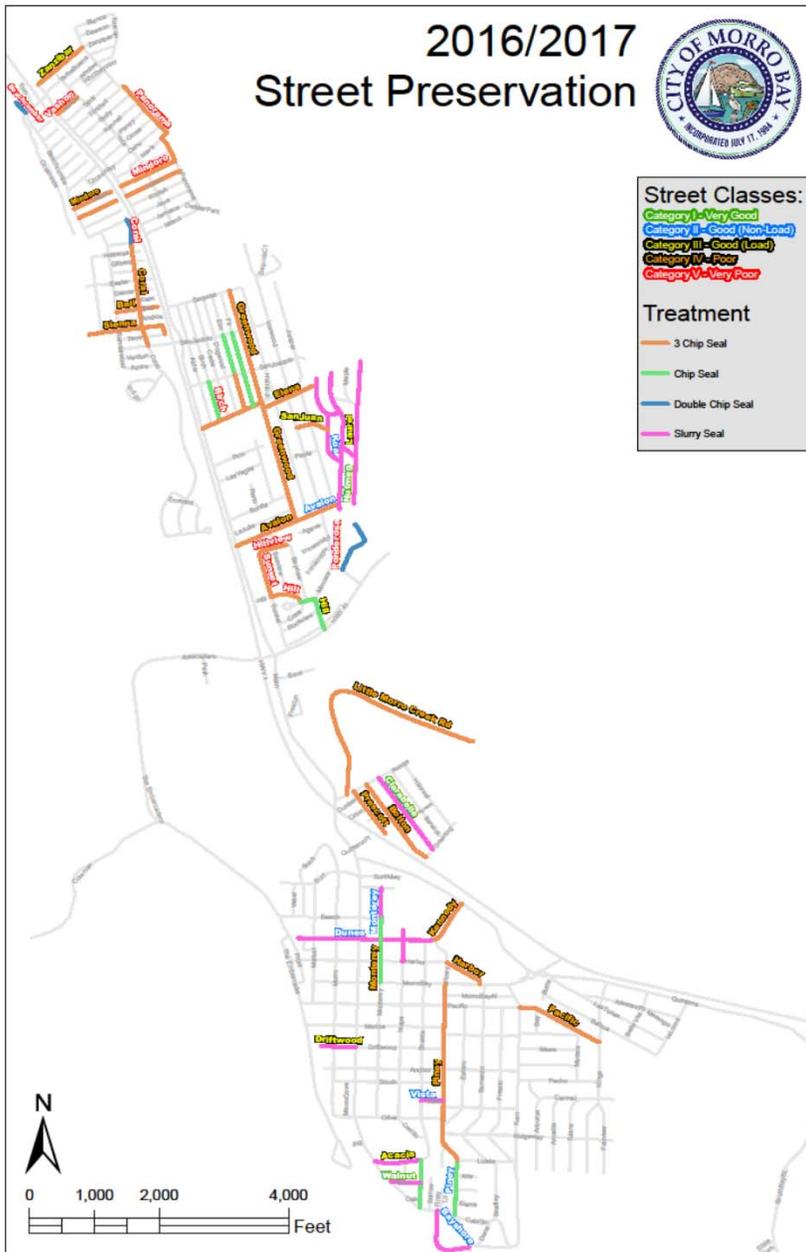
- Acacia
- Driftwood
- Dunes
- Elm
- Monterey
- Napa
- Shasta
- Vista
- Walnut

Penetrating Seal

- Andros
- Bayshore
- Clarabelle *Deferred*
- Kings
- SouthBay

Base Seal/Dust Palliative

- Dirt Embarcadero



Streets added for further evaluation:

- Bolton
- Casitas
- Conejo
- Kennedy
- Koa
- Laurel
- Nutmeg
- San Juan
- Vashon



PAVEMENT ALTERATIONS TRIGGER ADA

Crack Filling and Sealing
Surface Sealing
Chip Seals
Slurry Seals
Fog Seals
Scrub Sealing
Joint Crack Seals
Joint Repairs
Dowel Bar Retrofit
Spot High-Friction Treatments
Diamond Grinding
Pavement Patching

Open-graded Surface Course
Cape Seals
Mill & Fill / Mill & Overlay
Hot In-Place Recycling
Microsurfacing/Thin Lift Overlay
Addition of New Layer of Asphalt
Asphalt and Concrete Rehabilitation and
Reconstruction
New Construction

ADA Maintenance

ADA Alterations

Alterations trigger
wheelchair ramps



ADA Improvements

- Sidewalk IDIQ Contract Successful
- \$257K of gaps filled in existing network
- \$60K for Sidewalk repairs (trip hazards)
- \$67K for 2017 CDBG
- \$247K CDBG reallocation

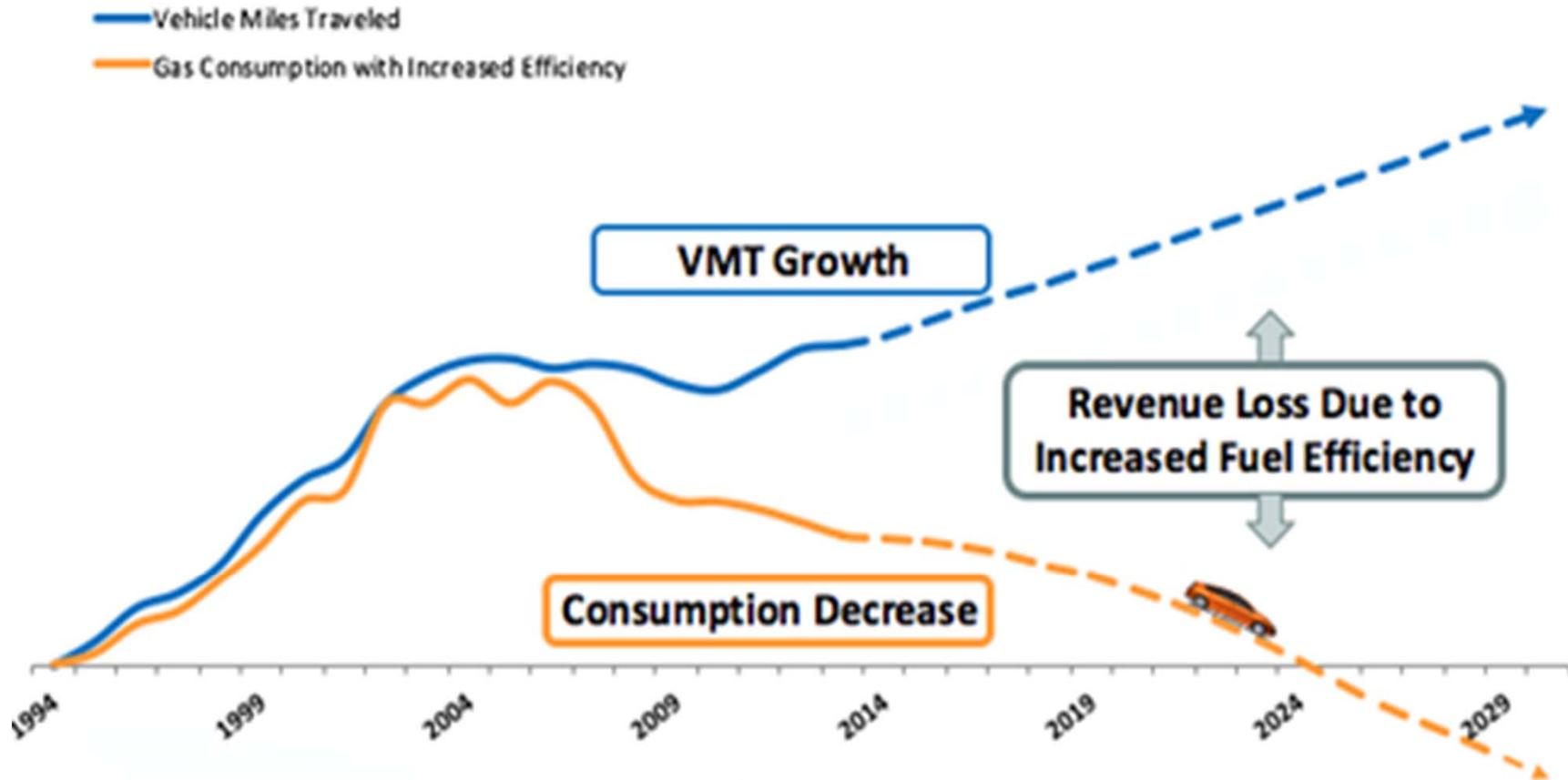


Funding Street Work

- SLOCOG Self-Help Sales Tax Initiative
 - Deferred Maintenance Shortfalls
 - \$79.3 Billion Funding CA Local Roads
 - \$59 Billion State Highway System
 - **Would add ~\$600,000 yrly for CMB Streets**
 - **\$1M for SR1/ MainSt @ SR41 Improvements**
 - **Morro Bay – Cayucos Bike Trail**
- Longer We Wait, the More it Costs
- Option: Borrow with Measure Q revenue



Funding Concerns



In this conceptual chart, Vehicle Miles Traveled and Fuel Consumption have been indexed to the same starting point in 1994 to enable comparison of the relative change of the two metrics over time



Real Cost to Taxpayers

\$44
a year

\$3.66
a month

\$0.84
a week

\$0.12
a day

Return on Investment

 **\$1** =  **\$5**
spent return

Source: a 2015 report to the FHWA from national research group TRIP found that for every \$1 spent on transportation, \$5.20 is returned back to the taxpayer when reduced vehicle maintenance costs, gas consumption, traffic delays/crashes and other ancillary benefits are considered.



Alternate Funding Options

- Measure J
- Excess (>10%) Emergency Reserve
- Dedicate Additional General Fund to Streets, in-lieu of ???
- Year-end Budget Excess to Street Fund
- Citywide Parcel Tax
- Neighborhood Street Improvement Districts
- Coop Purchase with other Agencies



Other Streets Activities

- Street Sweeping
- Storm Drain Maintenance – Moving to Utilities Division
- Striping
- Signs
- Pedestrian Facilities
- Bicycle Facilities
- Street Tree Maintenance
- Traffic Calming



Not the Perfect Solution
but
it Buys Time

»QUESTIONS?



Neighborhood Traffic Calming

- “Traffic calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior, and improve conditions for non-motorized street users.”



Traffic Calming Guidelines

- Sound Traffic Engineering
- Public Involvement.
- Not divert traffic to other local or residential streets.
- Address Emergency vehicle access.
- minimize maintenance activities.
- Only State/Federal warning signs.
- Bicycle and pedestrian travel should be enhanced.



Not Traffic Calming

Stop Signs

- Assign Rights of Way where otherwise unclear
- Need to meet “Warrants” or State and Federal Specified Conditions
 - Volume – Pedestrian or Vehicle
 - Collision History – Generally five in last 12 months, not including impaired drivers
 - Physical Conditions
- Unwarranted Stop Signs (or any Traffic Control Devices) increase Liability to City
- Unintended consequences of unwarranted Stop Signs
 - Use of alternative routes
 - Noise
 - Air Quality

Arbitrary speed limits

- not allowed
- Based on Vehicle Code
 - School Zones, Central Business Districts, Residential Local Streets
- or Engineering Traffic Study
 - 85th Percentile
 - Enforceability
 - Restudied every 5-10 years



Neighborhood Traffic Calming Examples

Passive

- Police Enforcement
- Education
- High Viz-Crosswalks
- Radar Feedback
- Striping
- Turn Restrictions
- Truck Restrictions
- \$0-\$5,000

Active

- Speed Humps/Tables
- Raised Crosswalks(Alternative Pavement)
- Mini Roundabout/Intersection Circles
- Chockers: Mid Block, Bulbouts, Medians, Chicanes
- Full or Partial Street Closures
- \$15,000 and up



Traffic Calming – Next Steps

- Small Projects, such as Pacific and Main and San Jacinto and Main
- General Plan Update
 - Circulation Element



Complete Street Concept



Greenwood Avenue North of Elena - Parking on One-Side

Scale: 1/4"=1'-0"



Bike & Ped

- Master Plan Adopted February 28, 2012
- Community wide Participation
- Previously Required for the BTA Grant process
- Gap Closure and ADA projects
- Existing Facilities
 - Class I – 3.72 miles
 - Class II – 7.72 miles
 - Class III – The rest of the 54 miles of streets
- Some of the Recommendations
 - Harborwalk Extension and Bridge (Complete)
 - Embarcadero – High School Improvements (Awaiting grant results)
 - Quintana Main (funding)
 - Greenwood (Funding)
 - Other Connections (Funding)
 - Next Steps: General Plan – Complete Streets
- Unmet Needs
- Council Goal Setting and Budgeting



Stripes and Signs

- Bike Lanes
- Cross Walks
- Stop Bars and Legends
- Parking Tees
- Curbs
- Misc pavement Marking
- Replaced with Street improvements
 - Atascadero Road, plus green lanes
 - Main Street
 - Harbor Street
- Traffic Control
 - Stop
 - Yield
 - Warning
- Other Regulatory/Informational
 - Parking Control
 - Street Name

Periodic Maintenance

Maintenance Observation

Retro Reflectivity - FHWA

Service Requests

CityWorks for Inventory and scheduling



Street Sweeping

- Minimum Required by NPDES
- Once a year in most residential areas
- Schedule and Map on City's Web Page
 - [Public Works Page under "Services and Links"](#)
 - <http://www.morro-bay.ca.us/documentcenter/view/8609>



Storm Drain Maintenance

- Per the City's NPDES Stormwater Permit for Water Quality Issues
- Reactive Maintenance
- Most Corrugated Metal Pipe 40-60 Years Old



AGENDA NO: C-4

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 30, 2015
FROM: Scot Graham, Community Development Director
SUBJECT: Adoption of Resolution No. 70-16 Reauthorizing the use of Interim Residential Design Guidelines

RECOMMENDATION

Staff recommends the City Council review and adopt Resolution No. 70-16 reauthorizing the use of the Design Guidelines for an additional 24 months.

ALTERNATIVES

1. Authorize continued use of the Interim Residential Design Guidelines for an additional twelve months as recommended by the Planning Commission on September 20, 2016
2. Provide other direction related to use of the Interim Residential Design Guidelines as deemed appropriate by a majority of the Council
3. The Council may choose not to reauthorize the Guidelines

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND/DISCUSSION

The Interim Residential Design Guidelines (the "Guidelines") are meant to apply to all single-family home development, including additions and remodels. The overall concept is to maintain and improve the quality of the development taking place in the City's residential neighborhoods. The guidance provided in the document is intended to direct homeowners, developers, residents and design professionals in identifying the main design components that define the character of a neighborhood and to use those elements to design new or remodeled homes. The Guidelines can be found at the following link: <http://www.morro-bay.ca.us/DocumentCenter/View/8429>

On July 15, 2015, the City Council adopted Resolution No. 52-15 authorizing use of the Guidelines for a period of twelve months (see Attachment 2). Staff presented a status update on the use of the Guidelines to the Planning Commission on January 19, 2016.

At the end of the twelve-month period, staff was to return with an evaluation of the effectiveness of the Guidelines. Given the Guidelines are utilized predominately by staff and the Planning Commission, staff brought the reauthorization discussion to the Planning Commission for recommendation to Council on September 20, 2016. Staff's recommendation was to extend the use of the Guidelines for a period of twenty-four months. The Planning Commission discussed the topic and made the following recommendation to the Council:

1. Reauthorize Guidelines for 12 months
2. Direct the Guidelines remain a separate document, and not part of the GP/LCP or Zoning Code.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>DWB</u>	City Attorney Review: <u>JWP</u>

3. Direct the word “Interim” be removed from the Guidelines making them permanent, and
4. Direct Staff work with the Planning Commission to update the Guidelines over the following 12-month period

See staff comments on recommendations 1, 2, 3 & 4 below.

Staff response to recommendation 1: The preference by staff is the Guidelines be reauthorized for 24 months to allow the GP/LCP/Zoning update to take its course, including planned discussions on Design Guidelines.

Staff response to recommendation 2: The reasoning behind the Planning Commission’s request to leave the Guidelines a separate document from the GP/LCP/Zoning Code is because the Guidelines will likely require review and updating on a regular basis. Updating the GP/LCP/Zoning Code is a complicated and time consuming process, regularly taking a year or more mostly due to the requirement for certification of amendments by the California Coastal Commission. Staff concurs with the Planning Commission recommendation.

Staff response to recommendation 3: It is probably best the “Interim” tag remain attached to the Guidelines until we have updated them after the GP/LPL/Zoning review process is completed. Once updated, the Council can adopt the Guidelines permanently.

Staff response to recommendation 4: Update of the Guidelines is not specifically part of the current FY16/17 Goals and Objectives for the Community Development Department. Instead of directing staff to work specifically with the Planning Commission over the next 12 months to update the Guidelines, it is recommended the update discussion for the Guidelines be funneled, at least partially, through the GP/LCP/Zoning Code update process. Discussions on Design Guidelines are planned as part of the GP/LCP/Zoning Code update and the Planning Commission can and will be included in those discussions. This item could also be specifically added to the Goals and Objectives for FY 17/18.

CONCLUSION

Adoption of Resolution No. 70-16 will authorize use of the Interim Residential Design Guidelines for an additional 24 months. Staff has also added language to the Resolution indicating part of the intent is to maintain the Interim Residential Design Guidelines as a separate and standalone document and directing the Planning Commission be included in the update process for the Guidelines.

ATTACHMENTS

1. City Council Resolution No. 70-16
2. City Council Resolution No. 52-15

RESOLUTION NO. 70-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REAUTHORIZING USE OF INTERIM RESIDENTIAL DESIGN GUIDELINES FOR
AN ADDITIONAL 24 MONTHS**

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

WHEREAS, the City Council adopted Resolution 52-15 approving use of Interim Residential Design Guidelines for a period of 12-months; and

WHEREAS, the Planning Commission, on September 20, 2016, reviewed the Interim Residential Design Guidelines and recommended to Council: (i) the Guidelines be reauthorized for a period of 12 months, (ii) the Guidelines be maintained as a separate standalone permanent document and (iii) Staff be directed to work with the Planning Commission on updating the Guidelines; and

WHEREAS, the Interim Residential Design Guidelines are necessary to implement the neighborhood compatibility policies found in the General Plan and Local Coastal Program; and

WHEREAS, the City is in the process of updating its General Plan, Local Coastal Program, and Zoning Code, including an update of the Interim Residential Design Guidelines to create permanent Residential Design Guidelines; and

WHEREAS, the intent of the Interim Residential Design Guidelines is to be utilized for an additional 24-month period with the possibility the Guidelines may continue beyond that period of time; and

WHEREAS, the Interim Residential Design Guidelines are to be applied to both additions to existing single-family residences and to the development of new single-family homes; and

WHEREAS, the City Council has duly considered all evidence, including public comment by interested parties, and the evaluation and recommendations by staff, presented at its meeting on October 11, 2016.

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

Section 1: Findings. Based upon all the evidence, the City Council adopts the following finding:

California Environmental Quality Act (CEQA)

The Interim Residential Design Guidelines fall within the General Rule CEQA exemption, subsection 15061(b)(3) of the State CEQA Guidelines, which states where it can be seen with certainty there is no possibility the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. The Interim Residential Design Guidelines fall within that category because the document is

intended to improve the quality of the built environment by including guidelines and consideration which, taken together, will improve project design and allow new development to better fit in with their local neighborhood character. The Interim Residential Design Guidelines do not promote new development, nor do they permit a higher density than is otherwise allowed by the General Plan, Local Coastal Program, and Zoning Code. They also do not remove, alter, or supplant any existing review processes, required findings, or zoning overlays. Rather the Interim Residential Design Guidelines provide a way for decision makers and community members to consider certain aesthetic and other design considerations which may protect and improve the built environment as part of the existing discretionary approval process.

Section 2. The City Council hereby approves use of the Interim Residential Design Guidelines Included as Exhibit A to Resolution 52-15 for an additional 24 months and directs future residential projects and actions be developed and evaluated using the guidance with the document. In addition, the Council's intent is for the Interim Residential Design Guidelines to be a separate and standalone document from the City's General Plan, Local Coastal Program, and Zoning Code; and the Council directs the Planning Commission be included in the update process for the Interim Residential Guidelines.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 11th day of October, 2016 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST

DANA SWANSON, City Clerk

Attachment B

RESOLUTION NO. 52-15

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA ADOPTING INTERIM RESIDENTIAL DESIGN GUIDELINES

THE CITY COUNCIL City of Morro Bay, California

WHEREAS, the Planning Commission of the City of Morro Bay has conducted nine separate hearings, over a 10-month period in support of development of Interim Residential Design Guidelines; and

WHEREAS, City staff conducted a Residential Design Guidelines workshop on May 16, 2015, to provide additional opportunity for public input; and

WHEREAS, the Interim Residential Design Guidelines are necessary to implement the neighborhood compatibility policies found in the General Plan and Local Coastal Program; and

WHEREAS, the intent of the Interim Residential Design Guidelines is to be utilized for an initial 12-month period with evaluation of the effectiveness of the Guidelines to take place at the end of the 12-month period with the possibility the use of the Guidelines may continue beyond that period of time; and

WHEREAS, the Interim Residential Design Guidelines are to be applied to both additions to existing single-family residences and to the development of new single-family homes; and

WHEREAS, the City Council has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff, presented at its meeting on July 14, 2015.

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

Section 1: Findings. Based upon all the evidence, the City Council adopts the following finding:

California Environmental Quality Act (CEQA)

The Interim Residential Design Guidelines fall within the General Rule CEQA exemption, subsection 15061(b)(3) of the State CEQA Guidelines, which states where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. The Interim Residential Design Guidelines fall within that category because the document is intended to improve the quality of the built environment by including

guidelines and consideration which, taken together, will improve project design and allow new development to better fit in with their local neighborhood character. The Interim Residential Design Guidelines do not promote new development, nor do they permit a higher density than is otherwise allowed by the General Plan, Local Coastal Program, and Zoning Code. They also do not remove, alter, or supplant any existing review processes, required findings, or zoning overlays. Rather the Interim Residential Design Guidelines provide a way for decision makers and community members to consider certain aesthetic and other design considerations which may protect and improve the built environment as part of the existing discretionary approval process.

Section 2. The City Council hereby accepts and approves the Interim Residential Design Guidelines Included as Exhibit A of the Resolution and directs future residential projects and actions be developed and evaluated using the guidance with the document.

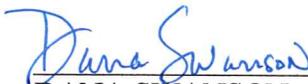
PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 14th day of July, 2015 on the following vote:

AYES: Irons, Headding, Johnson, Smukler
NOES: None
ABSENT: Makowetski
ABSTAIN: None



JAMIE L. IRONS, Mayor

ATTEST:



DANA SWANSON, City Clerk



DRAFT City of Morro Bay Interim Design Guidelines

Residential



July 2015

DRAFT City of Morro Bay Interim Design Guidelines

Residential

Acknowledgements

City Council

Jamie Irons, Mayor
Christine Johnson, Councilmember
Noah Smukler, Councilmember
Matt Makowetski, Councilmember
John Heading, Councilmember

Planning Commission

Michael Lucas, Commissioner
Gerald Luhr, Commissioner
Richard Sadowski, Commissioner
Katherine Sorenson, Commissioner
Robert Tefft, Chairperson

City Staff

David Buckingham, City Manager
Scot Graham, Community Development Manager
Rob Livick, Public Works Director/City Engineer

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INTRODUCTION

Purpose of the Guidelines

The purpose of the Interim Design Guidelines is to maintain the high quality of the City of Morro Bay’s neighborhoods by developing reasonable, sound and objective guidance to assist residents, homeowners, and designers in identifying the key design features and components that define the character of a neighborhood that can then be utilized in designing new or remodeled single family homes.

Neighborhood compatibility is generally represented by how a neighborhood looks and feels. The basic features that help define a neighborhood include: landscaping, pedestrian routes, street improvements, building material, architectural style, home size, scale, bulk, proximity of homes to one another, building height, and setbacks.

A majority of the neighborhoods in Morro Bay contain a wide variety of

architectural styles, which helps focus policy language on scale, height, bulk and consistency or integrity of the chosen architectural style.

The intent behind implementation of the Design Guidelines is to conduct design review on all single-family construction (additions included). The Guidelines are meant to implement the neighborhood compatibility policies found in the General Plan and Local Coastal Plan and as such, serve as a basis to provide consistent design review by both City Staff and the Planning Commission.

By applying the Design Guidelines as part of the project review process, the City of Morro Bay, has the opportunity to provide positive, constructive direction to development within the City. The Design Guidelines can save time, facilitate a positive response to community concerns about development proposals, avoid divisive controversy, reduce unnecessary delays and expenses, and most importantly, achieve high quality designs and more livable neighborhoods.

Single-Family Design Guidelines

The following guidelines are not meant to encompass the entire range of design possibilities, but instead are meant to provide basic guidance as to what is expected when development is proposed. The policies are not meant to discourage innovative designs nor encourage any specific style or design concept. Variations from the Guidelines will be considered when proposed project elements provide for a better project than would be possible adhering to the specific direction provided within the Guidelines.

Design Guidelines

A. Relationship to Homes in Immediate Neighborhood

1. The overall design of the home should pay particular attention to the adjacent homes while remaining visually compatible with the immediate neighborhood.
2. Maintain architectural integrity with design and material consistency on all facades.
3. When replacing or changing the exterior materials, use materials compatible with homes in the surrounding area.
4. Entryways or features, such as front doors and porches should be visible from the street. Use of tall walls, fences, landscaping or other design elements that block view of the entry should be avoided.

Utilize Figure 1, below, when determining what constitutes the immediate neighborhood within a standard subdivision. For consideration of neighborhood compatibility, greater weight should be given to the character of existing development closer to a proposed project than to more distant portions of the neighborhood. In some situations, factors may be present which require a definition of the immediate neighborhood that differs from that determined by use of the 500-foot radius. Examples include, but are not limited to, location and visibility of the home being built/modified. ***If questions arise regarding what constitutes the “Immediate Neighborhood,” then please consult City Staff.***

Figure 1. Immediate Neighborhood Map Example (500 Foot Radius).



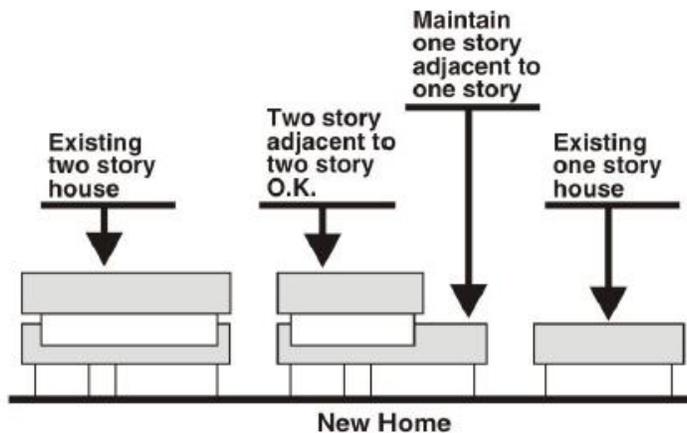
B. *Scale and Mass*

Building scale refers to the proportional relationship of a structure to objects/structures next to it. Mass is basically the size of a structure.

1. Proposed new construction or remodeling projects should be consistent

with the overall pattern of perceived scale and mass in the surrounding neighborhood. Compatibility cannot be achieved merely by demonstrating other selected residences nearby may be similar in size or larger than the proposed project, particularly if the selected examples are atypical of the neighborhood or at a distance from the proposed project. The apparent size, scale, and mass of a proposed project can be affected by thoughtful design, appropriate siting on the lot, landscaping, and other factors as well as by the actual size of the residence.

Figure 2. Placement options for second story when adjacent to single story home



2. The perceived scale, mass, and design should be appropriate to the original home.
3. Blocks where single-story houses or small two-story homes are the predominant block pattern, a second story may require special attention. Scale may be minimized by employing one or more of the following technique's:
 - a. Limit the house profile of the expanded or new home to an area generally consistent with the profiles of the existing homes.
 - b. Setting the second floor back from the front and sides of the first story a distance sufficient to reduce apparent overall scale of the building.
 - c. Limit the size of the second story relative to the first

story.

- d. Increase the front and/or side setbacks for the entire structure.
- e. Place at least 60 to 70 percent of the second floor area over the back half of the first story.
- f. Slope the new roof away from the adjacent homes.
- g. Incorporate the second story into the roof.

Figures 3 & 4 demonstrate incorporation of second floor into the roof helping to relate larger homes to smaller neighbors



Figure 4.



Figure 5. *Second floor is pulled into the center of the roof providing a setback from the building edges helping to maintain adequate space, light and sense of openness to the adjacent residences.*

C. Surface Articulation

Residences should be designed with relief in building facades. Long unarticulated wall and roof planes should be avoided, especially on two-story elevations.

1. Changes within the wall and roof planes can be accomplished when one of the forms is setback several feet or when a gable end fronts the street and through the use of porches that run across the street-facing elevation of the home.
2. Changes within the wall and roof planes can also be achieved through the use of various textures and materials. This can be seen in the use of horizontal wood lap siding, wood trim around windows and doors, shingle textures on the roof, deep recessed entries, use of roof segments separating the first- and second-floor facades.

Figure 6. Changes in wall plane and second-floor step backs are utilized, as well as a mix of materials and use of recessed areas help achieve relief in the building facade

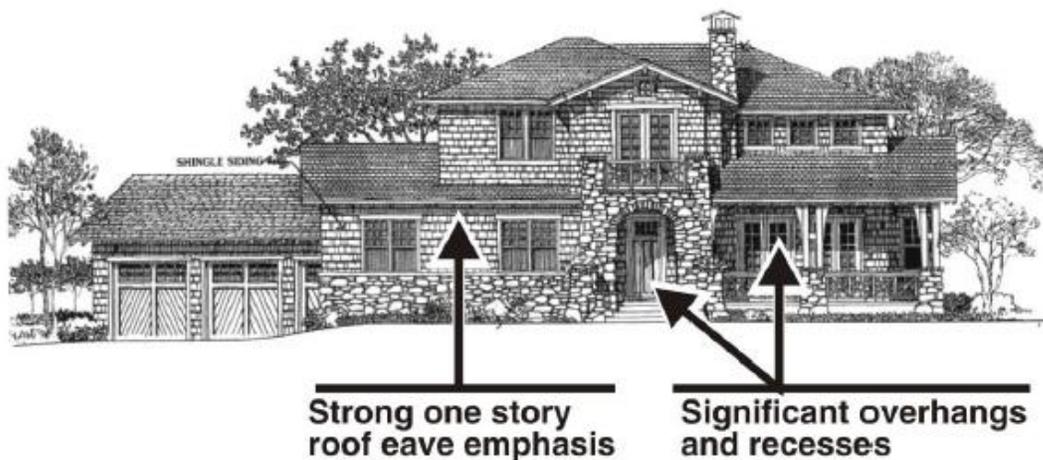




Figure 7. Design exhibits use of differing wall planes, two story entry element and covered porch to break up the front facade.

D. Building Orientation

1. Residences should contain visible front entryways, in scale with neighboring properties and oriented toward the public street.



Figure 8. Avoid exaggerated tall entries like this

Figure 9 & 10. Avoid formal entries in neighborhoods with informal homes (Figure 9) and in neighborhoods where entries are located under roof eaves as shown in the ranch style (Figure

10).



2. New/remodeled structures should not present height or bulk at front and side setback lines which is significantly greater than those of the adjacent homes.



Figure 11. Homes with differing bulk and massing along front facade

3. Homes should be located on the lot in a similar manner as adjacent homes and within the applicable setback requirements.



Figure 12. Homes with similar setbacks on the street frontage

4. In cases where setbacks are similar in the neighborhood, new homes should match those of adjacent homes.
5. Where adjacent homes have differing setbacks, the setback of the new home should be the average of the two on either side.

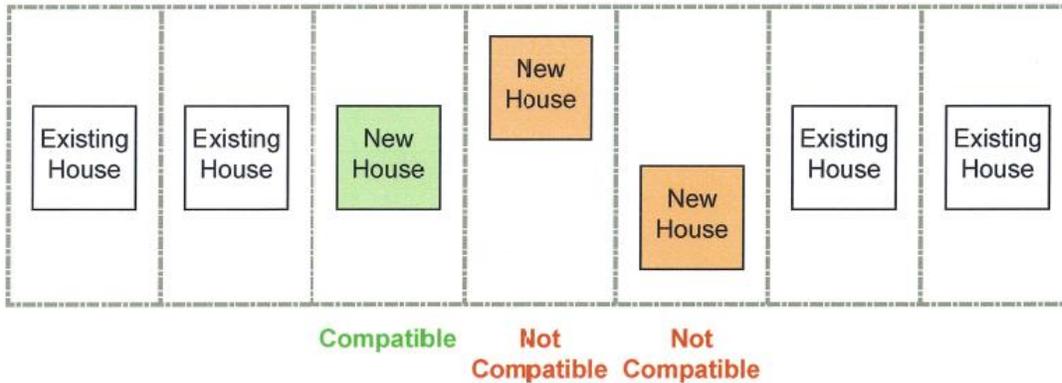


Figure 12a. In neighborhood where existing homes have consistent setbacks, new construction should match the siting of adjacent homes.

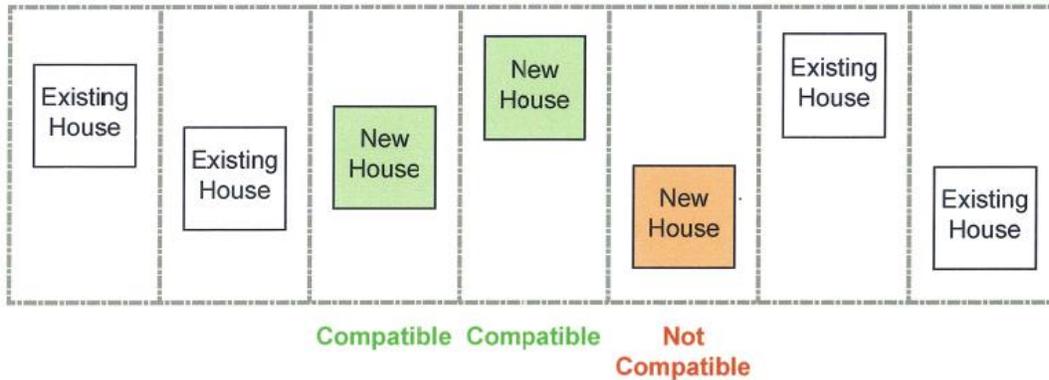


Figure 12b. In neighborhoods where existing homes have varied setbacks, the siting of new construction should be equal to or greater than the average setback of adjacent homes.

Exception to Averaging: Where the adjacent lots have a nonconforming setback, the applicant may have the option of conforming to the required zoning setback. In some instances, a varied setback from the neighborhood pattern may be necessary or

appropriate (such lot constraints include topography, trees, creeks, lot size and Environmentally Sensitive Habitat).

E. Garage and Driveway Design

In most cases, the curb appeal and livability of a home will be enhanced if the living area, rather than the garage is the most prominent feature of the front façade. Garage doors can have a noticeably negative impact to the street facing elevation of a home and, cumulatively on appearance of a neighborhood. To reduce the prominence of garages and driveways, home designs should to the extent feasible, reflect a careful consideration of the following principles:

1. Garages placed along the front elevation of a home should not exceed 50% of the linear front elevation width where possible. The remainder of the front elevation should be devoted to living area or a porch.
2. Garages exceeding 50% of the linear front elevation should include one or more of the following design options:
 - a. Recess garage from the front wall of the house a minimum of 5'
 - b. Provide an entry porch trellis extending in front of the face of the garage.
 - c. If the garage is the dominant feature from the street frontage, then it should be designed with architectural and visual interest.

Figure 13. Limiting driveway width of garages and setting them back from the front façade can minimize visual impact



Figures 14 – 18 provide examples of Decorative Garage Door ideas:

Figure 14.



Figure 15.



Figure 16.



Figure 17.



Figure 18.

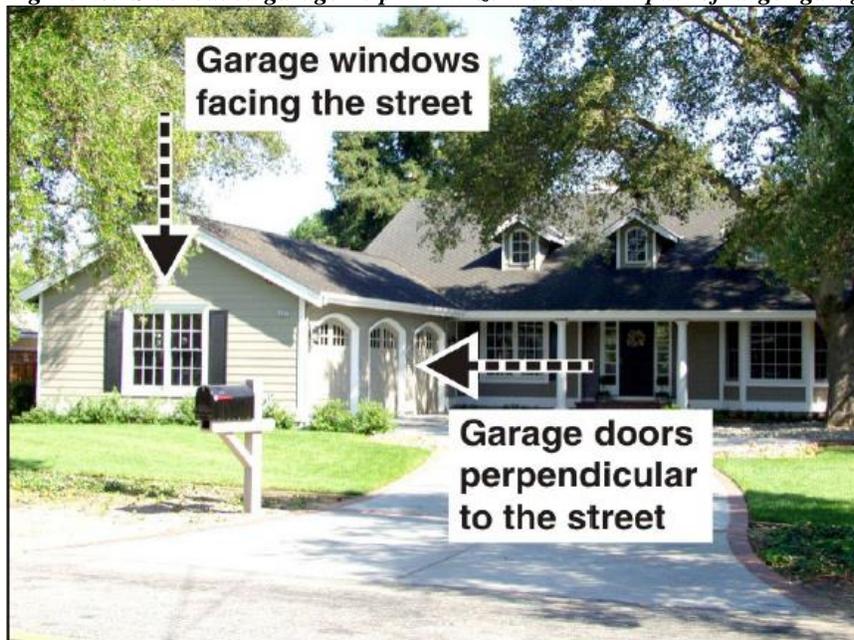


3. Garage entries should be oriented away from the street where possible. This can be accomplished through placement of the garage at the rear of property or through use of a side loaded garage (see figures 19 & 20).

Figure 19. Narrow driveway with garage located toward the rear of the property



Figure 20. Side loaded garage help minimize the visual impact of larger garages on the streetscape



4. Mitigate the impact of driveways on the streetscape by:
 - a. Limiting width of curb cuts to the minimum size needed to access the garage. This preserves on street parking and reduces paving in the front yard.
 - b. Utilizing decorative paving materials, permeable pavers or special patterns or colors to break up paved driveway areas in front setbacks (See figures 23 – 27).
 - c. Utilizing single width driveways or make use of “Hollywood” driveways (See figures 21 & 22).

Figure 21. Hollywood Driveway Design for single car garage



Figure 22. Hollywood driveway design for two car garage



Figures 23 – 27 provide examples of permeable paver drive options

Figure 23.



Figure 24.



Figure 25.



Figure 26.



Figure 27.



5. Other similar features as approved by the review authority.

F. Building Materials

Building materials should be consistently applied and shall be harmonious with adjacent materials (see figures 28 & 29). Piecemeal and frequent changes in building materials should be avoided.

1. When using a mix of material, avoid using too many materials.
2. Avoid using an even split of materials (*i.e.* 50/50) on facades.
3. It is preferred to have one material as the dominant surface with the second material utilized in a lesser or accent role.

Figure 28. Example of utilizing a mix of materials.

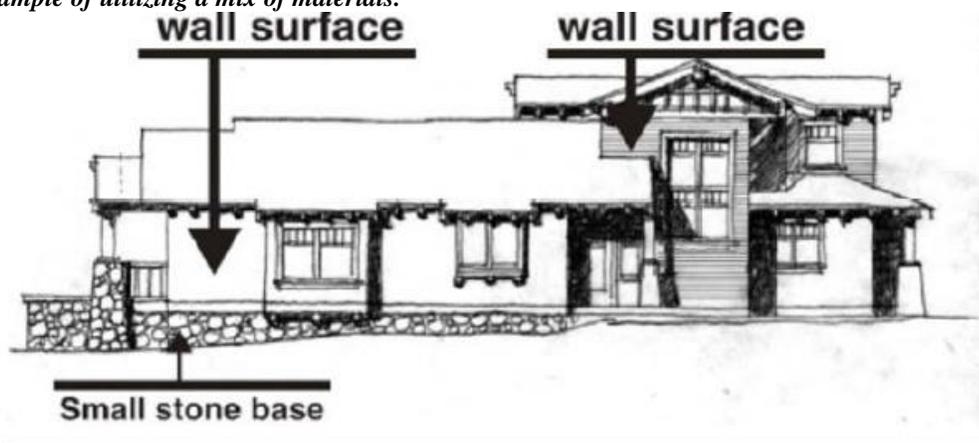


Figure 29. Use of complimentary building materials and color palette enhances building design



G. Architectural Elements

The architectural elements of a building include openings, doors, windows and architectural features such as roof elements, columns and dormers.

1. Architectural elements within the design should be in proportion to the overall home design.
2. Architectural elements should reflect the habitation and internal and external use of the structure.
3. For most traditional styles architectural elements should be balanced on the building elevations. One option to achieve balance is through the

vertical and horizontal alignments of the elements.

4. When the architectural style of a residence does not call for symmetry, creative asymmetric placement of architectural elements may provide for dramatic interest.

Figure 30a. Some architectural styles require simple shapes and formal symmetry of the door and windows



Figure 30b. Creative Asymmetric Placement of Architectural Elements



Figure 31. Avoid too many building elements competing for attention



H. Additions to Existing Homes

1. The design of the addition should be consistent with the materials and architectural elements utilized in the existing home and adjacent neighborhood. If differing materials or styles are chosen for the addition they should be complimentary in nature.
2. Second floor additions should integrate into the overall design of the home. The addition should look like an original part of the home.

Figure 32. Original single story home



Figure 33. Incorporating a second floor addition into the roof adds the desired space while respecting

the integrity of the existing house and the scale of the neighborhood.



3. Rooflines of the addition should be compatible with the roof slope of the existing house.
4. New windows and other architectural elements should be compatible with the shape, pattern, style, color and materials of the original architectural elements. If all windows are replaced, then the new windows should be compatible with the architectural style of the home.

Figure 34. Addition incorporated into the roof, but roofing material is not consistent with architectural style of the existing residence.

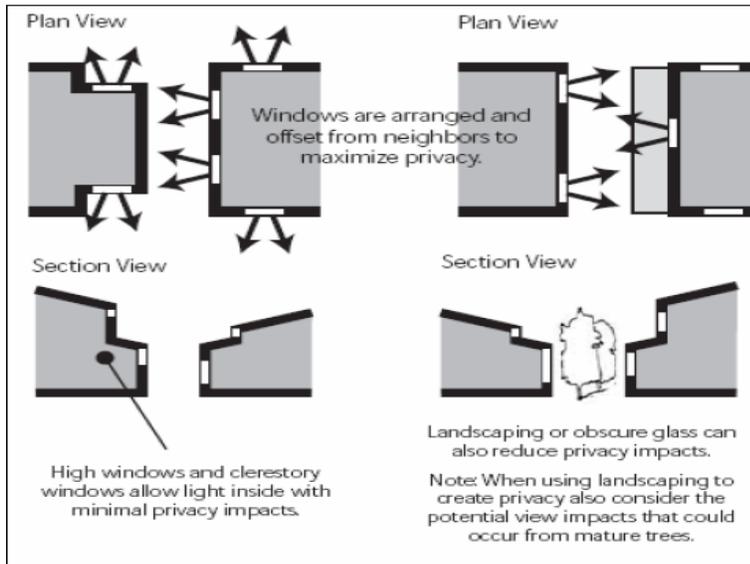


I. Privacy. Minimize privacy intrusions on adjacent residences.

While it may not be possible to ensure complete privacy between homes, given the small lot sizes in the City, designs should attempt to lessen the impact. Options for reducing privacy conflicts are noted below:

1. Windows should be placed so as to minimize views into the living spaces and yard spaces near neighboring homes. In particular, window placement in the side wall of a home should be offset to avoid looking directly into a neighboring room.
2. Decks and balconies should be designed and located with consideration given to the privacy of adjoining properties.
3. Other options for reducing privacy impacts between neighboring residences include: application of appropriate landscaping, use of smaller windows, designing sill height above eye level or utilizing frosted or textured glass to reduce visual exposure.

Figure 35. Design options for reducing privacy impacts



J. Landscaping

Residential landscaping should include the following:

1. Drought tolerant plant species that require little to no fertilizer, herbicides, and pesticides.
2. Plants appropriate for the sites characteristics; sun exposure, wind, soil moisture, and existing vegetation.
3. Non-invasive plant species, particularly near creeks, drainages or existing native vegetation. Plantings should be sited such that they will not interfere with onsite utility lines, including water and sewer lines.
4. Siting of trees to avoid unnecessarily obstructing views from adjacent properties. In view sensitive areas, proposed trees should be chosen that do not exceed a mature height that exceeds the maximum building height of the zone district. Proposed trees should also be continuously maintained at a height that does not exceed the maximum permitted height of the zone district. Existing mature trees are exempted from this policy.
5. Street trees should be chosen from the City's approved street tree list.

6. Mature landscaping should be preserved where possible, paying special attention to the preservation of mature healthy trees.
7. Efficient drip irrigation systems that make use of soil moisture meters, and rain and wind shutoff devices to reduce water consumption.

K. Hillside Development

The hillside development guidelines apply to properties with lot sizes 5,000 square feet or greater and with slopes exceeding 15%. The intent of the following policies is to preserve, enhance and protect the visual quality of the Morro Bay hillside areas. Project design should take into consideration the site's natural features, topography, visual character, unique qualities and surrounding environment:

1. Step the building up or down the hill (see Figure 36).
2. Set the structure into the hillside topography while also balancing or limiting the amount of grading, beyond the footprint, to avoid erosion and visual impacts (see Figure 36).
3. Step back the taller portions of the structure to reduce the appearance of height.
4. Minimize exposed foundations, underfloor areas, and downhill cantilevers when structurally feasible and avoid use of tall support columns utilized for support of overhanging areas (see Figure 37).
5. Vary height of building elements (See figure 38)

Figure 36. House cut into slope and stepped into the hillside

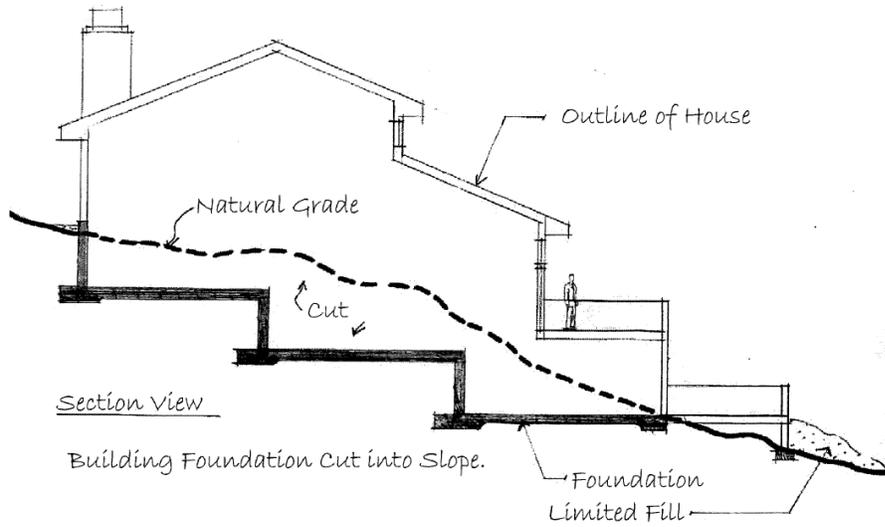


Figure 37. Avoid exposed understory with large cantilevers supported by tall columns

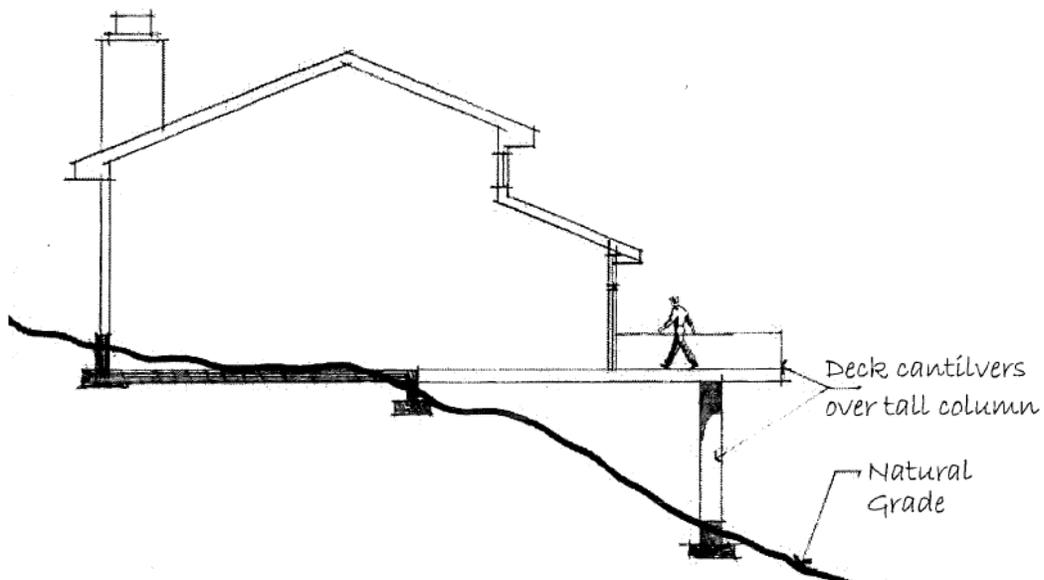
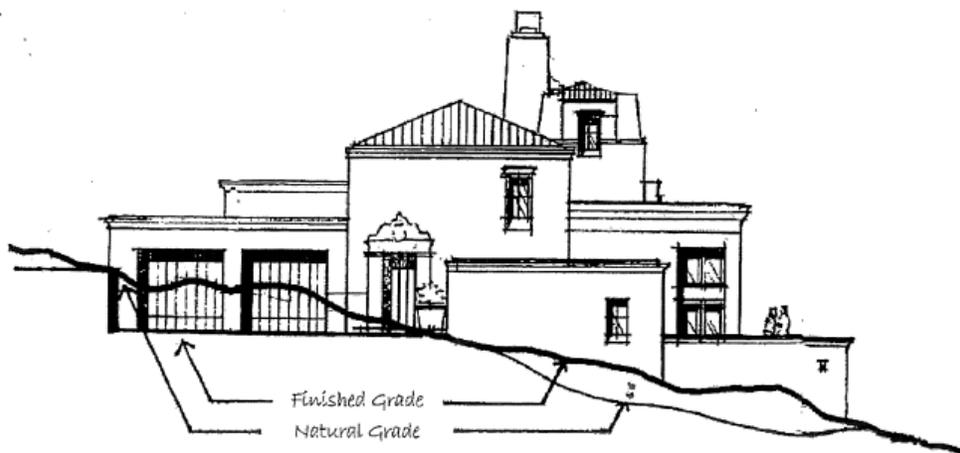


Figure 38. Vary Height of Building Elements



L. Solar Access

The City of Morro Bay encourages applicants to incorporate solar energy systems into their projects. Building placement and adjacencies should be considered such that they do not unreasonably affect solar access on neighboring properties. Solar panels and other roof mounted equipment can detract from the appearance of a home and appear obtrusive if not integrated into the design. The following policies should be considered when designing a solar system and when siting a home or addition:

1. For existing homes align solar equipment and panels with the underlying roof slope where feasible. Avoid panels with slopes that are different than that of the roof.
2. For new homes, the roof should be designed to accommodate future solar energy and hot water systems, taking into consideration orientation and slope.
3. Integrate the design of the equipment and panels into the design of the roof. Avoid a tacked on appearance.
4. Locate roof mounted solar equipment and panels below ridgelines and on sides of roofs away from street view wherever possible. Non-glare and non-reflective type panels should be utilized where possible.

5. The design and placement of roof mounted solar equipment and panels should account for heights of existing trees and future growth. This applies to both trees on-site and on neighboring properties.
6. Orient the massing of the home and roof forms away from the side yards of neighbors as much as possible to minimize blocking their solar access.
7. On flat roofs, set solar equipment back from the edge to reduce visibility.
8. Siting of new homes and additions should avoid shading existing solar systems and should take into consideration potential shading issues related to future solar installations on neighboring properties.
9. Minimize roof penetrations on South and West facing roofs.

M Glossary.

Bulk: The qualitative readily visible composition and perceived shape of a structures volume. Bulk is affected by variations in height, setbacks and stepbacks of upper stories.

Garage (Side Loaded): A garage with it entry doors located at an angle (usually a right angle) to the street which provides vehicular access to the garage.

Grading: Any excavation or filling of earth or combination of these activities.

Height Limit: The maximum allowed height of a structure as established by the Zoning Code utilizing an imaginary surface located at the allowed number of feet above and parallel to the existing grade.

Hillsides: Lands with slopes exceeding 15% slope

Mass: The three-dimensional form of a building

Roof Pitch: The angle of the sloped planes of a roof, often expressed in the rise in inches for every foot of horizontal distance, as in a 4 in 12 pitch.

Scale: Building elements and details as they proportionally relate to each other and to humans.

Setbacks: The horizontal distances a structure is held away from the adjacent property lines. Also use to describe the offset distance between horizontal or vertical planes of a structure.

Solar Access: The potential to receive adequate sunlight in order for certain areas of a dwelling or lot to catch the sun's energy.

Trellis: A horizontal light framework, freestanding or projecting from the face of a wall, use for the purposes of sun shading and/or support of vines or other vegetation.



AGENDA NO: C-5

MEETING DATE: October 11, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: October 5, 2016

FROM: Dave Buckingham, City Manager

SUBJECT: Approval of Participation in 2017 AMGEN Event

RECOMMENDATION

Staff recommends the Council approve Morro Bay's participation as a stage finish for the 2017 AMGEN Tour of California with City financial participation limited to \$25,000 of TBID revenue and staff support services.

ALTERNATIVES

1. The City Council can direct staff not to participate in this event in 2017.

FISCAL IMPACT

There is no direct impact to the City's General Fund. The Tourism Business Improvement District previously recommended expenditure of \$25,000 of TBID assessed funds to host the AMGEN and those would be the only City of Morro Bay moneys anticipated to be required for direct support of this event. Staff will provide limited indirect support such as some additional public safety and public works staff time which is already in the FY2015/2016 General Fund budget as routine support to events.

BACKGROUND

Staff brought this item to the City Council on Sep 27 with a recommendation to host the AMGEN finish. That staff report is attached and provides substantial background info.

While the City Council expressed some concern about dedicating General Fund revenues to host this event, there appeared to be broad agreement on the general benefit of hosting an AMGEN finish. In short, it appeared the Council was broadly supportive of hosting the event, but some Members raised concerns about committing significant General Fund revenues after the City's budget had been approved.

On Sep 27, the Council passed a motion to *"Direct staff to continue working with Amgen, Visit SLO County and our local tourism bureau to evaluate opportunities to host a stage finish at some point in the future."* Council discussion specifically noted that did not preclude the possibility of hosting the 2017 finish.

DISCUSSION

Following the Sep 27 Council meeting, staff continued discussions with Amgen and Visit SLO County. Those discussions resulted in Amgen identifying a way for Morro Bay to host the 2017 finish without exceeding our \$25,000 direct commitment of TBID assessed funds.

Based on discussions at this point, Morro Bay will host the stage finish on Tuesday, May 16, 2017.

The start for this leg will also be in SLO County and we therefore anticipate with riders, support

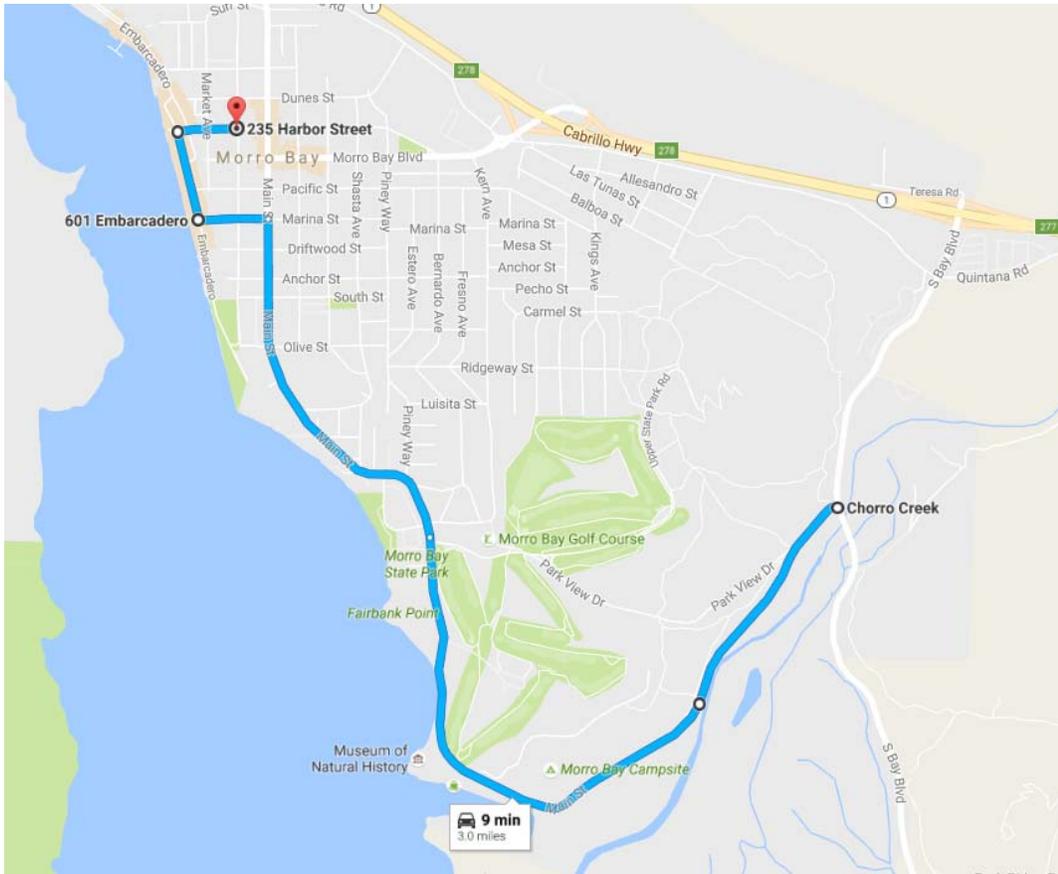
Prepared By: DWB City Attorney Review: JWP

personnel and visitors, a large number of Morro Bay hotel rooms will be booked for both Monday and Tuesday nights.

Hosting an AMGEN finish provides a platform to gain worldwide exposure, create economic impact and provide positive experiences for local and regional residents, businesses, supporters and enthusiasts.

Around 1.1 million people worldwide will “see” Morro Bay as host city with two hours of live, international TV coverage - a major tourism marketing and promotions opportunity.

The tentative finish route is shown below.



This course allows both Embarcadero and downtown businesses to benefit from the race while gaining critical TV-viewing time in many parts of Morro Bay.

CONCLUSION

The City had a positive experience hosting the 2016 AMGEN start. Hosting the 2017 finish should be at least equally, and likely more, positive, help local businesses, and further Market Morro Bay to the world as a great place to live and visit.

RECOMMENDATION

Staff recommends the City Council direct staff to continue working with AMGEN with the goal of hosting a 2017 stage finish in Morro Bay.

BACKGROUND

Hosting an AMGEN finish provides a platform to gain worldwide exposure, create economic impact and provide positive experiences for local and regional residents, businesses, supporters and enthusiasts.

Around 1.1 million people worldwide will “see” Morro Bay as host city, a major tourism marketing and promotions opportunity.

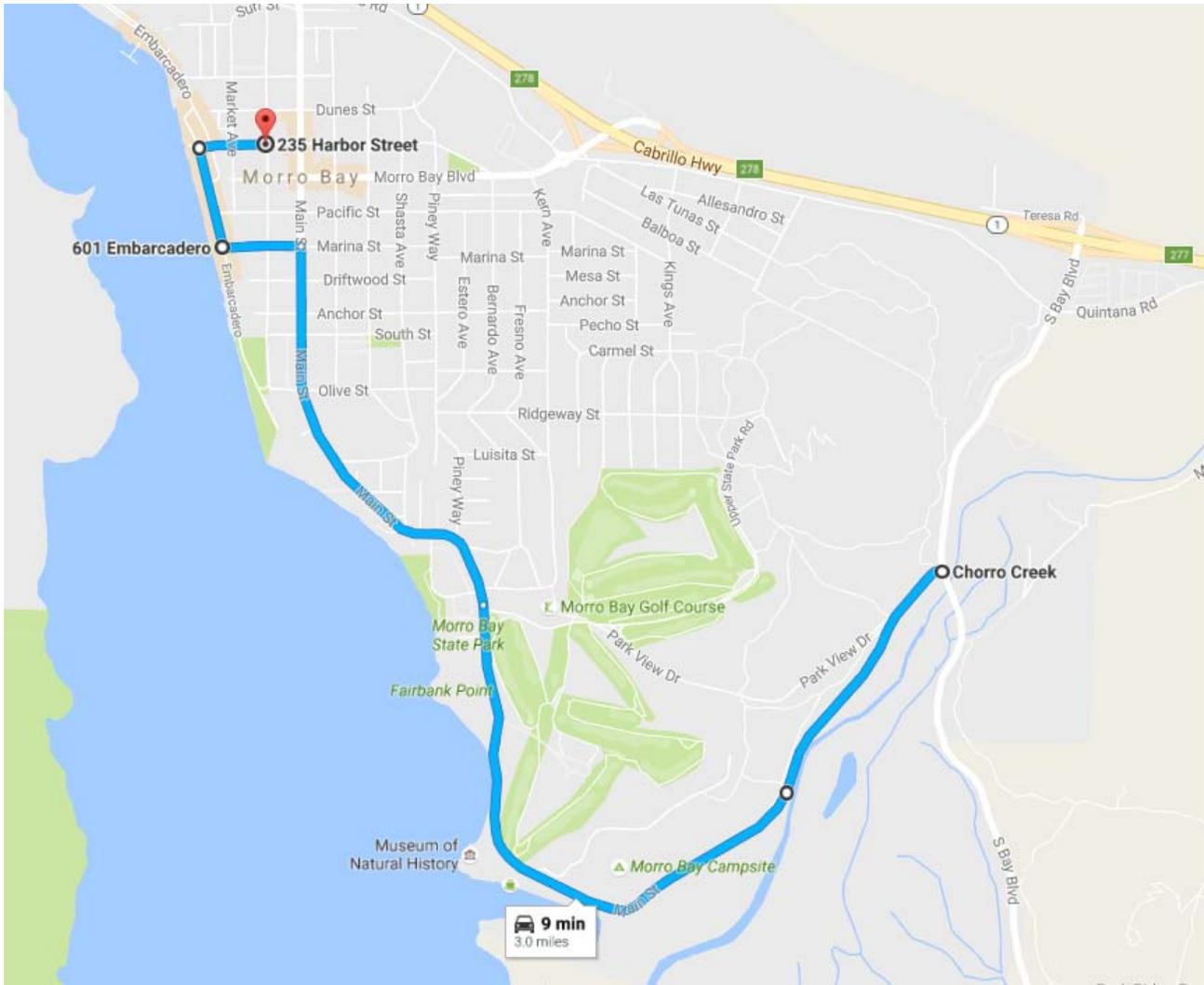
Each Amgen host city receives a package of benefits to assist with local fundraising efforts, to provide hospitality for key guests, and to promote and market the host city while driving in-bound tourism.

Morro Bay has been selected as one of the two finalists to host the finish for the 2017 AMGEN Central Coast stage. Alternatively, the Central Coast stage will likely start and finish in South County.

The City received positive feedback from residents after hosting the 2016 Stage 4 start last May. Staff received one written complaint about a road closure. As we experienced last year, hosting a start has relatively modest negative effect on residents since a single start time results in streets being closed for a short period, at a known time. While the worldwide tourism visibility for the City was excellent - and that was the primary purpose of hosting the event - the positive impact on businesses was also modest. That is due in part because hosting the start did not require riders to spend the night in the host city, and the event starts in the morning.

Hosting a finish leg will have different effects. On the negative side, road closures will be somewhat longer, probably a rolling closure of around 30 minutes for some roads and longer for the final stretches that will likely include part of the Embarcadero and Harbor Street. On the positive side, hosting the finish will mean all of the athletes and their support teams will spend the night in Morro Bay, and likely be somewhat more available to interact with residents and visitors. This should result in more positive effects on local businesses, both from hotel stays and restaurant / retail visitation.

Staff has negotiated a tentative finish route with AMGEN that maximizes time in Morro Bay while avoiding as many key traffic arteries as possible. As currently planned, riders will get to the intersection of South Bay Boulevard and Main Street coming either from Los Osos or from Highway 1. From there they will travel through the State Park, either on Main Street or up and down Park View Drive. They will follow Main Street toward the downtown, then turn left on Marina and right on the Embarcadero. The race will finish with a three block sprint on the Embarcadero, then right on Harbor street for two blocks uphill to the finish line.



This course allows both Embarcadero and downtown businesses to benefit from the race while gaining critical TV-viewing time in many parts of Morro Bay.

The host cities are responsible and will incur costs for providing:

NIGHT BEFORE THE STAGE FINISH	200 rooms
NIGHT OF THE STAGE FINISH	350 rooms
TEAM DINNER	350 individuals the night of the Stage Finish
TEAM BREAKFAST	350 individuals
MEDIA LUNCH/DINNER	150 working media
FINISH CREW BREAKFAST	30 people

As noted, with Council direction, staff intends to negotiation all of these items, together with VSLOC, to ensure the lowest possible cost for the City. It is also important to note that all of these required expenditures should directly benefit local Morro Bay businesses.

The TBID Advisory Board recommended the Council seek to host the 2017 AMGEN finish and further recommended allocation of \$25,000 of TBID assessed funds to support the event.

CONCLUSION

The City had a positive experience hosting the 2016 AMGEN start. Hosting the 2017 finish should be equally positive, help local businesses, and further Market Morro Bay to the world as a great place to live and visit.