



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting – Tuesday, February 11, 2020 Veterans Memorial Hall - 5:30 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

- Measure Q Presentation by Citizens Oversight & Citizens Finance Advisory Committee
Chairwoman Barbara Spagnola

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.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should 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.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

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 FOR THE JANUARY 14, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE JANUARY 14, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE FEBRUARY 5, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF RESOLUTION NO. 11-20 AUTHORIZING EXECUTION OF A DEED AND LEASE RESTRICTION AND CERTIFICATE OF ACCEPTANCE FOR LEASE SITE 87-88/87W-88W (TLC FAMILY ENTERPRISES, 833 EMBARCADERO) TO INCORPORATE CALIFORNIA COASTAL COMMISSION PERMIT CONDITIONS; (HARBOR)

RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 11-20 authorizing the City Manager to execute a Deed and Lease Restriction and Certificate of Acceptance for Lease Site 87-88/87W-88W with TLC Family Enterprises, located at 833 Embarcadero Road, in order to incorporate the California Coastal Commission permit conditions for the redevelopment of the site into the property deed and lease.

- B. PUBLIC HEARINGS - NONE

- C. BUSINESS ITEMS

- C-1 PRESENTATION AND DISCUSSION OF THE FISCAL YEAR 2018/19 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND RECOMMENDATION TO PAY-OFF CALPERS LIABILITIES FOR THE TIER II AND TIER III UNFUNDED LIABILITIES; (FINANCE)

RECOMMENDATION:

- 1. Council receive and provide feedback on the FY 2018/19 Comprehensive Annual Financial Report (CAFR) for the period July 1, 2018 through June 30, 2019; and**
- 2. Adopt Resolution No. 12-20 approving allocation of \$486,504 in FY 2018/19 year-end revenues over expenditures to pay off the Tier II and Tier III (PEPRA) unfunded accrued liabilities for the Police, Fire and Miscellaneous classifications.**

- C-2 ADOPTION OF RESOLUTIONS OF NECESSITY (RESOLUTION NO. 13-20 AND RESOLUTION NO. 14-20) AUTHORIZING EMINENT DOMAIN ACTIONS TO ACQUIRE EASEMENTS IN REAL PROPERTY FOR THE WATER RECLAMATION FACILITY PROJECT – APNs: 066-331-046 (VISTRA ENERGY) AND 066-331-036 (PG&E); (CITY MANAGER/CITY ATTORNEY)

RECOMMENDATION: Staff recommends the City Council:

- 1. Conduct a hearing on the proposed Resolutions of Necessity; and**
- 2. Adopt the Resolutions of Necessity (Resolution No. 13-20 and Resolution No. 14-20) authorizing the commencement of eminent domain actions to acquire temporary construction easements and permanent pipeline, well, and access easements on real property with APN: 066-331-046 (Vistra Energy) and APN: 066-331-036 (PG&E) for purposes of the Water Reclamation Facility (WRF) Project.**

- C-3 DISCUSSION CONCERNING AN ORDINANCE TO REGULATE TOBACCO, VAPING AND/OR SECONDHAND SMOKE, INCLUDING POTENTIALLY A TOBACCO RETAILER LICENSING PROGRAM, THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council discuss, and consider providing direction to staff on, an ordinance to regulate tobacco, vaping and/or secondhand smoke.

- C-4 REVIEW OPTIONS FOR IMPROVEMENTS TO PUBLIC TRASH AND RECYCLING RECEPTACLES AND PUBLIC RESTROOM MANAGEMENT IN THE EMBARCADERO AND MORRO ROCK PARKING LOT AREAS; (CITY MANAGER/PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council review the options to improve cleanliness of public trash and recycling receptacles and City managed public restrooms in the Embarcadero and Morro Rock parking lot areas and provide direction to staff as appropriate.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, February 25, 2020 at 5:30 p.m.** 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 805-772-6205 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, CALIFORNIA 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.

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – JANUARY 14, 2020
VETERANS MEMORIAL HALL
209 SURF STREET – 3:30 P.M.

AGENDA NO: A-1
MEETING DATE: February 11, 2020

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member

STAFF:	Dana Swanson	City Clerk
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ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 3:30 p.m. with all members present.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Mayor Headding opened public comment; seeing none, the public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

I. ADVISORY BODY INTERVIEWS <https://youtu.be/VSUxp1InOtQ?t=69>

Planning Commission

- One (1) upcoming vacancy for a 4-year term ending January 31, 2024.

The Council discussed a recent change in policy that allows for the person receiving the second highest number of votes would be appointed as alternate should a vacancy occur within six months.

Mayor Headding announced two applicants had withdrawn their applications (Neta Davis and Mike Rodriguez).

The following applicants were interviewed for the Planning Commission position: Laurel Barton, Ronald Bovasso, and Joseph Ingraffia. Following interviews, the Council voted by written ballot and the City Clerk read the results. Mr. Ingraffia received three votes (Addis, Heller and McPherson) and Ms. Barton received two votes (Davis and Headding). Mr. Ingraffia was appointed to a 4-year term ending January 31, 2024, and Ms. Barton was appointed as an alternate, should a vacancy occur within six months.

Public Works Advisory Board ("PWAB")

- Two (2) upcoming vacancies for 4-year term ending January 31, 2024.

The following applicants were interviewed for the Public Works Advisory Board positions: Doug Rogers and Mike Whitlock. Following interviews, the Council voted by written ballot and the City Clerk read the results. Mr. Rogers and Mr. Whitlock each received unanimous support from the Council and were appointed to a 4-year term ending January 31, 2024.

Citizens Oversight / Finance Advisory Committee ("CFAC")

- One (1) current vacancy for the remainder of a term ending January 31, 2022.

The following applicant was interviewed for the Citizens Oversight / Finance Advisory Committee position: Tina Wener. Following interviews, the Council voted by written ballot and the City Clerk read the results. Ms. Wener received unanimous support from the Council and was appointed to fill a current vacancy for the remainder of a term ending January 31, 2022.

Recreation and Parks Commission

- One (1) upcoming vacancy for a 4-year term ending January 31, 2024.

The following applicant was interviewed for the Recreation and Parks Commission position: Kevin Carol. Following interviews, the Council voted by written ballot and the City Clerk read the results. Mr. Carol received unanimous support from the Council and was appointed to a 4-year term ending January 31, 2024.

Tourism Business Improvement District (“TBID”) Advisory Board

- One (1) upcoming vacancy for a Hotelier with 22 rooms or less with a term ending January 31, 2024.
- One (1) upcoming vacancy for a Vacation Rental Representative with a term ending January 31, 2024.
- The City Clerk’s office will continue to recruit for the one (1) unfilled vacancy for the Hotelier Member-at-large with a term ending January 31, 2024.

Mayor Headding announced Mr. Greg Finch was unable to attend the interviews due to prescheduled personal reasons and asked to be considered for appointment to the TBID despite his absence.

MOTION: Mayor Headding moved the Council allow Mr. Finch to remain on the ballot even though he was unable to attend. The motion was seconded by Council Member Davis and carried 5-0.

The following applicants were interviewed for the Vacation Rental Representative position: Teresa (Teri) Ennis, and Terri Frank. Following interviews, the Council voted by written ballot and the City Clerk read the results. Ms. Ennis received four votes (Addis, Davis, Heller and McPherson) and Mr. Finch received one vote (Headding). Ms. Ennis was appointed to a 4-year term ending January 31, 2024, and Mr. Finch was appointed as an alternate, should a vacation rental representative vacancy occur within six months.

The following applicant was interviewed for the Hotelier with 22 rooms or less position: Christopher Kostecka. Following interviews, the Council voted by written ballot and the City Clerk read the results. Mr. Kostecka received unanimous support of the Council and was appointed to a 4-year term ending January 31, 2024.

The City Clerk’s office will continue to recruit for the one (1) unfilled vacancy for the Hotelier Member-at-large with a term ending January 31, 2024.

ADJOURNMENT

The meeting adjourned at 5:17 p.m.

Recorded by:

Dana Swanson
City Clerk

PRESENT: John Headding Mayor
Dawn Addis Council Member
Robert Davis Council Member
Jeff Heller Council Member
Marlys McPherson Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Dana Swanson City Clerk
Jennifer Callaway Finance Director
Rob Livick Public Works Director
Scot Graham Community Development Director
Steve Knuckles Fire Chief
Jody Cox Police Chief
Eric Endersby Harbor Director
Janeen Burlingame Management Analyst
Eric Casares WRF Program Manager, Carollo Engineering
Anita Luck Special Counsel, Aleshire & Wynder, LLP

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 6:22 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/mCdlqJ-h1LU?t=116>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/mCdlqJ-h1LU?t=492>

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/mCdlqJ-h1LU?t=576>

Chris Cameron invited the public to attend the 24th Annual Bird Festival to be held January 18 – 20. For more information, visit www.morrobaybirdfestival.org.

Robert Swain, Morro Bay, stated his support for Item C-1 and announced a Maritime Museum event to be held January 30th at 6:30 pm at the Inn at Morro Bay. For more information, visit www.morrobaymaritime.org.

Michael Wolff, Avocado Shack located at 2790 North Main street, provided the business spot. For more information, visit www.avocadoshack.net.

Mimi Goldberg, Morro Bay, spoke regarding homeless camping enforcement and the need for a warming shelter.

Betty Winholtz, Morro Bay, registered a complaint the Morro Bay Public Facilities Corporation Board of Directors meeting was held at the same time as the City Council meeting and hoped that would be avoided in the future. She also suggested the City fund improvements to bike paths on the west side of the highway.

Traci Theis, San Luis Obispo County Office of Education, spoke in favor of Item A-5 and suggested the Council consider a complete flavor ban in the future.

Barry Branin, Morro Bay, asked when will the City start repairing pipes outlined in OneWater Plan.

Cynthia Hawley raised questions regarding Water Reclamation Facility project design.

Melanie Williams Mahan, Morro Bay, expressed concern about issues between the beach and Cloisters walkway, including homeless encampment, fire potential, and the need to clear the drainage area to improve creek flow.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/mCdlqJ-h1LU?t=2393>

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 FOR THE OCTOBER 22, 2019, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE NOVEMBER 6, 2019, CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 ADOPTION OF RESOLUTION NO. 01-20 ESTABLISHING THE 2020 CITY COUNCIL
MEETING CALENDAR AND BUDGET DEVELOPMENT SCHEDULE;
(ADMINISTRATION)

RECOMMENDATION Staff recommends the City Council review the proposed Council meeting calendar and adopt Resolution No. 01-20 approving the 2020 City Council Meeting Calendar and Budget Development Schedule.

A-4 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF
REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON
ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)

RECOMMENDATION: Appoint Council Member Dawn Addis as Mayor Pro Tempore as well as appoint representatives to serve on the various County

or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2020 as shown on the attached appointment list.

- A-5 ADOPTION OF ORDINANCE NO. 627 CONCERNING TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 627, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."

- A-6 ADOPTION OF RESOLUTION NO. 02-20 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2019/2020 SURRENDERED AND ABANDONED VESSEL EXCHANGE GRANT CONTRACT WITH THE STATE OF CALIFORNIA DIVISION OF BOATING AND WATERWAYS IN THE AMOUNT OF \$20,000.00 FOR REMOVAL OF ABANDONED/SURRENDERED VESSELS AND HAZARDS TO NAVIGATION; (HARBOR)

RECOMMENDATION Staff recommends the City Council adopt Resolution No. 02-20, authorizing the Harbor Director to execute the attached 2019/2020 Surrendered and Abandoned Vessel Exchange (SAVE) Grant Contract Agreement #C19S0602 with the California Division of Boating and Waterways (DBW) for \$20,000.00 for the funding of removal of abandoned/surrendered vessels and hazards to navigation.

- A-7 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS; (HARBOR)

RECOMMENDATION: Staff recommends the City Council authorize a two-person delegation (the Mayor and Harbor Director) to attend the California Marine Affairs and Navigation Conference (C-MANC) 2020 "Washington Week" meetings in Washington, D.C. slated for March 2-4, 2020 and to represent the City's interests in the nation's capital.

Mayor Headding opened public comment for the Consent Agenda.

Benan Akkare spoke to Item A-5 and suggested the Council postpone adoption of ordinance to review newly adopted FDA regulations.

Inger Appanaitis, SLO County Health, spoke regarding Item A-5, provided an overview of policy changes that occurred in the past month at the federal level and noted the County recently banned sale of e-cigarettes in unincorporated areas.

Dr. Bob Campbell, member of SLO County Health Commission, spoke to Item A-5, urging the Council to reinstate language banning all flavored products.

Betty Winholtz, Morro Bay, addressed Item A-4, expressing concern stating Council assignments did not provide equitable representation for female council members. She also asked why SLO County Trust Fund and CMC do not have Council representation.

Melanie Williams Mahan, Morro Bay, spoke to Item A-5, expressing concern about impacts on business owners and that a ban on legal tobacco will result in the sale of bootleg products.

The public comment period was closed.

Council Member McPherson pulled Items A-4 and A-5.

MOTION: Council Member McPherson moved approval of Consent Agenda Items A-1, A-2, A-3, A-6 and A-7. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

A-4 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)
<https://youtu.be/mCdlqJ-h1LU?t=3211>

Council Member McPherson noted she had been Homeless Services Oversight Committee (“HSOC”) representative for 3 years and requested the record be corrected to reflect she is the appointee and Council Member Davis is the alternate.

MOTION: Council Member McPherson moved for approval of Item A-4 with the change suggested for representative to HSOC. The motion was seconded by Council Member Davis.

Following discussion, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

A-5 ADOPTION OF ORDINANCE NO. 627 CONCERNING TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY’S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)
<https://youtu.be/mCdlqJ-h1LU?t=3569>

Council Member McPherson asked City Attorney Neumeyer to review the regulations as presented.

Council Member McPherson expressed concern the ordinance, as proposed, would be in conflict with regulations being considered at the State and Federal level and, while she supported a ban on flavored products that appeal to children, felt it was too soon to ban legal products sold to adults.

MOTION: Council Member McPherson moved to table this tonight and bring back on future when we’ve had more time to study and determine what we want to do with this ordinance. The motion was seconded by Council Member Davis and carried 3-2 by roll call vote with Council Member Addis and Mayor Heading opposed.

B. PUBLIC HEARINGS

- B-1 PUBLIC HEARING FOR AND CONSIDERATION OF MORRO BAY GARBAGE SERVICES BASE-YEAR RATE ADJUSTMENT APPLICATION AND ADOPTION OF RESOLUTION NO. 03-20; (PUBLIC WORKS)
<https://youtu.be/mCdlqJ-h1LU?t=4331>

Management Analyst Burlingame provided the report and responded to Council inquires.

Mayor Headding opened the Public Hearing.

Morro Bay Garbage Service representative, Peter Cron, made a brief presentation and, along with Controller, Dane Johnson, responded to Council inquires.

Mayor Headding opened Public Comment.

Betty Winholtz, Morro Bay, suggested using the San Luis Obispo rate setting process may not be in Morro Bay's best interest and questioned the proposed vehicle replacement schedule.

The public comment period was closed.

Staff and Morro Bay Garbage Service representatives responded to questions raised during public comment.

City Clerk Swanson stated 39 written protests, which had not been validated or verified, were received by the City Clerk's office, which did not constitute a majority of the customers/property owners.

The Public Hearing was closed.

MOTION: Mayor Headding moved the Council adopt Resolution No. 03-20 increasing solid waste rates as outlined in the Fiscal Impact section of the staff report because there is not a majority protest against such increase. The motion was seconded by Council Member McPherson.

Following discussion, the motion carried 5-0 by roll call vote.

C. BUSINESS ITEMS

- C-1 ADOPTION OF RESOLUTION 04-20 APPROVING FINANCING OF THE WATER RECLAMATION FACILITY PROJECT WITH PROCEEDS FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER THE WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) (PUBLIC WORKS/SPECIAL COUNSEL/FINANCE)
<https://youtu.be/mCdlqJ-h1LU?t=6362>

Water Reclamation Facility Program Manager Casares, Special Counsel Luck, Legal Counsel Neumeyer, and Finance Director Callaway provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened.

Betty Winholtz, Morro Bay, asked for clarification regarding dollar amounts in the Discussion section of staff report and what would happen if the City was not be able to do the recycling portion of the project.

The public comment period for Item C-1 was closed.

Staff responded to questions raised during public comment.

The Mayor summarized comments made by the Board of Directors during the Morro Bay Public Facilities Corporation at its January 14, 2020 Special Meeting.

MOTION: Mayor Headding moved to adopt Resolution 04-20 approving proceedings to finance the new Water Reclamation Facility (WRF) Project from the proceeds of two installment sale agreements between the City and the Morro Bay Public Facilities Corporation, as each agreement is assigned to the United States Environmental Protection Agency (USEPA) and related documentation. Specifically, City Council approval of Resolution 04-20 authorizing three items:

1. Approves the Wastewater System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Wastewater Pledged Collateral pursuant to Section 4.5(a) of the Wastewater Installment Sale Agreement.
2. Approves the Water System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Water Pledged Collateral pursuant to Section 4.5(a) of the Water Installment Sale Agreement.
3. Approves of the WIFIA Credit Agreement for the Wastewater System Project and the WIFIA Credit Agreement Water System Project.

The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

C-2 AUTHORIZATION FOR THE CITY MANAGER SIGN A NON-BINDING MEMORANDUM OF UNDERSTANDING (MOU), BETWEEN THE CAYUCOS SANITARY DISTRICT, TRUST FOR PUBLIC LANDS, CHEVRON AND THE CITY OF MORRO BAY, FOR CONSERVATION OF LOTS 6SW AND 6NW, MORE COMMONLY KNOWN AS “DOG BEACH”; (COMMUNITY DEVELOPMENT)
<https://youtu.be/mCdlqJ-h1LU?t=7516>

Community Development Director Graham provided the report and responded to Council inquires.

The public comment period for Item C-2 was opened.

Betty Winholtz, Morro Bay, asked about lot size and why a vote of the people had been removed from item 9.

The public comment period for Item C-2 was closed.

Staff responded to questions raised during public comment.

MOTION: Council Member Davis moved to authorize the City Manager to sign a non-binding MOU between the City of Morro Bay, Cayucos Sanitary District, Trust for Public Lands and Chevron for conservation and City ownership

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of Lots 6SW and 6NW (Dog Beach), as shown on Attachment A of the MOU. The motion was seconded by Mayor Headding and carried 5-0 by roll call vote.

- C-3 2019 AND 2020 CITY GOALS AND ACTION ITEMS STATUS UPDATE; (CITY MANAGER)
<https://youtu.be/mCdlqJ-h1LU?t=8957>

City Manager Collins provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

The Council did not take any formal action on this item.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

Council Member Davis suggested a future agenda item to examine vaping and tobacco use regulations as separate items for Council review to provide guidance to staff. Following discussion, there was Council support for an agenda item to review elements of the ordinance to finds points of concurrence prior to introduction of the new ordinance.

Council Member Heller noted the Council received a letter from Chairperson Reisner on behalf of the Harbor Advisory Board and suggested an agenda item to consider establishing a policy requiring the advisory boards to submit an annual report. There was no support for a future agenda item to consider revising the advisory body policies to require such a report.

E. ADJOURNMENT

The meeting adjourned at 9:20 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
FEBRUARY 5, 2020 – 9:00 A.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-3
MEETING DATE: February 11, 2020

PRESENT: John Headding Mayor
 Robert Davis Council Member
 Marlys McPherson Council Member

ABSENT: Dawn Addis Council Member
 Jeff Heller Council Member

STAFF: Scott Collins City Manager
 Chris Neumeyer City Attorney (*Via teleconference*)
 Rob Livick Public Works Director
 Scott Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 9:00 a.m. with all but Council Members Addis and Heller present.

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

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda; seeing none, the public comment period was closed.

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

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 066-331-046
Property Negotiators: Vistra Energy
Agency Negotiators: Scott Collins, City Manager; Rob Livick, Public Works Director; Eric Casares, WRF
 Program Manager and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment – Easement Acquisition

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 10:35 a.m.

Recorded by:

Dana Swanson
City Clerk

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AGENDA NO: A-4

MEETING DATE: February 11, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: February 4, 2020

FROM: Eric Endersby, Harbor Director

SUBJECT: Approval of Resolution No. 11-20 Authorizing Execution of a Deed and Lease Restriction and Certificate of Acceptance for Lease Site 87-88/87W-88W (TLC Family Enterprises, 833 Embarcadero) to Incorporate California Coastal Commission Permit Conditions

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 11-20 authorizing the City Manager to execute a Deed and Lease Restriction and Certificate of Acceptance for Lease Site 87-88/87W-88W with TLC Family Enterprises, located at 833 Embarcadero Road, in order to incorporate the California Coastal Commission permit conditions for the redevelopment of the site into the property deed and lease.

ALTERNATIVES

Do not approve Resolution No. 11-20 for approval of a Deed and Lease Restriction and Certificate of Acceptance on the lease site, and direct staff accordingly. This action would, however, jeopardize the validity of the Coastal Commission’s approved permit for the site’s City-approved and required redevelopment.

FISCAL IMPACT

There is no fiscal impact to this action.

BACKGROUND

On December 11, 2018, the City executed a new 50-year Master Lease Agreement for Lease Site 87-88/87W-88W based on the complete mixed-use redevelopment of the site by TLC Family Enterprises, with redevelopment performance parameters outlined in the lease. To date, TLC has met all those parameters, including the acquisition of the necessary Coastal Development Permit from the California Coastal Commission (“Coastal”).

DISCUSSION

As part of their permit approvals, Coastal requires their permit conditions be memorialized in the attached Deed and Lease Restriction (Attachment 1) to be recorded with the County to ensure their conditions carry with the property. In the past Coastal has required the City and tenant to execute a lease amendment in order to incorporate their permit approvals into a lease, but are now requiring this Deed and Lease Restriction. This is “standard” practice for Coastal on our lease sites.

In addition, the completion of the attached Certificate of Acceptance (Attachment 2) of the Deed and Lease Restriction is necessary in order for the County Clerk to record the Deed and Lease

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: CFN

Restriction document.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 11-20, included with this report as Attachment 3, approving the Deed and Lease Restriction and Certificate of Acceptance as presented to enable TLC to continue with the lease-required redevelopment of Lease Site 87-88/87W-88W.

ATTACHMENTS

1. California Coastal Commission Deed and Lease Restriction for Lease Site 87-88/87W-88W
2. Certificate of Acceptance for recordation of the Deed and Lease Restriction
3. Resolution No. 11-20

1 RECORDING REQUESTED BY:

2 WHEN RECORDED MAIL TO:
3 California Coastal Commission
4 725 Front Street, Suite 300
5 Santa Cruz, CA 95060-4508
6 Attn: Legal Division

7 **DEED AND LEASE RESTRICTION**

8 I. WHEREAS, City of Morro Bay
9 _____
10 (hereinafter referred to as “Owner / Lessor”) is the record owner and lessor of the real property
11 described in EXHIBIT A, attached hereto and incorporated herein by this reference (hereinafter referred
12 to as the “Property”); and

13 II. WHEREAS, on December 11, 2018, Owner/Lessor conveyed to TLC Family Enterprises,
14 a California Corporation (hereinafter referred to as “Lessee”) a leasehold interest in the Property
15 (hereinafter referred to as the “Lease”); and

16 III. WHEREAS, the California Coastal Commission (hereinafter referred to as the
17 “Commission”) is a public agency created and existing under the authority of section 30300 of the
18 California Public Resources Code (hereinafter referred to as the “PRC”), a section of the California
19 Coastal Act of 1976 (Division 20 of the PRC; hereinafter referred to as the “Act”); and

20 IV. WHEREAS, the Property is located within the coastal zone as defined in the Act (PRC
21 § 30103); and

22 V. WHEREAS, pursuant to section 30600(a) of the PRC, Lessee applied to the Commission
23 for a coastal development permit to undertake development, as defined in the Act (PRC § 30106), on the
24 Property; and

25 VI. WHEREAS, on May 8, 2019, the Commission conditionally approved coastal
26 development permit number CDP 3-19-0011 (hereinafter referred to as the “Permit”),

1 subject to, among other conditions, the conditions listed under the heading “Special Conditions” in the
2 Notice of Intent to Issue Permit dated May 14, 2019, attached hereto as EXHIBIT B and
3 incorporated herein by this reference (hereinafter referred to as the “Special Conditions”), for the
4 reasons stated in the “Findings and Declarations” adopted by the Commission in support of its action,
5 which findings and declarations (along with any other documents that the Permit required to be
6 submitted to the Commission and with which the Permit requires compliance) are available from the
7 Commission upon request; and

8 VI. WHEREAS, the Commission found that, but for the imposition of the Special
9 Conditions, the proposed development could not be found consistent with the provisions of the Act and
10 that a permit could therefore not have been granted; and

11 VII. WHEREAS, Lessee has elected to comply with the Special Conditions, which require,
12 among other things, execution and recordation of this Deed and Lease Restriction, so as to enable Lessee
13 to undertake the development authorized by the Permit.

14
15 NOW, THEREFORE, in consideration of the issuance of the Permit to Lessee by the
16 Commission, the undersigned Owner/Lessor and Lessee, for themselves and for their heirs, assigns, and
17 successors-in-interest, hereby irrevocably covenant with the Commission that the Special Conditions
18 (shown in EXHIBIT B hereto) shall at all times on and after the date on which this Deed and Lease
19 Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use and
20 enjoyment of the Property that are hereby attached to the deed and lease to the Property as fully effective
21 components thereof.

22
23 1. DURATION. (a) This Deed and Lease Restriction shall remain in full force and effect
24 and shall bind Owner/Lessor, Lessee, all their assigns or successors-in-interest and other persons in
25 possession of the Property during the period that either the development authorized by the Permit, or any
26

1 part or modification thereof, or the Permit, or any modification or amendment thereof, remains in
2 existence on or with respect to, and thereby confers benefit upon, the Property.

3 (b) Furthermore, in the event of a termination or extinguishment of this Deed and Lease
4 Restriction other than pursuant to a Commission-approved amendment to the Permit, the Special
5 Conditions shall, notwithstanding any such termination or extinguishment, continue to restrict the use
6 and enjoyment of the Property as they did prior to that termination or extinguishment and to bind
7 Owner/Lessor, Lessee, their assigns or successors-in-interest and other persons in possession of the
8 Property, so long as either or both of the conditions described in paragraph 1(a) continue to exist on or
9 with respect to the Property.

10 2. TAXES AND ASSESSMENTS. It is intended that this Deed and Lease Restriction is
11 irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, section
12 8, of the California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or
13 successor statute. Furthermore, this Deed and Lease Restriction shall be deemed to constitute a
14 servitude upon and burden to the Property within the meaning of section 3712(d) of the California
15 Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.

16 3. RIGHT OF ENTRY. The Commission or its agent may enter onto the Property at times
17 reasonably acceptable to Owner/Lessor and Lessee to ascertain whether the use restrictions set forth
18 above are being observed.

19 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner/Lessor, Lessee
20 or other persons in possession of the Property, whether written or oral, which uses or would cause to be
21 used or would permit use of the Property contrary to the terms of this Deed and Lease Restriction will be
22 deemed a violation and a breach hereof. The Commission and Owner/Lessor and Lessee may pursue
23 any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed
24 and Lease Restriction. In the event of a breach, any forbearance on the part of any such party to enforce
25 the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any
26 subsequent breach.

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, _____, 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.

Signature _____ (Seal)

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, _____, 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.

Signature _____ (Seal)

EXHIBIT A

(Legal Description of Property)

EXHIBIT A

Legal Description

Real Property in the City of Morro Bay, County of San Luis Obispo, State of California, which is more particularly described as Lease Site 87 – 88 and 87W – 88W, as delineated as Lot 21 as shown on Parcel Map of the City of Morro Bay No. 68-30, filed in Book 3, Page 10, in the City of Morro Bay, County of San Luis Obispo, recorded on October 10, 1968.

833 Embarcadero Road, Morro Bay, California
APN 066-322-009

EXHIBIT B
(Notice of Intent to Issue Permit)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)

NOI Issue Date: May 14, 2019

Page 1 of 8

Please note: this is NOT a coastal development permit

A coastal development permit (CDP) for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. The sole purpose of this notice of intent (NOI) is to inform the permittee(s) of the steps necessary to obtain a valid and effective CDP. In order for the CDP to be effective, Commission staff must issue the CDP, and the permittee(s) must sign and return a copy of the CDP to the Commission. Commission staff cannot issue the CDP until each of the “prior to issuance” (PTI) conditions have been fulfilled (all of the conditions, including the PTI conditions, for this CDP are identified later in this notice).

Unless otherwise specified, the Commission’s approval of this CDP is valid for two years from the date of approval. To prevent expiration of the CDP, the permittee(s) must fulfill the PTI conditions, obtain and sign the CDP, and commence development within two years of the approval date specified below (unless otherwise specified). The permittee(s) may also apply for an extension of the CDP pursuant to California Code of Regulations, Title 14, Section 13169.

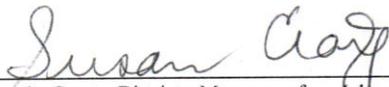
CDP 3-19-0011 was approved by the California Coastal Commission on May 8, 2019 and allows for the demolition of an existing, mostly vacant two-story 6,687-square-foot building; construction of a new 7,994-square-foot, two-story building with restaurant and retail use on the ground floor and an eight-unit standard operating hotel on the second floor; construction of a series of public coastal access improvements, including a ten-foot-wide segment of the Harborwalk and a five-foot-wide vertical accessway, a public outdoor seating area, public restrooms, and a children’s play area; relocation of floating dock and pilings; and related improvements on the Bayfront at 833 Embarcadero in the City of Morro Bay, San Luis Obispo County (APN 066-322-001; Land Lease Site 87-88; Water Lease Sites 87W-88W). CDP 3-19-0011 is subject to certain terms and conditions, including the standard and special conditions beginning on page 2 of this NOI.

If you have any questions regarding this notice, including regarding how to fulfill the PTI conditions, please contact Sarah Carvill in the Central Coast District Office at the address and phone number above. **Please sign the “Acknowledgement” on page 2 and return a signed copy of this NOI to the Central Coast District Office.**

NOTICE OF INTENT TO ISSUE CDP
CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)
NOI Issue Date: May 14, 2019
Page 2 of 8

NOI issued

By my signature below, this notice of intent to issue a CDP is issued on behalf of the California Coastal Commission on May 14, 2019.



Susan Craig, Central Coast District Manager, for John Ainsworth, Executive Director

Acknowledgement

The undersigned permittee(s) acknowledge receipt of this notice and fully understand its contents, including all conditions imposed. **Please sign and return a copy of this notice to the Central Coast District Office at 725 Front Street Suite 300, Santa Cruz, CA 95060.**



T.L.C. Family Enterprises Representative

6/1/19

Date

STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

NOTICE OF INTENT TO ISSUE CDP
CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)
NOI Issue Date: May 14, 2019
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This permit is granted subject to the following special conditions:

1. **Approved Development.** Coastal Development Permit (CDP) 3-19-0011 authorizes the development expressly proposed by the Applicant (i.e., ground floor retail and restaurant use, an eight-unit standard operating hotel, and lateral and vertical public access improvements) as described and shown in **Exhibit 3**, including with respect to the room rates and other hotel amenities as shown in **Exhibit 4**, and as modified by the conditions of this CDP. The Permittee shall undertake development in accordance with the approved CDP. Any proposed changes to the development shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission-approved amendment to this CDP unless the Executive Director determines that no amendment is legally required.

2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of Final Plans to the Executive Director for review and approval. The Final Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Final Plans shall be in substantial conformance with the proposed plans (titled "Harborwalk Plaza" and dated received in the Coastal Commission's Central Coast District Office January 7, 2019 (see **Exhibit 3**)), shall clearly show the development's siting and design, including through elevation and site plan views, and shall comply with the following requirements:
 - a. **Utilities.** All utilities shall be placed underground.

 - b. **Drainage and Runoff.** A post-construction drainage and runoff control system shall be identified that is sited and designed: to collect, filter, treat, and direct all site drainage and runoff in a manner intended to protect and enhance coastal resources as much as possible; to prevent pollutants, including increased sediments, from entering coastal waters as much as possible; to filter and treat all collected drainage and runoff to minimize pollutants as much as possible prior to infiltration or discharge from the site; to retain runoff from roofs, driveways, decks, and other impervious surfaces onsite as much as possible; to use low impact development (LID) best management practices (BMPs) as much as possible; to be sized and designed to accommodate drainage and runoff for storm events up to and including at least the 85th percentile 24-hour runoff event (allowing for drainage and runoff above that level to be likewise retained and/or conveyed in a non-erosive manner); to direct all drainage and runoff not infiltrated on site to City infrastructure able to handle the flows, and not directly to the Bay; and to include ongoing maintenance and management procedures (including at the least provisions for annual pre-storm season and post-storm event evaluation and repair/maintenance) that meet professional standards for maintenance of such systems, and that will apply for the life of the project.

 - c. **Pilings and Substructure.** The Plans shall identify all pilings and all other structural substructure elements to be removed, installed, or otherwise used in association with the proposed development, including coating materials. New pilings shall be made of steel or

NOTICE OF INTENT TO ISSUE CDP
CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)

NOI Issue Date: May 14, 2019

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reinforced concrete and sealed with a marine grade epoxy/polyurethane coating. New wood pilings shall not be installed. Any other wooden substructure components (either proposed new or to be demolished/removed) shall be clearly described on the Plans, including their coatings and preservatives, and shall be consistent with the requirements of the Commission's standard BMPs for use of treated wood (as shown on **page 3 of Exhibit 3**). Measures proposed to minimize the hydro-acoustic noise impacts of any piling driving shall be described on the Plans.

- d. Loading Zone.** Subject to approval of the City, the Plans shall designate one parking space along the Embarcadero and adjacent to the public plaza for general passenger loading and unloading, limited to 10 minutes per vehicle. The Final Plans shall describe that the curb on this parking space shall be colored white and shall also provide for signage to be placed adjacent to the space denoting its use for ten-minute passenger loading and unloading only. Any reference to this space as dedicated only for hotel guest loading and unloading shall not be included on the Final Plans. Evidence of review and approval of the loading and unloading zone location by the City shall be provided with the Final Plans.

The Permittee shall undertake development in accordance with the approved Final Plans, unless the Commission amends this CDP or the Executive Director determines that no amendment is legally required for any proposed minor deviations. All requirements of the approved Final Plans shall be enforceable components of the CDP.

- 3. Hotel Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
- a. General Occupancy Requirements.** All eight hotel units shall be open and available to the general public. No individual ownership or long-term occupancy of the hotel units shall be allowed.
 - b. Length-of-Stay Provisions.** The eight hotel units shall not be rented to any individual, family, or group for more than 29 consecutive days, and not for more than 14 days between the Friday of Memorial Day weekend and Labor Day (inclusive of those two dates).
 - c. Conversion Prohibited.** The conversion of any of the hotel units to limited-use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.
 - d. Low-Cost Units.** The one year-round low-cost hotel unit and one part-time low-cost unit shall be available to the general public at rates no higher than as proposed by the Applicant, as allowed to be modified following the Consumer Price Index as specified in subsection (e) below (see **Special Condition 1** and **Exhibit 4**).

NOTICE OF INTENT TO ISSUE CDP
CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)

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- e. **Monitoring Reports for Low-Cost Hotel Units.** The Permittee (or its affiliated designee) shall annually provide, for Executive Director review and approval, two copies of a monitoring report for the one year-round low-cost and one part-time low-cost hotel units, beginning one year after occupancy of the hotel, and annually thereafter. The monitoring reports shall include, at a minimum, the average daily rate charged each month during the preceding year for the year-round low-cost unit, and for the part-time low-cost unit for those days in each month when it is offered on a low-cost basis; occupancy rates for the low-cost units for each applicable month (modified as above for the part-time low-cost unit); a description of proposed low-cost rates for the upcoming year (which shall be allowed to increase at no more than the annual Consumer Price Index each year without a CDP amendment), and an assessment of compliance with the terms and conditions of this CDP regarding the low-cost units. The ultimate intent of this reporting requirement is that the Permittee (or its affiliated designee) will make necessary changes as identified in any approved monitoring report as required by the Executive Director to maintain consistency with the terms and conditions of this CDP.
4. **Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two full-size sets of a Public Access Management Plan (Access Plan). The Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public use of the public access areas of the proposed development (including the bayfront lateral accessway, the connecting vertical accessways, the public outdoor seating areas, the public plaza and children's play area, the public restrooms, wayfinding and public access signs, etc.). The Access Plan shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission as shown in **Exhibit 3**, except as modified by these special conditions, and shall at a minimum include the following:
- a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use).
- b. **Public Access Signs/Materials.** The Access Plan shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs (including the public access use hours described in **Special Condition 4(d)**) shall be provided. At a minimum, public access signs shall be placed near the entrance to the public plaza at the Embarcadero, near the intersection of the public plaza and the bayfront lateral accessway, and near the vertical access entryway at the Embarcadero. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At least one

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CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)
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public access interpretive sign (appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway.

- c. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- d. **Public Access Use Hours.** The public access areas and amenities along the bayfront lateral accessway and vertical accessways shall be open to the general public 24 hours per day and shall be available free of charge, except for the public restrooms, which shall be available free of charge during business hours, and may be closed outside of business hours. Business hours shall include any time at which the market hall and/or any of the retail shops are open to the public. The floating dock shall be open to the public for general pedestrian access from at least one hour before sunrise to one hour after sunset. Signs discouraging the public from walking on the docks during these hours are prohibited.
- e. **Public Outdoor Seating Areas.** No restaurant condiments or table settings shall be allowed in the public outdoor seating areas on the north and west sides of the building. Signs shall be posted in these areas indicating that seating is available for public use and no purchase is necessary to utilize the area.
- f. **Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use prior to occupancy of the hotel units.
- g. **Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

The Permittee shall undertake development in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.

- 5. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access, including with respect to public parking and other coastal resources.
 - (b) **Construction Methods.** Construction and staging zones shall be limited to the minimum area required to implement the approved project. The Plans shall limit construction activities to avoid coastal resource impacts.

NOTICE OF INTENT TO ISSUE CDP
CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project)
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- (c) **Construction Best Management Practices (BMPs).** The Construction Plan shall also identify the type and location of erosion control/water quality BMPs that will be implemented during construction to protect coastal resources, including the following:
- i. **Runoff Protection.** Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into storm drains or otherwise offsite.
 - ii. **Equipment BMPs.** All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site.
 - iii. **Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).
 - iv. **Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
- (d) **Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (e) **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (f) **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

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(g) **Daylight Work Only.** All work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset), except for interior work. Nighttime work (other than interior work) and lighting of the exterior work area are prohibited.

The Permittee shall undertake development in accordance with the approved Construction Plan, unless the Commission amends this CDP or the Executive Director determines that no amendment is legally required for any proposed minor deviations. All requirements of the approved Construction Plan shall be enforceable components of the CDP.

6. **Transportation Demand Management Program.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Transportation Demand Management Program (TDMP). Said program shall include such measures as provision of bicycles for guests and methods for encouraging use of public transit, carpooling, and alternative transportation methods (e.g., bicycling to work) by employees. The Permittee shall undertake the development in accordance with this condition and the approved TDMP.
7. **Eelgrass.** The Applicant shall be subject to the California Eelgrass Mitigation Policy (CEMP) and shall complete pre- and post-construction eelgrass surveys and mitigate for any impacts to eelgrass as required by the CEMP and as specified in City Planning Condition 12.
8. **Compliance with Local Conditions of Approval.** The proposed development was approved by the City of Morro Bay via Conditional Use Permit #UP0-509 (see **Exhibit 6**). The City's conditions associated with that action remain in effect. In the event of conflict between any such conditions imposed by the City and the terms and conditions of this CDP, the terms and conditions of this CDP shall prevail.
9. **Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

CERTIFICATE OF ACCEPTANCE

(Government Code, Section 27281)

THIS IS TO CERTIFY the CITY OF MORRO BAY, a municipal corporation, Grantee herein, acting by authority granted by Resolution No. 11-20, hereby accepts the conditions applicable to the real property, or interest therein, memorialized by the within deed and consents to the recordation thereof by its duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and the City's official seal has been affixed, this ___ day of _____, 2020.

THE CITY OF MORRO BAY, a municipal corporation

By: _____
Scott Collins, City Manager

RESOLUTION NO. 11-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A DEED AND LEASE RESTRICTION
AND CERTIFICATE OF ACCEPTANCE
FOR LEASE SITE 87-88/87W-88W, LOCATED AT 833 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, TLC Family Enterprises (Travis Leage and Cherise Hansson) is the lessee of Lease Site 87-88/87W-88W since 2018, and is a tenant in good standing; and

WHEREAS, TLC Family Enterprises' lease requires complete redevelopment of the Lease Site consisting of elimination of all existing improvements and building a new mixed-use facility including retail, restaurant and hotel rooms, docks, public access and other improvements, for which TLC was granted Precise Plan approval from the City of Morro Bay Planning Commission; and

WHEREAS, TLC Family Enterprises was granted California Coastal Commission approval for their redevelopment of the Lease Site; and

WHEREAS, the California Coastal Commission requires recordation of a Deed and Lease Restriction in order to incorporate their permit approvals into the property deed and lease, which also requires a Certificate of Acceptance in order to be recorded.

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

1. The attached Deed and Lease Restriction, and Certificate of Acceptance are hereby approved; and
2. The City Manager is hereby authorized to execute said Deed and Lease Restriction and Certificate of Acceptance.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 11th day of February, 2020 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: C1
MEETING DATE: February 11, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 4, 2020
FROM: Jennifer Callaway, Finance Director
SUBJECT: Presentation and Discussion of the Fiscal Year 2018/19 Comprehensive Annual Financial Report and recommendation to pay-off CalPERS liabilities for the Tier II and Tier III Unfunded Liabilities.

RECOMMENDATION

1. Council receive and provide feedback on the FY 2018/19 Comprehensive Annual Financial Report (CAFR) for the period July 1, 2018 through June 30, 2019; and
2. Adopt Resolution No. 12-20 approving allocation of \$486,504 in FY 2018/19 year-end revenues over expenditures to pay off the Tier II and Tier III (PEPRA) unfunded accrued liabilities for the Police, Fire and Miscellaneous classifications.

BACKGROUND

In the City's continued effort for increased transparency and fiscal accountability, in 2015 the City issued a Request for Proposal (RFP) for auditing services and the Pun Group was the selected as the most responsive proposer. The City entered into agreement with the Pun Group to perform auditing services for the fiscal years ending June 30, 2015, 2016, 2017 and 2018, with the option to renew for two additional fiscal years (2019 through 2020). The Auditors were onsite in October 2019 to review expenditures, revenues, contracts and general accounting processes for both accuracy and internal controls (fraud prevention). After the audit team collected its information, the issues discovered, if any, are presented as audit findings in the attached Comprehensive Annual Financial Report (CAFR). The City received no audit findings for FY 2018/19.

DISCUSSION

The Pun Group issued a Report on Internal Control Related Matters Identified in the Audit which highlights that the one outstanding Audit Finding from FY 2016/17 related to Accounting Policies and Procedures has been implemented and considered closed. Staff is pleased to report that there are no new findings for FY 2018/19.

Highlights of the CAFR results include:

Independent Auditor's Report (Financial Section Tab, page 1 last paragraph)

The auditors have given the City's financial statements a "clean" audit opinion for the year ended June 30, 2019, giving reasonable assurance that the financial statements are presented "fairly, in all material respects..."

Management's Discussion and Analysis (MD&A) (pages 5 through 15)

Page 5 of the CAFR begins the MD&A section of the report wherein summaries are presented

Prepared By: JC Dept Review: JC
City Manager Review: SC City Attorney Review: CFN
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for the City on an entity-wide basis. Information is provided in this section with a year-to-year view, explaining how fund balances have changed between fiscal years ending June 30, 2018 and June 30, 2019. Information is also presented on the adopted General Fund budget to actuals.

Statement of Net Position (page 20)

The Statement of Net Position serves as a useful indicator of a government's financial position. The City's government activities net position is \$115.3 million at fiscal year-end as compared to \$115.8 million the prior year, an overall decrease of \$500K over the prior fiscal year.

The City's business-type activities increased from \$32.8 million to \$38.7 million, an increase of \$5.9 million. The increase is largely attributable to the collection of utility service charges to fund construction of the City's new Water Reclamation Facility.

The largest portion of the net assets, \$119.9 million, represents the City's investment in its capital assets and infrastructure. Restricted assets of \$4.9 million are resources that are subject to external restrictions on how they may be used. As of June 30, 2019, net position of Government activities totaled \$115.3 million

Basic Financial Statements (pages 17 through 86, including footnotes)

This section contains basic financial statements, including the "Government-Wide" statement of Net Position and Statement of Activities, financial statements for the fund types including Governmental Funds, Proprietary Funds and Fiduciary Funds.

The footnotes section provides details on significant items such as the City's cash and investments (note 2 beginning on page 61), its long term obligations related to loan payables, pension related debt and compensated absences (note 7 page 68), the net pension liability for both the City's miscellaneous, Fire safety and Police safety pension plans (note 8 on page 71), and a discussion of the City's other post-employment benefit plans (note 9 on page 78).

Required Supplementary Information (pages 87 through 93)

The schedules of Budgetary Comparison Schedules and Pension Plan Contributions are provided in this section.

Supplementary Information (pages 95 through 133)

This section provides budget to actual information for "non-major" funds which represent less than 10% of the City's total assets/liabilities/revenues or expenditures.

Statistical Section (pages 135 through 185)

This section presents demographic statistics and ten-year historical financial data for the City, including information on assessed valuations, fund balances, debt, property tax rates, personnel (full-time equivalent) history, principle employers, and other financial and demographic disclosures.

General Fund Year-End Revenues Over Expenditures

Through prudent spending and receipt of higher than expected property tax, sales tax, and Transient Occupancy Tax revenues, the City's General Fund closed FY 2108/19 with \$727,820 of revenues over expenditures. This savings is largely attributable to personnel savings due to vacancies, lower than expected legal fees and other contractual services costs. Lastly, approximately \$167,000 of the savings was due to the early payment of the City's Fire Safety Side fund (CalPERS) in FY 2017/18. Staff expected this CalPERS savings for FY 2018/19 with funds due back to the General Fund Emergency Reserve which funded the prepayment. The vacancies that contributed to this savings have currently been filled and we do not anticipate significant savings for FY 2019/20 at this time.

Staff recommends that the City Council adopt resolution No. 12-20 to appropriate \$486,504 from the FY 2018/19 year-end savings to pay off the unfunded liabilities for the City's Tier II and Tier III-PEPRA (Public Employee Pension Reform Act) CalPERS retirements formulas for the Miscellaneous, Fire and Police plans. The payments are broken down as follows:

Classification	Tier II UAL	Tier III UAL	Tier II Interest Savings	Tier III Interest Savings
Fire	\$ 49,270	\$ 27,881	\$ 20,020	\$ 5,224
Police	\$ 174,554	\$ 54,194	\$ 96,856	\$ 10,154
Miscellaneous	\$ 102,759	\$ 77,846	\$ 19,254	\$ 8,477
Total by Tier	\$ 326,583	\$ 159,921	\$ 136,130	\$ 23,855
Total	\$ 486,504		\$ 159,985	

There are three benefits to payoff of these unfunded liabilities which are as follows:

1. Result in a savings to the City of approximately \$160,000 in total interest that the City will not have to pay over the next two to eleven years (depending on the retirement plan).
2. This will help to prevent the Tier II and PEPRA formulas from accruing significantly larger unfunded liabilities (as has occurred with the Tier I formulas), saving the city money in the long-term and proactively managing liabilities.
3. Prepayment will result in reduced expenditures for FY 2020/21 of approximately \$100,000 which will assist in budget balancing efforts.

It should be noted that City staff will be recommending that the General Fund year-end revenues over expenditures be used to pay off the unfunded accrued liabilities for all City employees, including employees funded in the Utilities, Harbor and Transit enterprise funds. This will yield savings to the enterprise funds over the next two to eleven years which translates to reduced operating costs for enterprise fund customers.

By policy, the City's General Fund Emergency Reserve is to maintain a target funding level of 28% of annual, on-going operating expenditures based on the most recent adopted budget and a minimum target funding level of 25% of annual on-going operating expenditures based on the most recent adopted budget.

Based on the adopted FY 2019/20 adopted budget, the City's target and minimum funding levels for the General Fund Emergency Reserve are outlined below:

FY 2019/20 Adopted Budget (on-going expenditures)	\$ 13,682,443
GFER Target Funding Level - 28%	\$ 3,831,084
GFER Minimum Funding Level - 25%	\$ 3,420,611

The General Fund Emergency Reserve (GFER) balance as of 6/30/2019 (including the \$727,820 in FY 2018/19 revenues over expenditures) totals \$3,808,577. With staff's recommendation to allocate \$486,504 of the GFER balance to prepay the Tier II and Tier III UAL's for the Police, Safety and Miscellaneous classifications, the GFER balance would fall below the minimum funding level as outlined below:

GFER Funding Level 6/30/2019	\$ 3,808,577
Use of \$486,504 for UAL Payoff	\$ (486,504.00)
GFER Funding Level 12/31/2019	\$ 3,322,073

However, per policy, Council has three years to bring the GFER balance within the minimum and target funding levels. The Measure Q fund owes the GFER \$168,750 for the City's Fire Engine purchase that occurred in FY 2018/19. This repayment was committed over the next three years (FY 2109/20 included). Therefore, when taking into account this commitment, the GFER would fall within the minimum funding level as outlined below:

FY 2019/20 Adopted Budget (on-going expenditures)	\$ 13,682,443
GFER Target Funding Level - 28%	\$ 3,831,084
GFER Minimum Funding Level - 25%	\$ 3,420,611
GFER Funding Level 6/30/2019	\$ 3,808,577
Use of \$486,504 for UAL Payoff	\$ (486,504.00)
GFER Funding Level 12/31/2019	\$ 3,322,073
Measure Q Fire Truck Payback to GFER	\$ 168,750
GFER Funding Level	\$ 3,490,823

Staff would also note that the Citizen's Finance Advisory Committee (CFAC) provided valuable feedback in response the draft FY 2018/19 CAFR, including several recommendations to improve the final CAFR. CFAC formed a subcommittee to review the CAFR and Staff appreciates this thorough review and collaboration to make the City's CAFR the best reflection the city. The Subcommittee's report is provided as Attachment 2 for Council review.

Once again, the CAFR was submitted for consideration of the Government Finance Officers Association (GFOA) Award for excellence in Financial Reporting.

CONCLUSION

Kenneth Pun from The Pun Group will present the FY 2018/19 audit reports to the City Council. There are six reports in total as follows:

- City's 2018/19 Comprehensive Annual Financial Report
- Report on Internal Controls
- Communication Letter
- Transit Audit
- Bike Pathways Audit
- Roads Audit

Documents Available for Review at City Hall and on the City Website:

1. [FY 2018/19 Comprehensive Annual Financial Report](#)
2. [Report on Internal Controls](#)
3. [Communication Letter](#)
4. [Transit Report](#)
5. [Bike Pathways Report](#)
6. [Roads Audit](#)

ATTACHMENTS

1. Resolution No. 12-20
2. CFAC Sub Committee Report
3. Staff Presentation

RESOLUTION NO. 12-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 19/20 BUDGET
TO AUTHORIZE USE OF FISCAL YEAR 18/19 REVENUES OVER EXPENDITURES TO PAY
OFF THE CITY'S TIER II AND TIER III CALPERS UNFUNDED ACCRUED LIABILITIES FOR THE
FIRE, POLICE AND MISCELLANEOUS RETIREMENT CLASSIFICATIONS**

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

WHEREAS, the City closed Fiscal Year (FY) 18/19 with \$727,820 in year end revenues over expenditures; and

WHEREAS, the City Council has prioritized fiscal sustainability and addressing the City's CalPERS pension issue; and

WHEREAS, the City staff recommends that the City Council appropriate \$486,504 from the FY 18/19 year-end revenues over expenditures to pay off the City's Tier II and Tier III CalPERS unfunded accrued liabilities for the City's Fire, Police and Miscellaneous classifications; and

WHEREAS, the pay-off of the City's unfunded liabilities for Tier II and Tier III Fire, Police and Miscellaneous classifications will result in interest savings of \$160,000 over the next two to eleven years; and

WHEREAS, pay-off of the City's unfunded liabilities for Tier II and Tier III Fire, Police and Miscellaneous classifications will prevent the Tier II and Tier III formulas from accruing significantly larger unfunded liabilities such as has occurred with the Tier I formulas, saving the City money in the long-term and proactively managing liabilities; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, amend the operating budget of the City, by the additional revenues over expenditures from FY 18/19 of \$486,504, to pay-off the City's Tier II and Tier III CalPERS unfunded liabilities for the City's Fire, Police and Miscellaneous pension plans.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 11th day of February 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

Date: January 22, 2020
To: Morro Bay City Council
From: Citizens Finance Advisory Committee
Subject: **Review of June 30, 2019 Comprehensive Annual Financial Report (CAFR)**

The first duty of the Citizens Finance Advisory Committee as listed in the CFAC by-laws is “Annual review of independent financial audit, with recommendations, as appropriate.” To fulfill this duty, CFAC appointed an ad-hoc subcommittee (Lois Johnson and John Martin) to perform a detailed review of the 2019 CAFR and produce a memo to Council. This memo was reviewed and approved by CFAC at its meeting on January 21, 2020.

Last year, management submitted the City’s 2018 CAFR to the Government Finance Officers Association and was awarded the coveted “Certificate of Achievement for Excellence in Financial Reporting.” In addition, the GFOA reviewer deemed the City “Proficient” in every one of the seventeen grading categories. This is a milestone achievement for which management and Council should be proud. The 2019 CAFR is even better than last year’s, with better and more complete narrative explanations of the financial statements. Moreover, management has fully implemented the auditor’s recommendation from last year that a comprehensive accounting manual be completed and implemented.

Management was completely cooperative with our review of the CAFR. It is obvious that they are dedicated to transparency and accuracy. It is clear that they understand the importance of the CAFR, which is the City’s permanent record in all things financial. However, during our review, we noted certain issues that we believe present opportunities to make the CAFR even more accurate, understandable and relevant. These issues may be organized into three areas: 1) technical, 2) substantive and 3) process. Technical issues (typos, duplications, reverse entries, formatting, headings, dates, etc.), which are inevitable in a complex document of this size, have been discussed directly with management and will not be presented in this report.

Substantive Issues

Presentation of Reserves

In the letter of transmittal, management describes the City’s relevant financial policies, which is an excellent practice. Some of the noted resolutions designate Council-approved reserves for the various funds. Res. No. 85-18 is the prevailing document regarding several reserves, including the City’s most important general fund emergency reserve. Management reports on this reserve in the fifth bullet point on page 5 of the Management’s Discussion and Analysis (MD&A), but other reserves are not so clearly reported.

Recommendation #1: In the letter of transmittal, management should present a table showing the dollar amounts (fund balance) of the various reserves at fiscal year-end compared with the minimum and target reserves per the noted resolutions. The status of the reserves will be clearly shown in one easy-to-read table.

Committed and Assigned General Fund Balances

In the CAFR there are six budgeted funds rolled up into the financial statements presented for the general fund. Those six funds, with their 6/30/19 fund balances are:

Fund Number and Name	Fund Balance
050 – Vehicle Replacement	\$ 325,747
052 – Facility Maintenance	110,603
460 – Capital Accumulation	207,998
470 – Project Accumulation	295,728
480 – Opportunity Fund	31,448
051 – General Fund Emergency Reserve	3,808,577

For a reason unknown to CFAC, only the facility maintenance fund balance is shown as committed on the general fund balance sheet (page 29), and the remaining \$4,669,499 is shown as unassigned. One could easily mistake this amount as the general fund emergency reserve, but it is not. Management has addressed this on page 5 of the MD&A, which states, “A total of \$4.7 million is held as unassigned with \$3.9 million allocated to the General Fund Emergency Reserve which meets the City’s General Fund reserve policy.” This \$3.9 million figure does not appear anywhere in any of the financial statements, notes or statistical section of the CAFR. It appears that the actual amount is closer to \$3.8 million.

Recommendation #2: Show the fund balances of the other general fund sub-funds as “committed” (imposed by City Council) or “assigned” (imposed by management) on the general fund balance sheet on page 29 and on pages 144-145 (refer to note 1 section Q on page 60 for a discussion of committed and assigned fund balances).

Fluctuating Expenses

We note that there are significant fluctuations in expenses in the category of “Employee Wages and Benefits” in the water and sewer enterprise funds (see page 38). This can best be seen in the 10-year trend table shown on pages 150-153. The expense for employee wages and benefits in the water enterprise decreased from \$930,294 to \$230,440 without explanation. Conversely, the same expense in the sewer enterprise increased from \$198,120 to \$794,060 without explanation. The magnitude of these fluctuations is startling. Significant fluctuations

(though not as severe) are also seen in the harbor enterprise fund expense for employee wages and benefits (page 155).

Significant fluctuations are also seen in the sewer fund's expenses for wastewater treatment and administration (page 153). No explanation is offered.

Recommendation #3: Management should explain the causes of these significant expense fluctuations.

Transfers

When GFOA reviews the CAFR, they provide the City with comments for improvement. One of their comments states:

“Reimbursements should not be displayed in the financial statements as transfers. The disclosure makes it appear as though reimbursements are reported as transfers. Reimbursements should be treated as a reduction to the originally booked expense/expenditure and therefore would not be reported as an item in the external financial statements.”

The City's disclosure regarding transfers (Note 3 on page 65) is the same as the prior year CAFR, so it appears that management did not address GFOA's concern.

Also, without questioning the legitimacy of the transfers, we note that there isn't much in the way of explanation, or citing of authorities to transfer. For example, we see that \$40,808 was transferred from the sewer fund to the water fund, but we don't know why. One curiosity is that the table shows \$106,194 being transferred from the general fund to the general fund.

Recommendation#4: Management should draft a more robust Note 3 disclosure of transfers with better explanations and citing of authorities, and they should address GFOA's comment. Transfers concerning only the general fund should be netted to zero.

Process Issues

The deadline to submit the CAFR to GFOA for the Certificate of Achievement is December 31, or six months after fiscal year end. CFAC has sought to review the CAFR at its December meeting prior to the GFOA submittal. To accommodate CFAC, management pressed the auditor to provide the draft financial statements to meet that schedule with the result that the auditors sent three drafts (12/4/19, 12/5/19 and 12/12/19) each with slightly different numbers. Then they produced the final complete document just prior to the GFOA deadline. This resulted in much confusion and additional work for the subcommittee and management. Management cannot write the Management's Discussion and Analysis (MD&A) portion of the CAFR until the

auditor provides the completed financial statements. This leads to the risk that some things in the MD&A may not be correct because of the numerous times that management must rewrite and update figures from subsequent financial statement drafts provided by the auditor. Unfortunately, this did in fact occur in 2019 as some of the figures in Table 2 of the MD&A were not updated per the auditor's final draft (compare the 2019 expenses for the water and sewer operating fund on page 10 with the amounts on page 38).

Recommendation #5: CFAC should review the CAFR at its meeting in January of each year and write a report (if appropriate) for the Council's consideration at its second January meeting. This means that CFAC's review would be done after the CAFR has been submitted to GFOA.

As to deadlines, management should be most concerned with meeting the GFOA submittal deadline of December 31 and not try to meet CFAC's scheduled December meeting. Management should also review and correct drafts from the auditor prior to any CFAC review. CFAC should receive the CAFR only when management considers it correct and complete.

If CFAC appoints a subcommittee, and if it is convenient for management to involve that subcommittee with the process in December, the subcommittee could review the corrected draft report and assist management as proofreaders at that stage.

In conclusion, management has produced another excellent Comprehensive Annual Financial Report for the City of Morro Bay, which we are confident will be awarded another Certificate of Achievement. We have made five recommendations for issues that we believe can be improved; however, that should in no way overshadow the excellent work that has been done by the City's very competent staff.



CITY OF MORRO BAY

Presentation to the City Council
For the Fiscal Year Ended June 30, 2019

February 11, 2020

Contents

- Scope of Work
- Audit Responsibilities
- Overview of Financial Statements
- Financial Indicators and Key Pension Information
- Audit Results





Scope of Work

Scope of Work

- **Financial Audit**
 - City of Morro Bay's Basic Financial Statements
- **Compliance Audit**
 - Audit of TDA Funds
 - Local Transportation Fund - Roads
 - Transit Enterprise Fund
 - Local Transportation Fund – Non-Transit, The Bike Path



Audit Responsibilities

Management Responsibilities

- Responsible for the Financial Statements
- Present the Financial Statements in accordance with Accounting Principles Generally Accepted in the United States of America
- Adopt sound accounting policies
- Establish and maintain internal controls over financial reporting and compliance
- Provide evidence supporting the amounts and disclosures in the financial statements
- Prevent and detect fraud

Auditors' Responsibilities

- Perform the audit in conformity with Auditing Standards Generally Accepted in the United States of America and the Standards applicable to Financial Audits contained in *Government Auditing Standards*
- Communicate with “Those Charged with Governance”
- Assess audit risk of internal control over financial reporting and compliance
- Determine fairness presentation of the financial statements
- Render opinions



Overview of the Financial Statements

Comprehensive Annual Financial Report

Introductory Section

- Letter of Transmittal
- List of Elected and City Officials
- Organization Chart

Financial Section

- Independent Auditors' Reports
- Management's Discussion and Analysis – RSI (Unaudited)
- Basic Financial Statements:
 - Government-Wide Financial Statements
 - Fund Financial Statements
 - Notes to Basic Financial Statements
- Required Supplementary Information (Unaudited)
 - Budgetary Information
 - Budgetary Comparison Schedule – General Fund
 - Schedule of Changes in Proportionate Share of NPL and Related Ratio
 - Schedule of Contributions
 - Schedule of Changes in Total OPEB Liability and Related Ratios
- Supplementary Information

Comprehensive Annual Financial Report

Statistical Section

Financial Trends

Revenue Capacity

Debt Capacity

Demographic and Economic Information

Operating Information

City of Morro Bay
Government-Wide Summary
Statement of Net Position
June 30, 2019

	Governmental Activities	Business-Type Activities	Total
Assets	<u>\$ 136,983,423</u>	<u>\$ 46,523,099</u>	<u>\$ 183,506,522</u>
Deferred Outflows of Resources	<u>4,454,796</u>	<u>1,223,591</u>	<u>5,678,387</u>
Liabilities	<u>25,459,073</u>	<u>8,836,632</u>	<u>34,295,705</u>
Deferred Inflows of Resources	<u>635,089</u>	<u>227,821</u>	<u>862,910</u>
Net Position:			
Net investments in capital assets	118,137,266	26,205,411	144,342,677
Restricted	4,935,388	-	4,935,388
Unrestricted (deficit)	<u>(7,728,597)</u>	<u>12,476,826</u>	<u>4,748,229</u>
Total Net Position	<u><u>\$ 115,344,057</u></u>	<u><u>\$ 38,682,237</u></u>	<u><u>\$ 154,026,294</u></u>

City of Morro Bay
Government-Wide Summary
Statement of Activities
For the Year Ended June 30, 2019

	Governmental Activities	Business-Type Activities	Total
Expenses	<u>\$ (18,871,795)</u>	<u>\$ (8,557,628)</u>	<u>\$ (27,429,423)</u>
Program Revenues			
Charges for services	3,832,713	14,845,751	18,678,464
Operating grants and contributions	1,919,585	345,921	2,265,506
Capital grants and contributions	273,699	-	273,699
Total program revenues	<u>6,025,997</u>	<u>15,191,672</u>	<u>21,217,669</u>
Net Cost of Services	(12,845,798)	6,634,044	(6,211,754)
General Revenues	11,264,557	358,207	11,622,764
Transfers	1,115,134	(1,115,134)	-
Change in Net Position	<u>\$ (466,107)</u>	<u>\$ 5,877,117</u>	<u>\$ 5,411,010</u>

**City of Morro Bay
General Fund Summary
Balance Sheet
June 30, 2019**

Assets	<u><u>\$ 10,125,053</u></u>
Liabilities	<u><u>\$ 1,410,784</u></u>
Fund Balance	
Nonspendable	3,934,167
Restricted	-
Committed	110,603
Unassigned	<u>4,669,499</u>
Total Fund Balance	<u><u>8,714,269</u></u>
Total Liabilities and Fund Balance	<u><u>\$ 10,125,053</u></u>

City of Morro Bay
General Fund Summary
Statement of Revenues, Expenditures and Changes in Fund Balance
For the Year Ended June 30, 2019

Revenues	\$ 13,529,873
Expenditures	<u>(13,103,418)</u>
Revenues over Expenditures	426,455
Other Financing Sources and Uses	
Transfers (Net)	<u>301,365</u>
Change in Fund Balance	<u><u>\$ 727,820</u></u>



Financial Indicators and Key Pension Information

**City of Morro Bay
Governmental Activities
Net Cost of Services to Tax Revenues
For the Year Ended June 30, 2019**

Net Cost of Services	\$ 12,845,798
Tax Revenues	<u>10,759,181</u>
Ratio	<u><u>119.39%</u></u>

**City of Morro Bay
General Fund
Unassigned Fund Balance to Annual Expenditures
For the Year Ended June 30, 2019**

Unassigned Fund Balance	\$ 4,669,499
Annual Expenditures	<u>13,103,418</u>
Ratio	<u><u>35.64%</u></u>

GASB 68 and 71 – The Pension Standards As of June 30, 2018 (Measurement Date)

	Discount Rate -1% 6.15%	Current Discount Rate 7.15%	Discount Rate +1% 8.15%
Miscellaneous	\$ 21,314,654	\$ 13,269,597	\$ 6,628,532
Safety	16,632,524	10,955,819	6,304,776
Total	<u>\$ 37,947,178</u>	<u>\$ 24,225,416</u>	<u>\$ 12,933,308</u>

GASB 75 – The OPEB Standards

As of June 30, 2019 (Measurement Date)

Sensitivity of the Net OPEB Liability to Changes in the Discount Rate

Discount Rate -1% -2.50%	Current Discount Rate (3.50%)	Discount Rate +1% -4.50%
<u>\$ 3,272,364</u>	<u>\$ 2,778,103</u>	<u>\$ 2,393,923</u>

Sensitivity of the Net OPEB Liability to Changes in the Healthcare Cost Trend Rate

Trend 1% Lower	Valuation Trend	Trend 1% Higher
<u>\$ 2,374,077</u>	<u>\$ 2,778,103</u>	<u>\$ 3,273,224</u>



Audit Results

Audit Results

- **Opinions**

- ***Unmodified Opinions are issued to all Opinion Units***

- Financial Statements are fairly presented in all material respect
- Accounting policies have been consistently applied
- Estimates are reasonable
- Disclosures are properly reflected in the financial statements

Other Results

- No disagreement with Management
- No significant deficiencies were identified in internal control over financial reporting
- No accounting issues
- No inappropriate activities were noted

For more information, contact:

Presenter:

Kenneth H. Pun, CPA

Direct +1 949 777 8801

Ken.Pun@PunGroup.com



AGENDA NO: C-2

MEETING DATE: February 11, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 5, 2020

FROM: Scott Collins, City Manager
Chris F. Neumeyer, City Attorney

SUBJECT: Adoption of Resolutions of Necessity (Resolution No. 13-20 and Resolution No. 14-20) Authorizing Eminent Domain Actions to Acquire Easements in Real Property for the Water Reclamation Facility Project – APNs: 066-331-046 (Vistra Energy) and 066-331-036 (PG&E)

RECOMMENDATION

Staff recommends the City Council:

1. Conduct a hearing on the proposed Resolutions of Necessity; and
2. Adopt the Resolutions of Necessity (Resolution No. 13-20 and Resolution No. 14-20) authorizing the commencement of eminent domain actions to acquire temporary construction easements and permanent pipeline, well, and access easements on real property with APN: 066-331-046 (Vistra Energy) and APN: 066-331-036 (PG&E) for purposes of the Water Reclamation Facility (WRF) Project.

FISCAL IMPACT

The cost of acquisition of the easements is within the overall budget, for the WRF Project.

BACKGROUND

As part of the WRF Project, the City needs to construct conveyance infrastructure (i.e. pipelines) between the existing wastewater treatment plant (WWTP) and new pump stations and the new WRF site located at South Bay Boulevard. The infrastructure will be located along the City Council approved "West Alignment." Most of the infrastructure will be located between the existing WWTP site, run parallel to and west of Highway 1, along Quintana Road and northeasterly along South Bay Boulevard east of Highway 1. A map showing the West Alignment is attached to this report as Attachment 1. Additional infrastructure will be necessary to construct underground injection wells and a new force main pipeline.

Portions of land required for temporary construction easements and permanent pipeline, well, and access easements (Easements) are located on two properties owned by Vistra Energy and Pacific Gas & Electric (PG&E), respectively. The Easements are as follows:

Vistra Energy

- A permanent pipeline easement consisting of approximately 37,026 square feet (0.85 acres), described in Exhibit A-1 and depicted in Exhibit B-1 to proposed Resolution No. 13-20

01181.0032/628851.3 Prepared By: <u>SC/CFN</u>	
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

- A temporary construction easement consisting of approximately 93,218 square feet (2.14 acres), described in Exhibit A-1 and depicted in Exhibit B-1 to proposed Resolution No. 13-20
- A permanent pipeline easement consisting of approximately 84,506 square feet (1.94 acres), described in Exhibit A-2 and depicted in Exhibit B-2 to proposed Resolution No. 13-20
- A permanent pipeline and injection well easement consisting of approximately 166,399 square feet (3.82 acres), described in Exhibit A-2 and depicted in Exhibit B-2 to proposed Resolution No. 13-20
- A temporary construction easement consisting of approximately 192,971 square feet (4.43 acres), described in Exhibit A-3 and depicted in Exhibit B-3 to proposed Resolution No. 13-20

PG&E

- A permanent pipeline easement consisting of approximately 80,568 square feet (1.85 acres), described in Exhibit A and depicted in Exhibit B to proposed Resolution No. 14-20

Written offers were presented to Vistra Energy and PG&E, respectively, as required by California Government Code Section 7267.2 on or about December 2, 2019. Vistra Energy presented a counteroffer, but a negotiated agreement is being sought but has not been reached at this time. PG&E is currently going through bankruptcy proceedings and is unable to reach a negotiated agreement within the contemplated timeframe. In addition, any acquisition of property from PG&E that is not undertaken by eminent domain would be subject to PUC approval by a process of uncertain duration. The Easements are necessary for the City to proceed with the WRF Project. Therefore, staff recommends the City Council authorize the acquisition of the Easements through eminent domain.

In accordance with California Government Code Section 1245.235, the City has prepared and mailed notices of this hearing to both Vistra Energy and PG&E informing them of the right to appear at this hearing and be heard on the following issues:

1. Whether the public interest and necessity require the WRF Project;
2. Whether the WRF Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the Easements are necessary for the WRF Project;
4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record, or has not been made because the owner(s) cannot be located with reasonable diligence; and
5. Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

While a hearing on a resolution of necessity is often referred to as a public hearing, the only notice

required is 15 days' notice by regular mail to the property owner. No published notice is required. Notices that the Resolutions of Necessity would be considered at tonight's meeting were mailed to PG&E on January 24, 2020, and to Vistra Energy on January 27, 2020.

The affirmative vote of two-thirds of all the members of the City Council, which in this case is four (4) affirmative votes, is required to adopt the Resolutions of Necessity.

DISCUSSION

Public acquisition of private property by eminent domain for pipelines and utility facilities is authorized by Section 19 of Article I of the California Constitution, California Code of Civil Procedure Sections 1240.010 through 1240.050 and Sections 1240.410 through 1240.430, and Government Code Sections 37350, 37350.5, and 40404.

Pursuant to California Government Code Section 1240.030, the power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.

In addition, a resolution of necessity must include a finding that the offer required by Government Code Section 7267.2 has been made to the owner or owners of record, or the offer was not made because the owner could not be located with reasonable diligence.

The public interest, convenience, and necessity require the WRF Project, which consists of upgrading the City's wastewater treatment and water supply infrastructure, including construction of a new WRF, new pipelines, and pump stations, conveyance of wastewater to the new WRF and treated recycled water to new wells for groundwater injection/replenishment and potable reuse, and the decommissioning of the existing WWTP. The existing WWTP was built in 1954 and provides wastewater treatment services to the City and unincorporated communities within the surrounding area. The WWTP was built before modern State and Federal water quality standards and does not meet federal Clean Water Act (CWA) standards for full secondary treatment. Instead, the WWTP has been operating under a CWA waiver since 1984. However, in 2018, the City received a time schedule order (TSO) from the Central Coast Regional Water Quality Control Board requiring compliance with full CWA secondary treatment requirements by February 2023. Failure to be in compliance by the deadline would result in the City having to pay substantial fines and penalties, in addition to still needing to eventually bring the WWTP into compliance with current water quality standards. As a result, the WRF Project is necessary to replace the WWTP, bring the City into compliance with all State and Federal water quality standards, and provide for water reclamation and increased water supply security for the City and surrounding community in light of climate change and water scarcity.

The WRF Project is planned in the manner which will be the most compatible with the greatest public good and the least private injury. The WRF itself will be located away from coastal hazard threats at a more inland and higher elevation to decrease chances of significant adverse impacts on coastal resources. The proposed location of the WRF Project further minimizes adverse impacts on public views, public access, and recreation by being built on vacant, agricultural land further away from the coastline and outside the immediate vicinity of existing commercial and residential

uses. Other potential locations for the WRF Project are technically infeasible, provided poor hydraulics and constructability, or increased adverse environmental impacts. Furthermore, the location of several of the Easements is on property already dedicated for public use as a bike path. Relocating the Easements would adversely affect more private property not already dedicated to a public use, would adversely affect sensitive cultural resource areas, and would significantly increase construction costs and risks.

Acquisition of the Easements is necessary for the WRF Project. Without the Easements, water and effluents would not be able to be transported to and from the new WRF, the pump stations, or wells, and there would be no injection wells to provide replenishment for groundwater within the area. In other words, without the Easements the WRF Project could not be constructed.

Portions of the proposed Easements are a more necessary public use than the existing public use as a bike path easement, since the WRF Project cannot be constructed without the Easements at the proposed location. Moreover, the proposed Easements for the pipelines, which will be underground, are not anticipated to interfere with or adversely affect the public use of the existing bike path, and the two public uses may coexist on the properties.

The environmental impacts of the WRF Project were analyzed and considered, and mitigation measures were adopted, in connection with the Final Environmental Impact Report dated June 2018 and certified in August 2018 (State Clearinghouse No. 2016081027).

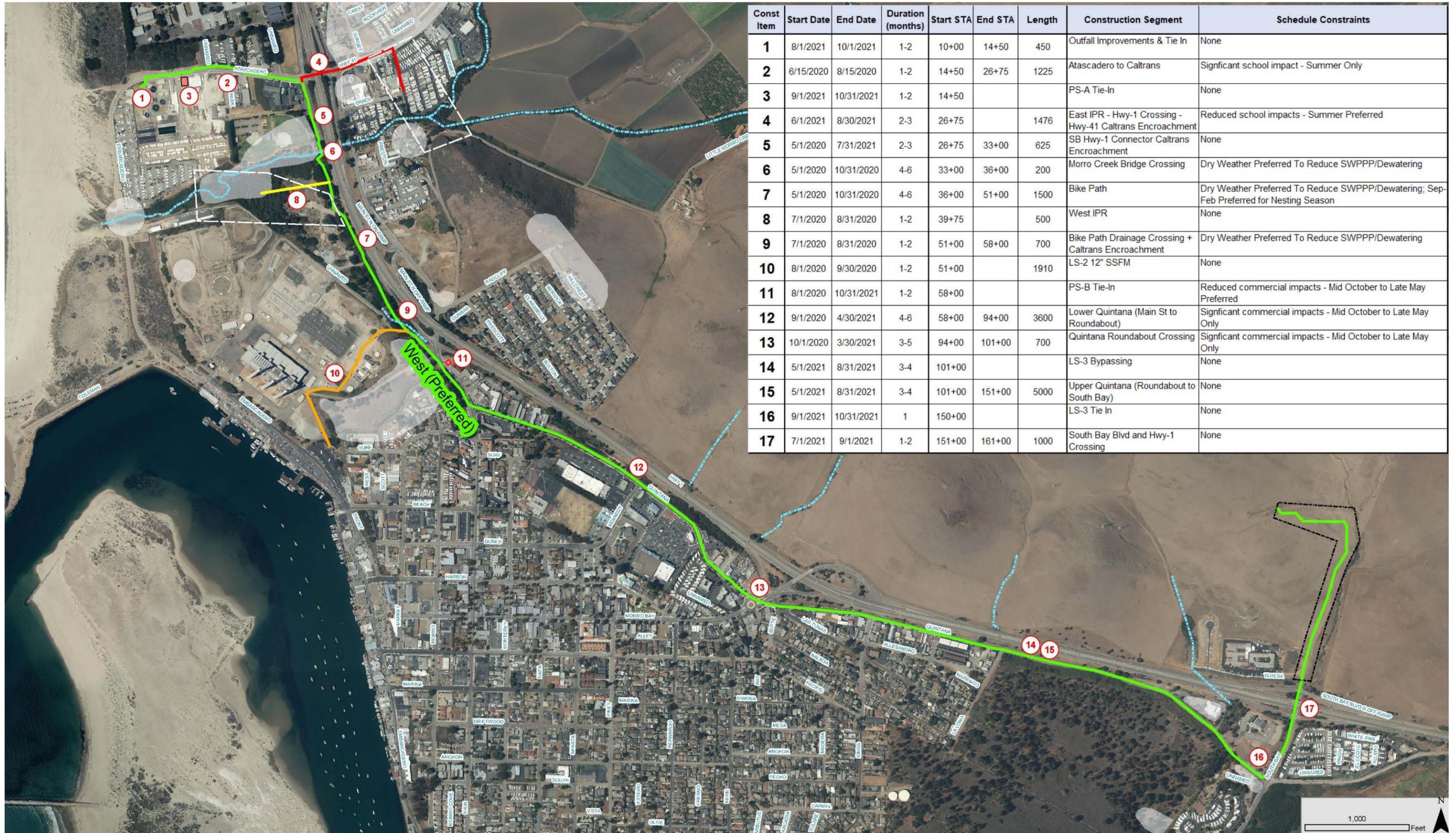
In compliance with Government Code Section 7267.2, the City made offers to acquire the Easements from each of the owners, Vistra Energy and PG&E, of the properties on December 2, 2019. Negotiations between the City and Vistra Energy continue. On January 30, 2020, the City Manager received the most recent correspondence from Vistra Energy stating their desire to obtain an appraisal and providing a counteroffer for the City's acquisition of the easements on the Vistra property. The City remains interested in negotiating with Vistra Energy, and neither adoption of the Resolution of Necessity, nor the filing of an eminent domain case following adoption of the Resolution, will interfere with such negotiations. The City Manager recommends proceeding with the Resolutions to minimize delay in being able to proceed with the WRF Project.

After the City receives testimony and evidence from all interested parties, to proceed the City Council must make a determination as to whether to acquire the Easements by eminent domain and adopt the proposed Resolutions of Necessity. The City must make the above findings based upon all the evidence and the existence of the above stated conditions.

If the actions are approved by the City Council, then as necessary the City Attorney will be instructed to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the Easements by eminent domain. The City Attorney will also be directed to seek and obtain an order of prejudgment possession in accordance with the provisions of the eminent domain law.

ATTACHMENTS

1. WRF Project West Alignment Map dated May 2019
2. Resolution No. 13-20 (with Exhibits A-C)
3. Resolution No. 14-20 (with Exhibits A-C)



Const Item	Start Date	End Date	Duration (months)	Start STA	End STA	Length	Construction Segment	Schedule Constraints
1	8/1/2021	10/1/2021	1-2	10+00	14+50	450	Outfall Improvements & Tie In	None
2	6/15/2020	8/15/2020	1-2	14+50	26+75	1225	Atascadero to Caltrans	Significant school impact - Summer Only
3	9/1/2021	10/31/2021	1-2	14+50			PS-A Tie-In	None
4	6/1/2021	8/30/2021	2-3	26+75		1476	East IPR - Hwy-1 Crossing - Hwy-41 Caltrans Encroachment	Reduced school impacts - Summer Preferred
5	5/1/2020	7/31/2021	2-3	26+75	33+00	625	SB Hwy-1 Connector Caltrans Encroachment	None
6	5/1/2020	10/31/2020	4-6	33+00	36+00	200	Morro Creek Bridge Crossing	Dry Weather Preferred To Reduce SWPPP/Dewatering
7	5/1/2020	10/31/2020	4-6	36+00	51+00	1500	Bike Path	Dry Weather Preferred To Reduce SWPPP/Dewatering; Sep-Feb Preferred for Nesting Season
8	7/1/2020	8/31/2020	1-2	39+75		500	West IPR	None
9	7/1/2020	8/31/2020	1-2	51+00	58+00	700	Bike Path Drainage Crossing + Caltrans Encroachment	Dry Weather Preferred To Reduce SWPPP/Dewatering
10	8/1/2020	9/30/2020	1-2	51+00		1910	LS-2 12" SSFM	None
11	8/1/2020	10/31/2021	1-2	58+00			PS-B Tie-In	Reduced commercial impacts - Mid October to Late May Preferred
12	9/1/2020	4/30/2021	4-6	58+00	94+00	3600	Lower Quintana (Main St to Roundabout)	Significant commercial impacts - Mid October to Late May Only
13	10/1/2020	3/30/2021	3-5	94+00	101+00	700	Quintana Roundabout Crossing	Significant commercial impacts - Mid October to Late May Only
14	5/1/2021	8/31/2021	3-4	101+00			LS-3 Bypassing	None
15	5/1/2021	8/31/2021	3-4	101+00	151+00	5000	Upper Quintana (Roundabout to South Bay)	None
16	9/1/2021	10/31/2021	1	150+00			LS-3 Tie In	None
17	7/1/2021	9/1/2021	1-2	151+00	161+00	1000	South Bay Blvd and Hwy-1 Crossing	None

RESOLUTION NO. 13-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
DECLARING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF
TEMPORARY CONSTRUCTION AND PERMANENT EASEMENT INTERESTS IN A PORTION
OF THE PROPERTY KNOWN AS ASSESSOR'S PARCEL NO. 066-331-046**

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

WHEREAS, for the public purposes set forth herein, the City of Morro Bay, California is authorized to acquire property through the exercise of eminent domain pursuant to Section 19 of Article 1 of the California Constitution, Section 1230.010 *et seq.* of the California Code of Civil Procedure, and Sections 37350, 37350.5 and 40404 of the California Government Code; and

WHEREAS, "Project" for the purposes of this acquisition consists of upgrading the City's wastewater treatment and water supply infrastructure, including construction of a new water reclamation facility ("WRF"), new pipelines, and pump stations, conveyance of wastewater to the new WRF and treated recycled water to new wells for groundwater injection/replenishment and potable reuse, and the decommissioning of the existing wastewater treatment plant ("WWTP") (collectively, the "Project"); and

WHEREAS, in order to carry out and make effective the principal purpose of the Project, it is necessary for the City to acquire temporary construction and permanent easement interests (the "Easement Interests") in a portion of certain privately-owned real property located in the City of Morro Bay, County of San Luis Obispo, California with Assessor's Parcel No. 066-331-046 ("Property"), as more particularly described and depicted in Exhibits "A" and "B" which are incorporated by this reference; and

WHEREAS, on or about December 2, 2019, the City made a written offer to the record owner to acquire the Easement Interests in the Property at an amount that was not less than the appraised fair market value, in compliance with Government Code Section 7267.2(a), and the owner and the City have not been able to reach a negotiated agreement regarding the acquisition of the Easement Interests; and

WHEREAS, on January 27, 2020, a Notice of Intent to Adopt a Resolution of Necessity ("Notice of Intent," a copy of which is attached hereto as Exhibit "C" and incorporated by this reference) was mailed to all persons whose names appear on the last equalized County Assessment Roll as having an ownership interest in the Property, and to the address appearing on said Roll and to other addresses, which Notice of Intent advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein; and

WHEREAS, the hearing set out in said Notice of Intent was held on February 11, 2020, at the time and place stated therein and all interested parties were given an opportunity to be heard on the following matters:

- (a) Whether the public interest and necessity require the Project;
- (b) Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;

- (c) Whether the Easement Interests proposed to be acquired are necessary for the Project;
- (d) Whether the offer meeting the requirements of Government Code Section 7267.2 has been given; and
- (e) Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

WHEREAS, the staff report to the City Council regarding this matter is incorporated herein by this reference in its entirety; and, as a result of such hearing, the City Council has determined that public health, safety, and welfare require the City to acquire the Easement Interests for the stated purposes; and

WHEREAS, the City Council, as a result of such hearing, has determined that the public health, safety, and welfare require the City to acquire the Easement Interests for the stated purposes.

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby does find, determine, and declare based upon evidence presented to it as follows:

Section 1. The facts and conclusions referenced in this Resolution, and the findings made by the City Council herein, are supported by substantial evidence contained in the record of this proceeding, including, but not limited to, the staff report. The staff report, in its entirety, is supportive of all of the findings made in this Resolution.

Section 2. The Easement Interests consist of temporary construction and permanent easement interests in the real property located within the City of Morro Bay, County of San Luis Obispo, State of California, Assessor's Parcel No. 066-331-046, and more specifically described in Exhibits "A" and "B" hereto.

Section 3. The City Council finds as follows:

- (a) The public interest, convenience, and necessity require the Project.

The Project consists of upgrading the City's wastewater treatment and water supply infrastructure, including construction of a new WRF, new pipelines, and pump stations, conveyance of wastewater to the new WRF and treated recycled water to new wells for groundwater injection/replenishment and potable reuse, and the decommissioning of the existing WWTP. The existing WWTP was built in 1954 and provides wastewater treatment services to the City and unincorporated communities within the surrounding area. The WWTP was built before modern State and Federal water quality standards and does not meet federal Clean Water Act (CWA) standards for full secondary treatment. Instead, the WWTP has been operating under a CWA waiver since 1984. However, in 2018, the City received a time schedule order (TSO) from the Central Coast Regional Water Quality Control Board requiring compliance with full CWA secondary treatment requirements by February 2023. Failure to be in compliance by the deadline would result in the City having to pay substantial fines and penalties, in addition to still needing to eventually bring the WWTP into compliance with current water quality standards. As a result, the Project is necessary to replace the WWTP, bring the City into compliance with all State and Federal water quality standards, and provide for water reclamation and increased water supply security for the City and surrounding community in light of climate change and water scarcity. .

(b) The Project is planned and located in a manner which is most compatible with the greatest public good and the least private injury.

The WRF itself will be located away from coastal hazard threats at a more inland and higher elevation to decrease chances of significant adverse impacts on coastal resources. The proposed location of the Project further minimizes adverse impacts on public views, public access, and recreation by being built on vacant, agricultural land further away from the coastline and outside the immediate vicinity of existing commercial and residential uses. Other potential locations for the Project are technically infeasible, provided poor hydraulics and constructability, or increased adverse environmental impacts. Furthermore, the location of several of the Easement Interests is on property already dedicated for public use as a bike path. Relocating the Easement Interests would adversely affect more private property not already dedicated to a public use, would adversely affect sensitive cultural resource areas, and would significantly increase construction costs and risks.

(c) The taking of the Easement Interests as described above is necessary for the Project.

Without the Easement Interests, water and effluents would not be able to be transported to and from the new WRF, the pump stations, or wells, and there would be no injection wells to provide replenishment for groundwater within the area. In other words, without the Easement Interests, the Project could not be constructed.

(d) The requirement of Government Code Section 7267.2 that a written offer to purchase the property be made has been met and the offer was made in the form and manner required by law.

A written offer to purchase the Easement Interests, based on an appraisal of the fair market value of the Easement Interests, was made to the owner of the Easement Interests on or about January 27, 2020.

Section 4. The acquisition of the Easement Interests is authorized by Section 19 of Article 1 of the California Constitution, Section 1230.010 et seq. of the California Code of Civil Procedure, and Sections 37350, 37350.5, and 40404 of the California Government Code.

Section 5. As to any portion of the Easement Interests that is currently appropriated for a public use, the use for which the Easement Interests is sought to be taken is a more necessary public use, and the City is empowered to take such Easement Interests for a more necessary public use pursuant to Code of Civil Procedure Section 1240.610. Specifically, portions of the Easement Interests are a more necessary public use than the existing public use as a bike path easement, since the Project cannot be constructed without the Easement Interests being located at the proposed location. Moreover, the proposed Easement Interests for the pipelines, which will be underground, are not anticipated to substantially interfere with or adversely affect the public use of the existing bike path, and the two public uses may coexist on the Property.

Section 6. The environmental impacts and effects of the Project were fully addressed, and all obligations imposed by the California Environmental Quality Act have been complied with for the Project.

Section 7. The City hereby declares its intent to acquire the Easement Interests in the City's name in accordance with the provisions of the law of the State of California and finds that all conditions, statutory requirements and prerequisites to the exercise of the power of eminent domain

to acquire the Interests described herein have been complied with by the City.

Section 8. The City Council authorizes the City Manager and the City Attorney to execute such documents as may be necessary to implement the acquisition of the Easement Interests and to direct the law firm of Aleshire & Wynder, LLP to commence proceedings in a court of competent jurisdiction, as may be necessary, to acquire the Easement Interests by eminent domain, including the filing of an application for an Order for Possession prior to Judgment, if necessary, in accordance with the provisions of the California Eminent Domain Law and the Constitution of California.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 11th day of February 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

Exhibit A

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
August 2019
Page 1 of 4 Pages

Those portions of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Parcel One

A Twenty (20.00) foot wide strip of land, the centerline of which is described as follows:

Commencing at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence, along the easterly line of said Lot 1, S45°31'03"E, a distance of 16.65 feet, more or less to a point on a line parallel with, and lying 20.00 feet southeasterly of, the southeasterly line of said Lot 2;

- Thence 1st, along said parallel line, N82°25'56"W, a distance of 65.46 feet;
- Thence 2nd, continuing along said parallel line, N80°32'04"W, a distance of 49.88 feet;
- Thence 3rd, continuing along said parallel line, N72°44'42"W, a distance of 34.38 feet;
- Thence 4th, continuing along said parallel line, S89°09'33"W, a distance of 45.40 feet;
- Thence 5th, continuing along said parallel line, S78°00'52"W, a distance of 62.75 feet;
- Thence 6th, continuing along said parallel line, S56°11'46"W, a distance of 46.12 feet;
- Thence 7th, continuing along said parallel line, S36°07'55"W, a distance of 420.02 feet;
- Thence 8th, leaving said parallel line, S13°43'22"W, a distance of 38.91 feet;
- Thence 9th, S36°13'22"W, a distance of 173.37 feet;
- Thence 10th, S81°13'22"W, a distance of 11.73 feet;
- Thence 11th, N53°46'38"W, a distance of 36.26 feet;
- Thence 12th, S81°13'22"W, a distance of 62.19 feet;
- Thence 13th, S69°58'22"W, a distance of 17.65 feet;
- Thence 14th, S81°13'22"W, a distance of 25.35 feet;
- Thence 15th, N75°48'02"W, a distance of 22.56 feet;
- Thence 16th, N87°03'02"W, a distance of 26.51 feet;

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
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Thence 17th, S81°06'34"W, a distance of 85.11 feet;

Thence 18th, S58°36'34"W, a distance of 51.83 feet;

Thence 19th, S36°06'34"W, a distance of 17.87 feet, more or less, to a line parallel with, and lying 10.00 feet northeasterly of, the easterly line of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 20th, along said parallel line, S24°13'11"E, a distance of 548.20 feet, more or less, to the southerly line of said Lot 1, being also a point of the north line of Surf Street.

The sidelines of said twenty foot wide strip shall be lengthened or shortened to terminate easterly on said easterly line of Lot 1 and to terminate southerly on said southerly line of Lot 1.

Containing 0.85 acres, more or less.

Parcel Two

Beginning at the southeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence 1st, along the easterly line of said Lot 1, S45°31'03"E, a distance of 60.30 feet;

Thence 2nd, leaving said easterly line, S84°14'59"W, a distance of 264.15 feet;

Thence 3rd, S45°44'02"W, a distance of 75.30 feet;

Thence 4th, S32°43'13"E, a distance of 100.68 feet;

Thence 5th, S32°18'05"W, a distance of 97.01 feet;

Thence 6th, N55°54'38"W, a distance of 153.01 feet, more or less, to the southeasterly line of Parcel One described above;

Thence 7th, along said southeasterly line, S36°07'55"W, a distance of 51.24 feet;

Thence 8th, leaving said southeasterly line, S53°28'45"E, a distance of 28.38 feet;

Thence 9th, S38°43'47"W, a distance of 203.62 feet;

Thence 10th, S53°39'33"E, a distance of 108.10 feet;

Thence 11th, S48°11'51"W, a distance of 128.37 feet;

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
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Thence 12th, N87°54'46"W, a distance of 365.86 feet, more or less, to a point on the southerly line of Parcel One described above;

Thence 13th, leaving said southerly line, S42°44'53"W, a distance of 57.37 feet;

Thence 14th, S27°24'45"E, a distance of 551.72 feet, more or less, to the southerly of said Lot 1;

Thence 15th, along last said southerly line, S89°11'34"W, a distance of 64.81 feet, more or less, to the southeasterly corner of the land quitclaimed to the City of Morro Bay in the Quitclaim Deed recorded May 6, 2015 as Document Number 2015021548 of Official Records of said County, and as shown on the map filed in Book 111, Page 30 of Record of Surveys in the office of the County Recorder of said County;

Thence 16th, along said easterly line and its northwesterly prolongation, N24°13'11"W, a distance of 489.11 feet;

Thence 17th, leaving said easterly line, N53°38'01"W, a distance of 75.08 feet;

Thence 18th, N38°37'27"E, a distance of 50.00 feet;

Thence 19th, S53°38'01"E, a distance of 20.25 feet, more or less, to the northwesterly line of Parcel One described above;

Thence 20th, along said northwesterly line, N36°06'34"E, a distance of 5.46 feet to an angle point therein;

Thence 21st, continuing along said northwesterly line, N58°36'34"E, a distance of 55.81 feet to an angle point therein;

Thence 22nd, leaving said northwesterly line, N35°51'31"E, a distance of 167.15 feet;

Thence 23rd, S54°08'29"E, a distance of 211.37 feet;

Thence 24th, N36°04'14"E, a distance of 155.98 feet;

Thence 25th, N27°35'18"E, a distance of 45.89 feet, more or less, to an angle point in the northwesterly line of Parcel One described above, being also a point on the southeasterly line of said Lot 2;

Thence 26th, along said southeasterly line, N36°07'55"E, a distance of 423.77 feet;

Thence 27th, continuing along said southeasterly line, N56°11'46"E, a distance of 49.82 feet to an angle point therein;

Thence 28th, continuing along said southeasterly line, N78°00'52"E, a distance of 65.65 feet to an angle point therein;

Thence 29th, continuing along said southeasterly line, N89°09'33"E, a distance of 47.97 feet to an angle point therein;

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City of Morro Bay WRF Offsite Pipeline Project
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Thence 30th, continuing along said southeasterly line, S72°44'42"E, a distance of 35.29 feet to an angle point therein;

Thence 31st, continuing along said southeasterly line, S80°32'04"E, a distance of 49.03 feet to an angle point therein;

Thence 32nd, continuing along said southeasterly line, S82°25'56"E, a distance of 51.98 feet to the Point of Beginning.

Excepting therefrom all of Parcel One described above.

Containing 2.14 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Justin P. Height, PLS 6167

Date

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
August 2019
Page 1 of 3 Pages

Those portions of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Parcel One

A seventy (70.00) foot wide strip of land, more particularly described as follows:

Beginning at the northeasterly corner of said Lot 1, being also a point on the westerly line of State Highway 1 as shown on said Record of Survey;

Thence 1st, along the easterly line of said Lot 1, S20°06'26"E, a distance of 550.31 feet to an angle point therein,

Thence 2nd, continuing along last said easterly line, S23°32'35"E, a distance of 307.51 feet to an angle point therein, being the beginning of a non-tangent curve to the left, concave easterly, the radial center of which bears N67°54'00"E, a distance of 4080.00 feet;

Thence 3rd, continuing along last said easterly line, and along said curve through a central angle of 05°02'10", an arc distance of 358.61 feet to the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and said State Highway 1;

Thence 4th, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the right, concave easterly, the radial center of which bears N63°27'10"E, a distance of 4150.00 feet;

Thence 5th, along said parallel line, and long said curve through a central angle of 04°26'06", an arc distance of 321.24 feet;

Thence 6th, continuing along said parallel line, N23°32'35"W, a distance of 308.73 feet;

Thence 7th, continuing along said parallel line, N20°06'36"W, a distance of 566.24, more or less, to the northerly line of said Lot 1;

Thence 8th, along said northerly line, N81°03'50"E, a distance of 71.35 feet to the Point of Beginning.

Containing 1.94 acres, more or less.

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
August 2019
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Parcel Two

Commencing at the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and said State Highway 1;

Thence, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the True Point of Beginning;

Thence 1st, continuing along said northerly line of Lot 2, N85° 42' 10"W, a distance of 189.28 feet to an angle point therein;

Thence 2nd, continuing along said northerly line of Lot 2, S75° 19' 23"W, a distance of 421.36 feet to an angle point therein;

Thence 3rd, leaving said northerly line of Lot 2, N59° 01' 01"W, a distance of 131.30 feet;

Thence 4th, N55° 22' 26"W, a distance of 295.99 feet;

Thence 5th, N53° 44' 39"W, a distance of 87.99 feet;

Thence 6th, N87° 18' 25"W, a distance of 31.08 feet;

Thence 7th, S78° 49' 13"W, a distance of 357.71 feet;

Thence 8th, S73° 34' 24"W, a distance of 328.38 feet;

Thence 9th, S69° 36' 40"W, a distance of 173.29 feet, more or less, to a point on the westerly line of said Lot 1,

Thence 10th, along said westerly line of Lot 1, N08° 56' 10"W, a distance of 30.61 feet, more or less, to a line parallel with, and lying 30.00 feet northerly of, the 9th course described herein;

Thence 11th, along last said parallel line, N69° 36' 40"E, a distance of 168.25 feet, more or less, to a line parallel with, and lying 30.00 feet northerly of, the 8th course described herein;

Thence 12th, along last said parallel line, N73° 34' 24"E, a distance of 321.25 feet;

Thence 13th, N11° 10' 47"W, a distance of 70.87 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 7th course described herein;

Thence 14th, along last said parallel line, N78° 49' 13"E, a distance of 380.76 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 6th course described herein;

Thence 15th, along last said parallel line, S87° 18' 25"E, a distance of 73.41 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 5th course described herein;

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
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August 2019
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Thence 16th, along last said parallel line, S53° 44' 39"E, a distance of 116.72 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 4th course described herein;

Thence 17th, along last said parallel line, S55° 22' 26"E, a distance of 291.38 feet, more or less, to a line parallel with, and lying 100.00 feet northeasterly of, the 3rd course described herein;

Thence 18th, along last said parallel line, S59° 01' 01"E, a distance of 59.00 feet,

Thence 19th, N87° 10' 50"E, a distance of 94.04 feet, more or less, to the intersection of a line parallel with, and lying 100.00 feet northerly of, the 2nd course described herein, and a line parallel with, and lying 450.00 westerly of, the 6th course of Parcel One described above;

Thence 20th, along said line parallel with the 2nd course described herein, N75° 19' 23"E, a distance of 322.82 feet, more or less, to a line parallel with, and lying 100.00 feet northerly of, the 1st course described herein;

Thence 21st, along last said parallel line, S85° 42' 10"E, a distance of 148.14 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the left, concave easterly, the radial center of which bears N65°02'52"E, a distance of 4150.00 feet;

Thence 22nd, along last said parallel line, and long said curve through a central angle of 01°35'42", an arc distance of 115.53 feet to the True Point of Beginning.

Containing 3.82 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Justin P. Height, PLS 6167

Date

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy - APN 066-331-040
August 2019
Page 1 of 1 Pages

That portion of Lot 1, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010271 of Official Records of said County, being the point common to said Lot 1, said Lot 2, and State Highway 1;

Thence, along the northerly line of said Lot 2, N85°42'10"W, a distance of 81.78 feet, more or less, to a point on a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 1, said point being the beginning of a non-tangent curve to the right, concave easterly, the radial center of which bears N63°27'10"E, a distance of 4150.00 feet;

Thence, along said parallel line, and along said curve, through a central angle of 01°35'42", an arc distance of 115.53 feet, more or less, to a point on a line parallel with, and lying 100.00 feet northerly of, the northerly line of said Lot 2, said point being the True Point of Beginning;

Thence 1st, continuing along the line parallel with the easterly line of Lot 1, and continuing northerly along said curve, through a central angle of 02°50'24", an arc distance of 205.71 feet;

Thence 2nd, continuing along last said parallel line, N23°32'35"W, a distance of 308.73 feet

Thence 3rd, continuing along last said parallel line, N20°06'36"W, a distance of 117.27 feet;

Thence 4th, leaving last said parallel line, S69°53'24"W, a distance of 20.00 feet;

Thence 5th, S24°53'25"W, a distance of 253.12 feet;

Thence 6th, S66°27'25"W, a distance of 247.68 feet, more or less, to a line parallel with, and lying 450.00 westerly of, the 2nd course described herein;

Thence 7th, along last said parallel line, S23°32'35"E, a distance of 345.79 feet, more or less, to a line parallel with, and lying 100.000 feet northerly of, the northerly line of said Lot 2;

Thence 8th, along last said line parallel line, N75° 19' 23"E, a distance of 322.82 feet;

Thence 9th, continuing along last said parallel line, S85° 42' 10"E, a distance of 148.14 feet to the True Point of Beginning.

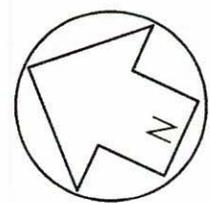
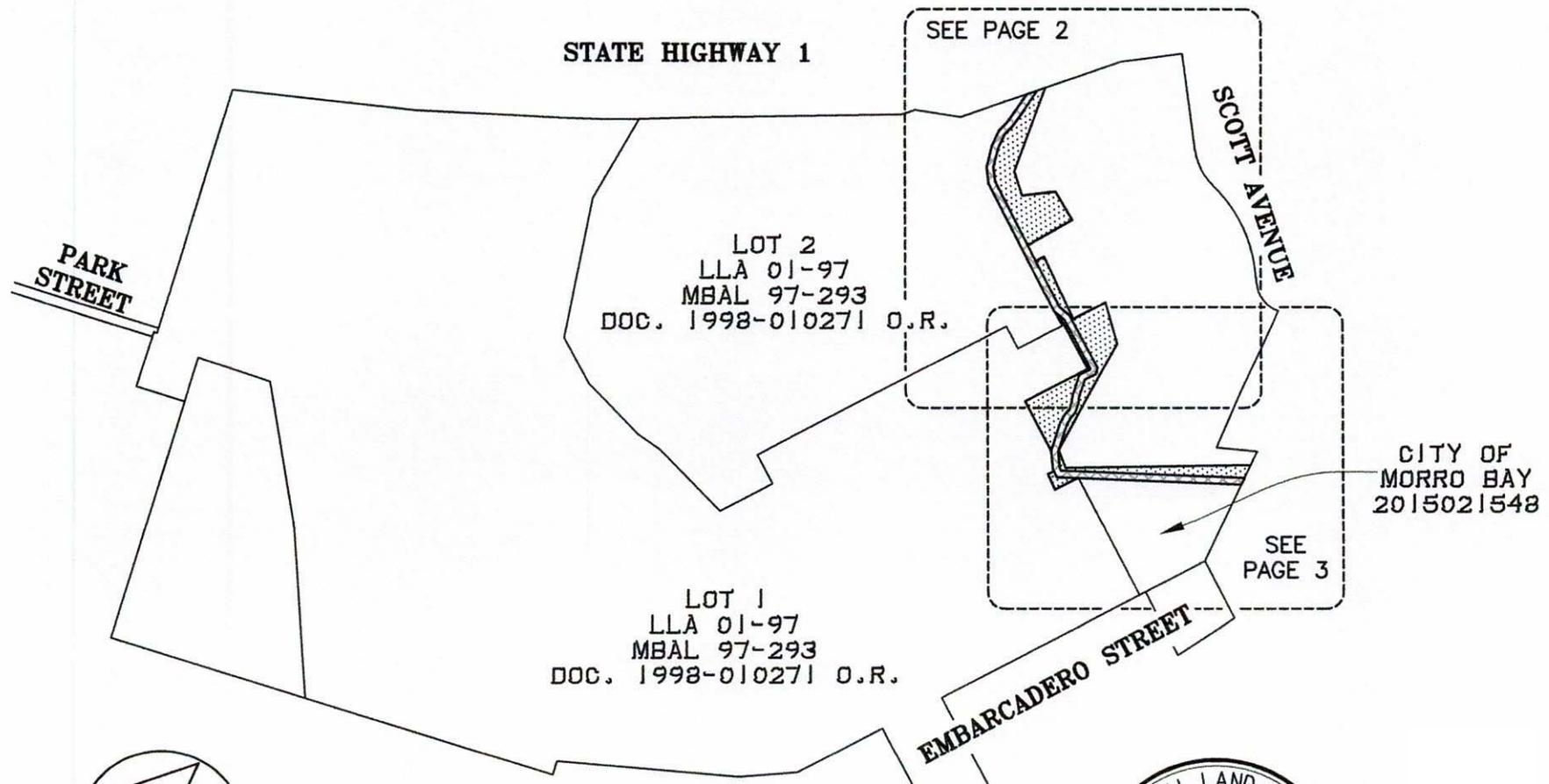
Containing 4.43 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Justin P. Height, PLS 6167

Date

Exhibit B



SCALE: 1"=500'

-  Parcel One
-  Parcel Two



GUIDA SURVEYING INC.
 9241 IRVINE BOULEVARD, SUITE 100
 IRVINE, CALIFORNIA 92618
 TOLL FREE 1.855.90GUIDA
 WWW.GUIDAINC.COM

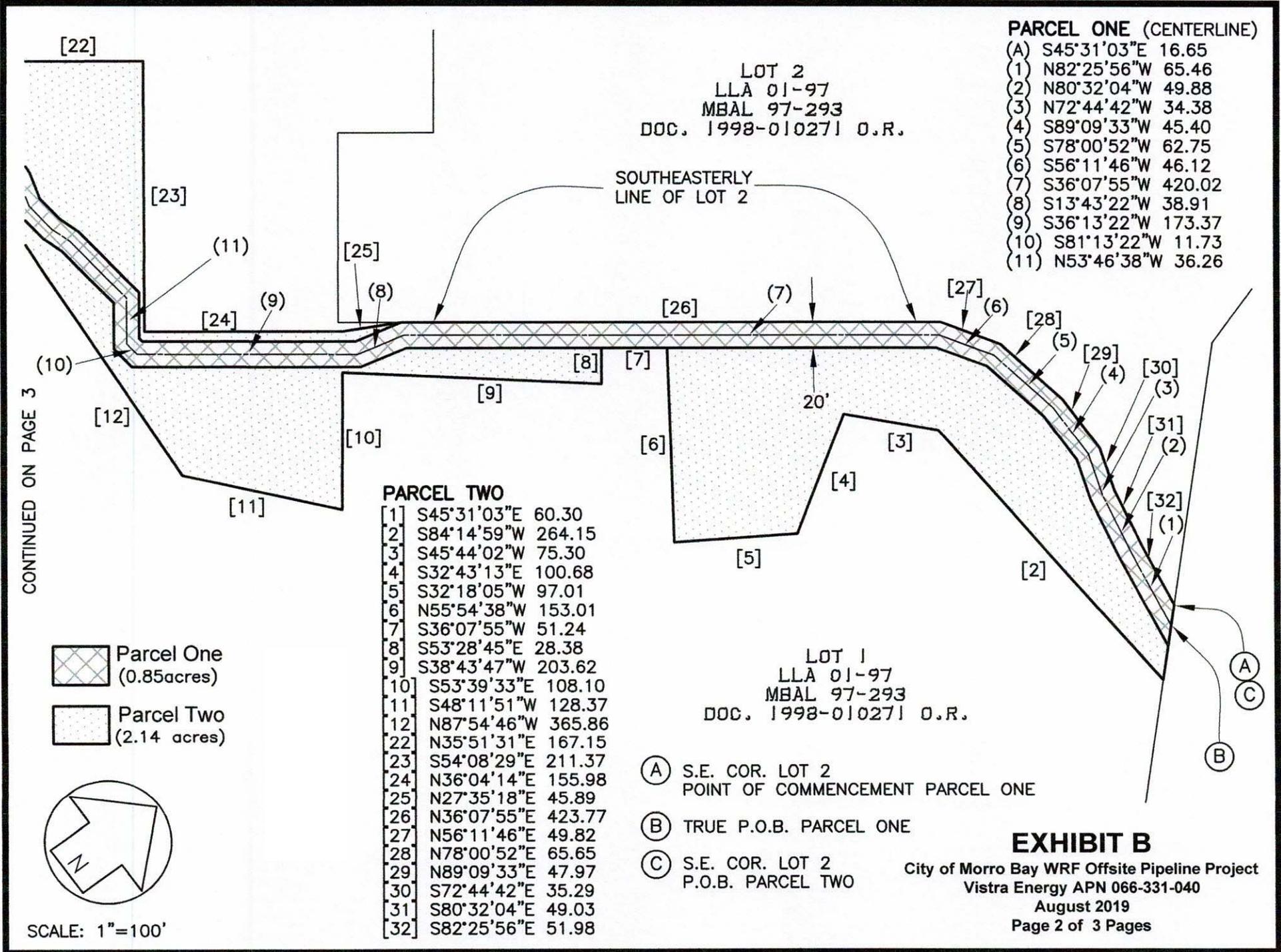
THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

EXHIBIT B
 City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
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Job No. 0117-01961 0117-01961Legal-Vistra.dwg

JUSTIN P. HEIGHT, PLS 6167 DATE

CONTINUED ON PAGE 3



PARCEL ONE (CENTERLINE)

(A)	S45°31'03"E	16.65
(1)	N82°25'56"W	65.46
(2)	N80°32'04"W	49.88
(3)	N72°44'42"W	34.38
(4)	S89°09'33"W	45.40
(5)	S78°00'52"W	62.75
(6)	S56°11'46"W	46.12
(7)	S36°07'55"W	420.02
(8)	S13°43'22"W	38.91
(9)	S36°13'22"W	173.37
(10)	S81°13'22"W	11.73
(11)	N53°46'38"W	36.26

LOT 2
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

SOUTHEASTERLY
LINE OF LOT 2

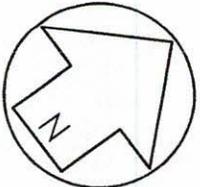
LOT 1
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

PARCEL TWO

[1]	S45°31'03"E	60.30
[2]	S84°14'59"W	264.15
[3]	S45°44'02"W	75.30
[4]	S32°43'13"E	100.68
[5]	S32°18'05"W	97.01
[6]	N55°54'38"W	153.01
[7]	S36°07'55"W	51.24
[8]	S53°28'45"E	28.38
[9]	S38°43'47"W	203.62
[10]	S53°39'33"E	108.10
[11]	S48°11'51"W	128.37
[12]	N87°54'46"W	365.86
[22]	N35°51'31"E	167.15
[23]	S54°08'29"E	211.37
[24]	N36°04'14"E	155.98
[25]	N27°35'18"E	45.89
[26]	N36°07'55"E	423.77
[27]	N56°11'46"E	49.82
[28]	N78°00'52"E	65.65
[29]	N89°09'33"E	47.97
[30]	S72°44'42"E	35.29
[31]	S80°32'04"E	49.03
[32]	S82°25'56"E	51.98

Parcel One
(0.85 acres)

Parcel Two
(2.14 acres)



SCALE: 1"=100'

- (A) S.E. COR. LOT 2
POINT OF COMMENCEMENT PARCEL ONE
- (B) TRUE P.O.B. PARCEL ONE
- (C) S.E. COR. LOT 2
P.O.B. PARCEL TWO

EXHIBIT B

City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy APN 066-331-040
August 2019
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EXHIBIT B-1

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CONTINUED ON PAGE 2

LOT 2
LLA 01-97

LOT 1
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

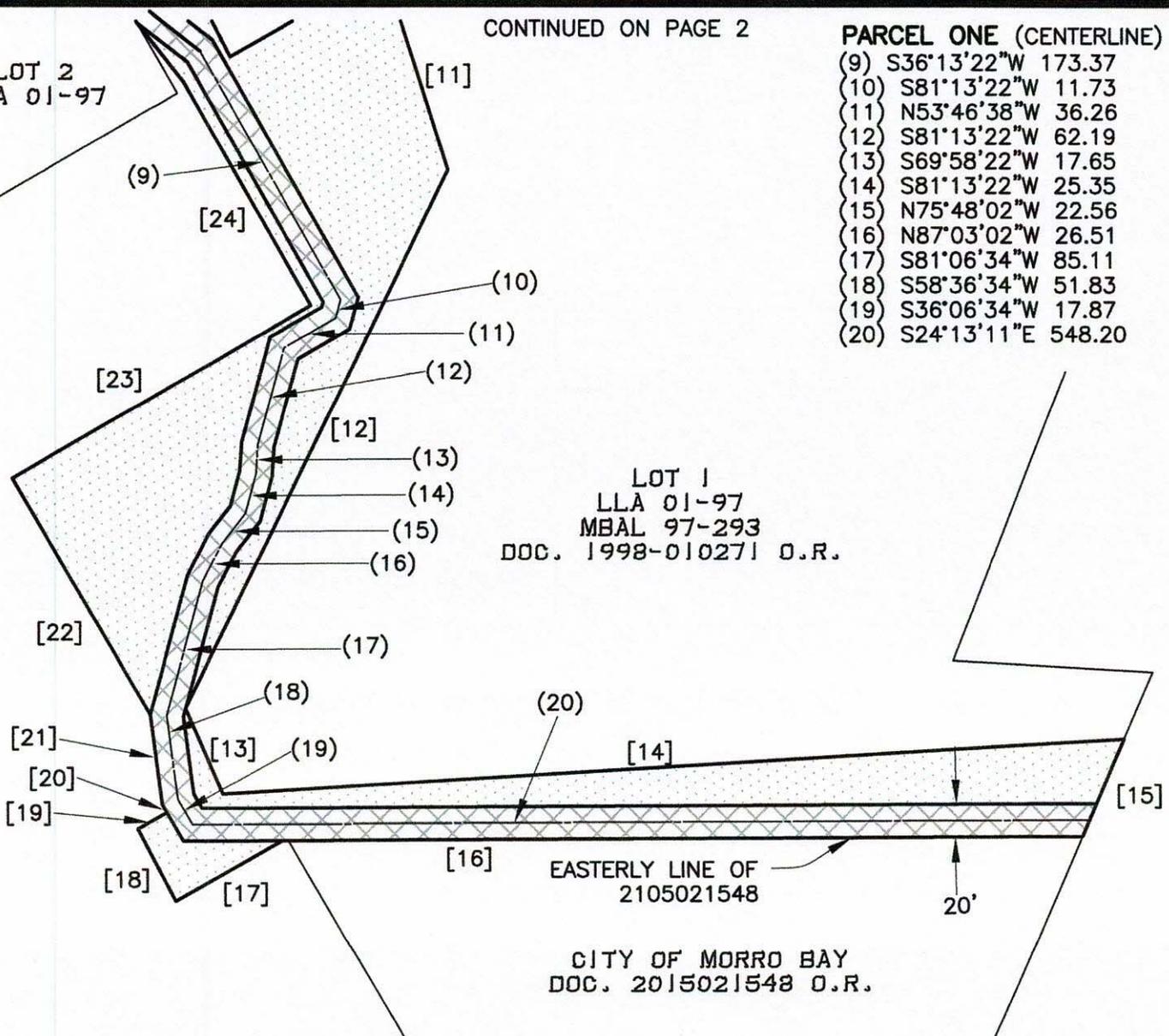
EASTERLY LINE OF
2105021548
CITY OF MORRO BAY
DOC. 2015021548 O.R.

PARCEL ONE (CENTERLINE)

(9)	S36°13'22"W	173.37
(10)	S81°13'22"W	11.73
(11)	N53°46'38"W	36.26
(12)	S81°13'22"W	62.19
(13)	S69°58'22"W	17.65
(14)	S81°13'22"W	25.35
(15)	N75°48'02"W	22.56
(16)	N87°03'02"W	26.51
(17)	S81°06'34"W	85.11
(18)	S58°36'34"W	51.83
(19)	S36°06'34"W	17.87
(20)	S24°13'11"E	548.20

PARCEL TWO

[11]	S48°11'51"W	128.37
[12]	N87°54'46"W	365.86
[13]	S42°44'53"W	57.37
[14]	S27°24'45"E	551.72
[15]	S89°11'34"W	64.81
[16]	N24°13'11"W	489.11
[17]	N53°38'01"W	75.08
[18]	N38°37'27"E	50.00
[19]	S53°38'01"E	20.25
[20]	N36°06'34"E	5.46
[21]	N58°36'34"E	55.81
[22]	N35°51'31"E	167.15
[23]	S54°08'29"E	211.37
[24]	N36°04'14"E	155.98



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Parcel One
(0.85 acres)

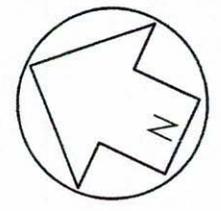
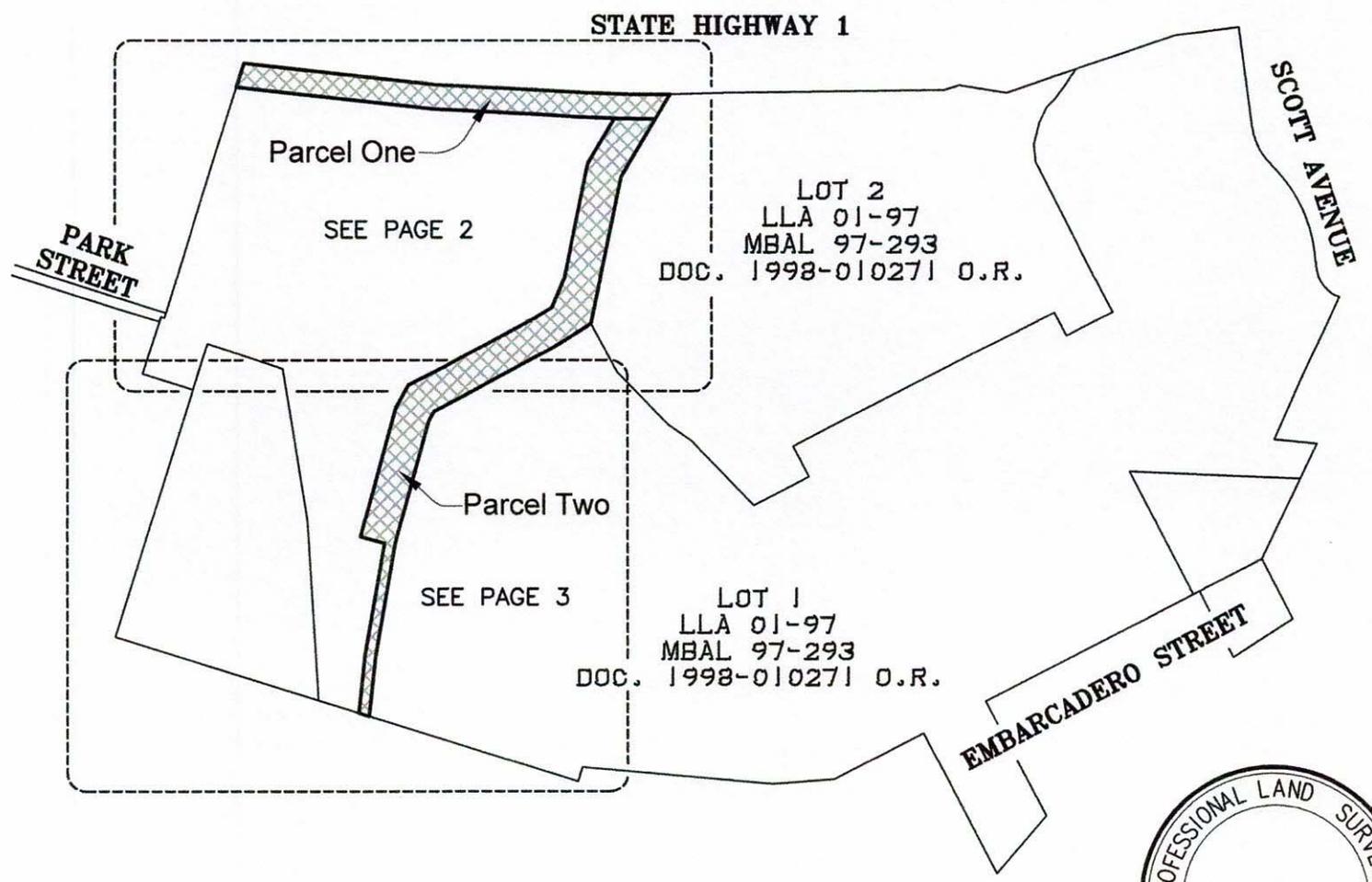
Parcel Two
(2.14 acres)

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

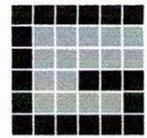
EXHIBIT B
 City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
 August 2019
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EXHIBIT B-2

Page 1 of 3



SCALE: 1"=500'



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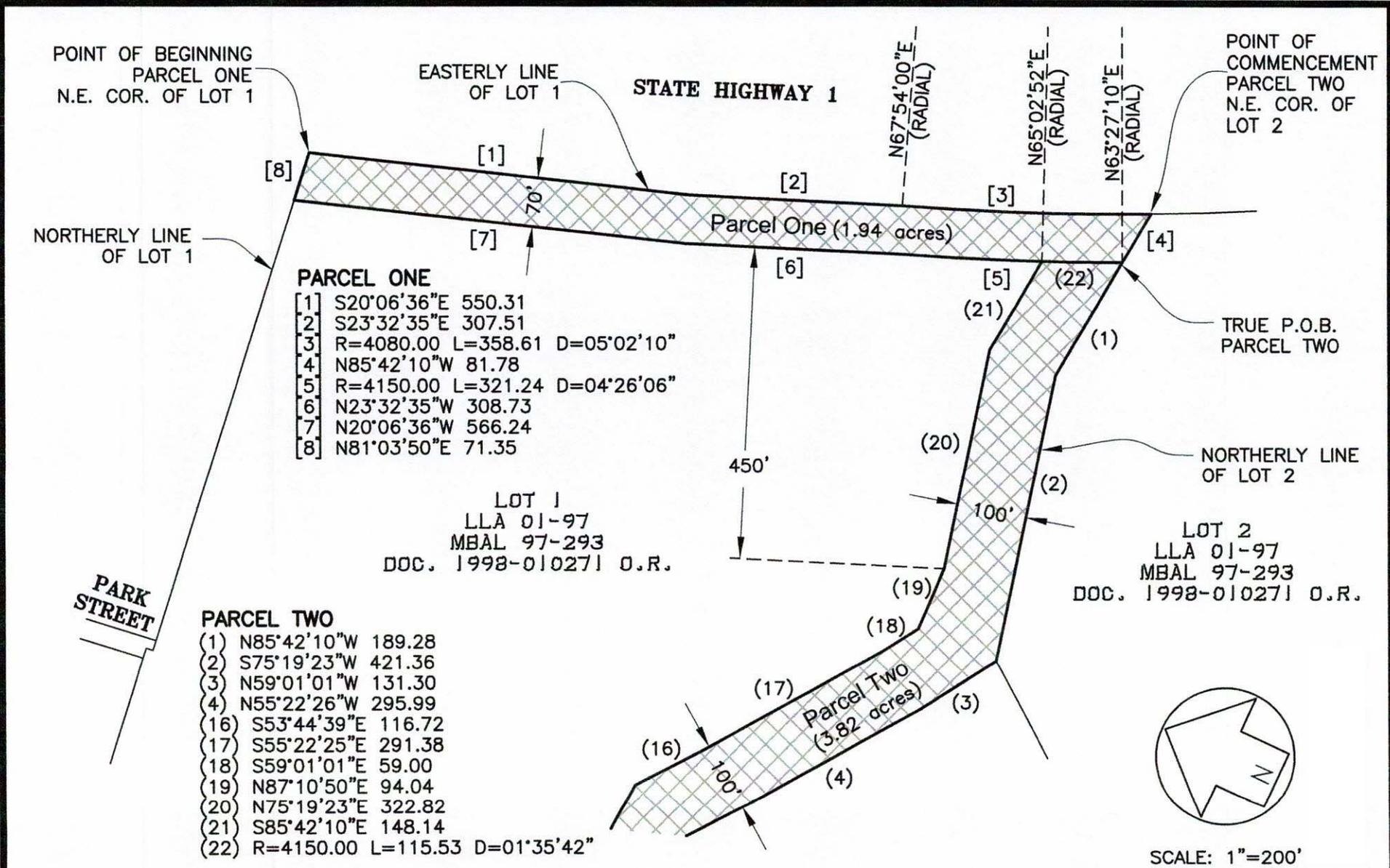
THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

JUSTIN P. HEIGHT, PLS 6167 DATE

EXHIBIT B

City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
 August 2019
 Page 1 of 3 Pages



- PARCEL ONE**
- [1] S20°06'36"E 550.31
 - [2] S23°32'35"E 307.51
 - [3] R=4080.00 L=358.61 D=05°02'10"
 - [4] N85°42'10"W 81.78
 - [5] R=4150.00 L=321.24 D=04°26'06"
 - [6] N23°32'35"W 308.73
 - [7] N20°06'36"W 566.24
 - [8] N81°03'50"E 71.35

- PARCEL TWO**
- (1) N85°42'10"W 189.28
 - (2) S75°19'23"W 421.36
 - (3) N59°01'01"W 131.30
 - (4) N55°22'26"W 295.99
 - (16) S53°44'39"E 116.72
 - (17) S55°22'25"E 291.38
 - (18) S59°01'01"E 59.00
 - (19) N87°10'50"E 94.04
 - (20) N75°19'23"E 322.82
 - (21) S85°42'10"E 148.14
 - (22) R=4150.00 L=115.53 D=01°35'42"

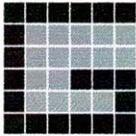
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Job No. 0117-01961 0117-01961Legal-Vistra.dwg

EXHIBIT B

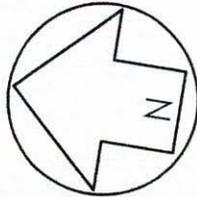
City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
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Job No. 0117-01961 0117-01961Legal-Vistra.dwg



SCALE: 1"=200'

CONTINUED
ON PAGE 2

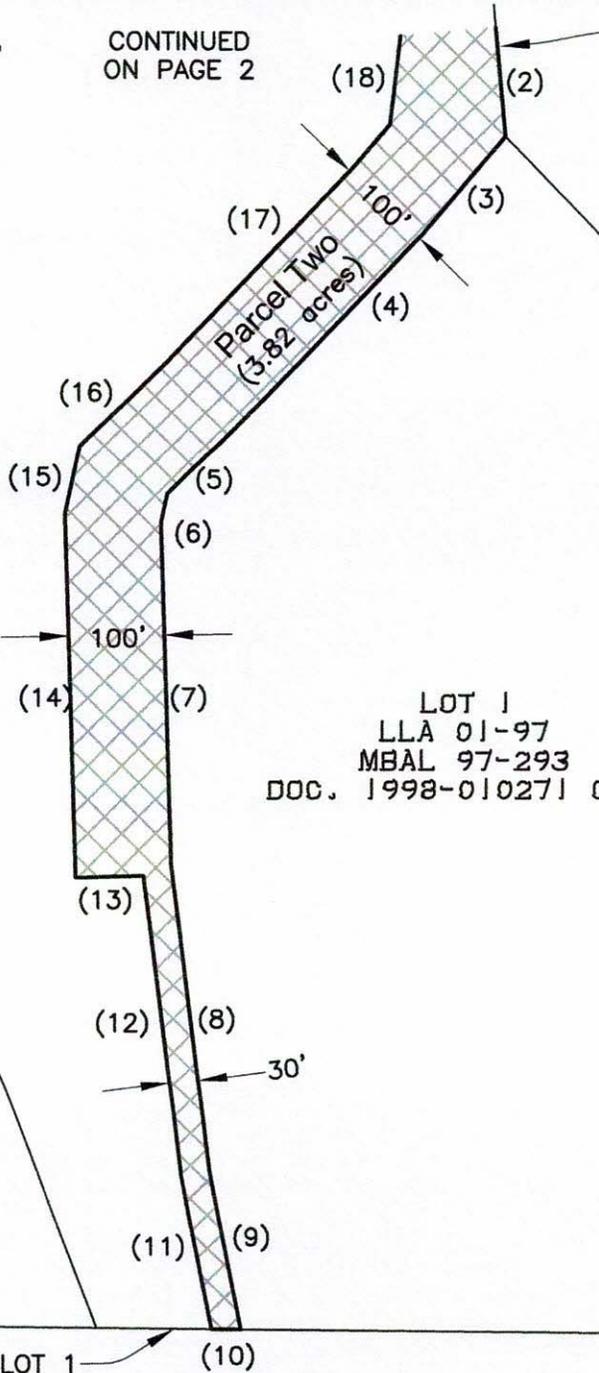
NORTHERLY LINE OF LOT 2

LOT 2
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

LOT 1
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

CITY OF MORRO BAY
DOC. 2008039089 O.R.

WESTERLY LINE OF LOT 1



PARCEL TWO

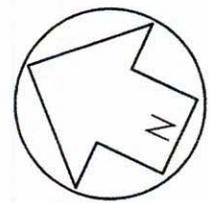
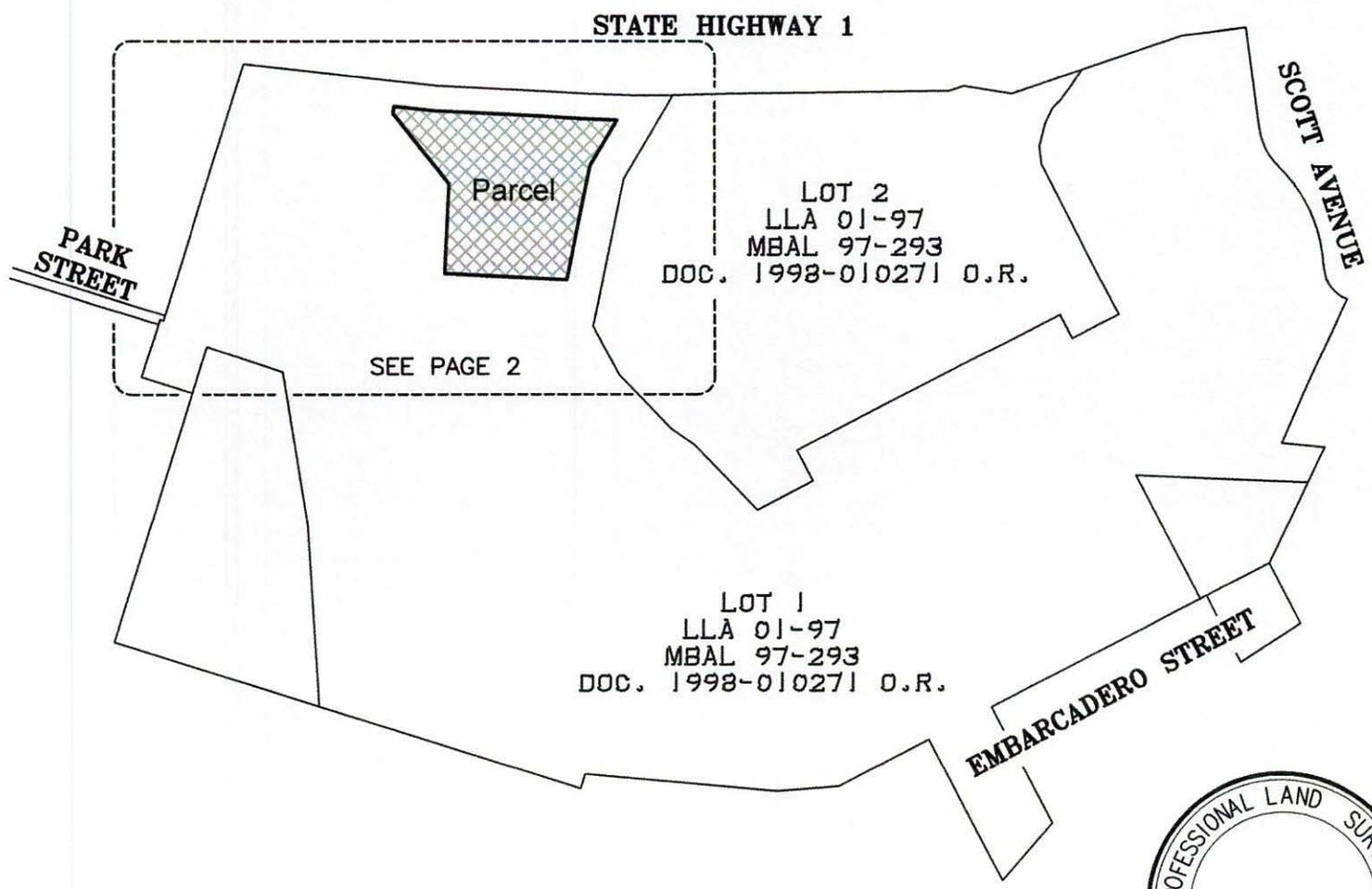
(2)	S75°19'23"W	421.36
(3)	N59°01'01"W	131.30
(4)	N55°22'26"W	295.99
(5)	N53°44'39"W	87.99
(6)	N87°18'25"W	31.08
(7)	S78°49'13"W	357.71
(8)	S73°34'24"W	328.38
(9)	S69°36'40"W	173.29
(10)	N08°56'10"W	30.61
(11)	N69°36'40"E	168.25
(12)	N73°34'24"E	321.25
(13)	N11°10'47"W	70.87
(14)	N78°49'13"E	380.76
(15)	S87°18'25"E	73.41
(16)	S53°44'39"E	116.72
(17)	S55°22'25"E	291.38
(18)	S59°01'01"E	59.00

EXHIBIT B

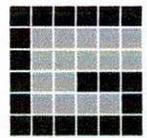
City of Morro Bay WRF Offsite Pipeline Project
Vistra Energy APN 066-331-040
August 2019
Page 3 of 3 Pages

EXHIBIT B-2

Page 3 of 3



SCALE: 1"=500'



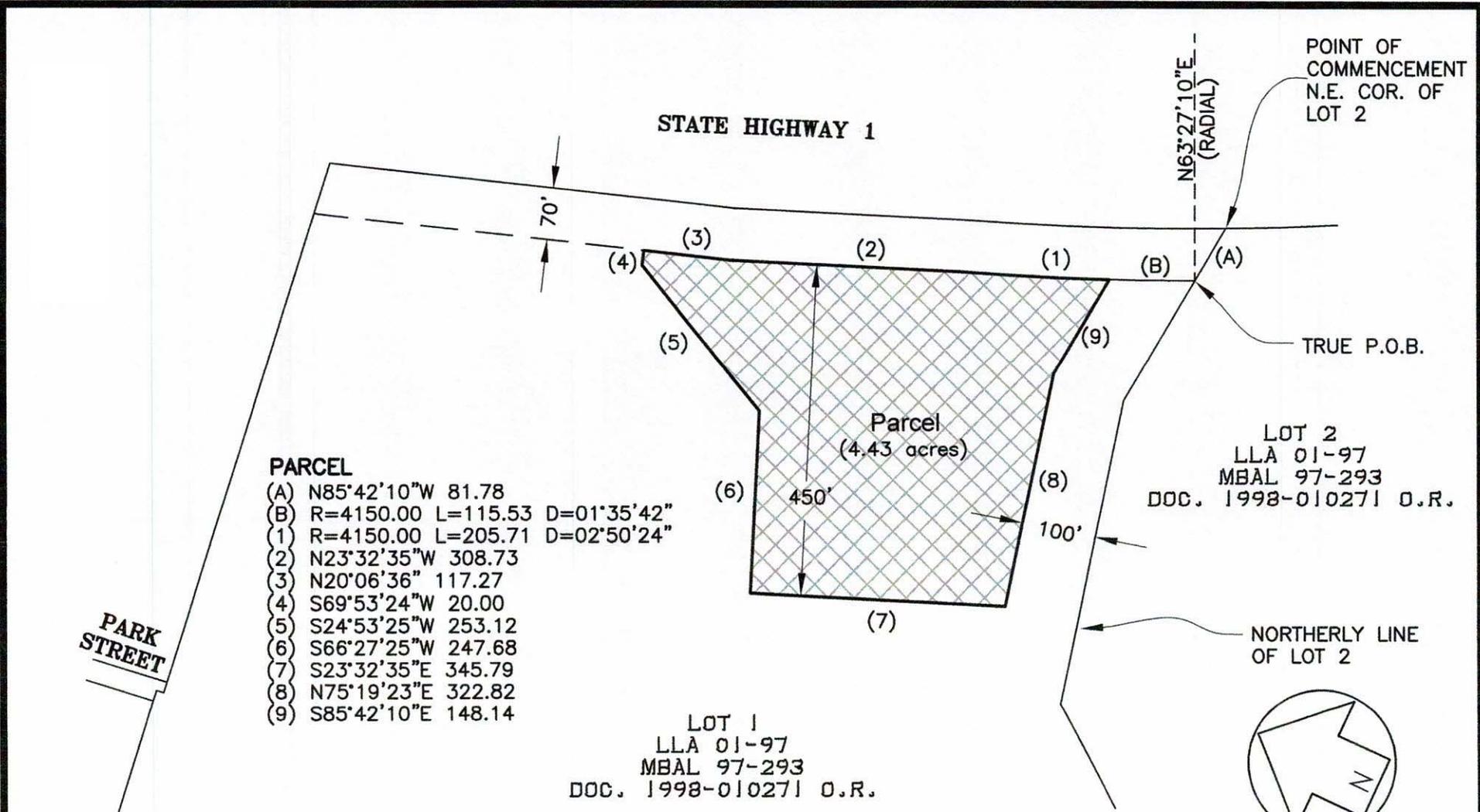
GUIDA SURVEYING INC.
 9241 IRVINE BOULEVARD, SUITE 100
 IRVINE, CALIFORNIA 92618
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THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

EXHIBIT B
 City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
 August 2019
 Page 1 of 2 Pages

Job No. 0117-01961 0117-01961Legal-Vistra.dwg

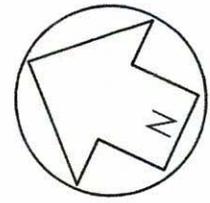
JUSTIN P. HEIGHT, PLS 6167 DATE



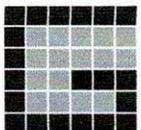
- PARCEL**
- (A) N85°42'10"W 81.78
 - (B) R=4150.00 L=115.53 D=01°35'42"
 - (1) R=4150.00 L=205.71 D=02°50'24"
 - (2) N23°32'35"W 308.73
 - (3) N20°06'36" 117.27
 - (4) S69°53'24"W 20.00
 - (5) S24°53'25"W 253.12
 - (6) S66°27'25"W 247.68
 - (7) S23°32'35"E 345.79
 - (8) N75°19'23"E 322.82
 - (9) S85°42'10"E 148.14

LOT 1
 LLA 01-97
 MBAL 97-293
 DOC. 1998-010271 O.R.

LOT 2
 LLA 01-97
 MBAL 97-293
 DOC. 1998-010271 O.R.



SCALE: 1"=200'



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Job No. 0117-01961 0117-01961Legal-Vistra.dwg

EXHIBIT B

City of Morro Bay WRF Offsite Pipeline Project
 Vistra Energy APN 066-331-040
 August 2019
 Page 2 of 2 Pages



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

January 27, 2020

VIA REGULAR AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

VISTRA ENERGY, fka
DYNEGY Morro Bay, LLC fka
LSP Morro Bay, LLC fka
Duke Energy Morro Bay, LLC
10777 Westheimer, Suite 975
Houston, TX 77042

VISTRA ENERGY, fka
DYNEGY Morro Bay, LLC
c/o Pillsbury Winthrop, et al.
50 Fremont Street, Suite 1009
San Francisco, CA 94105

Eric Cherniss
Vistra Energy
6555 Sierra Drive
Irving, TX 75039

Re: APN: 066-331-046 (City of Morro Bay)
Property: Morro Bay Water Reclamation Facility Project
Subject: Notice of Intent to Adopt Resolution of Necessity

Dear Property Owner:

On December 2, 2019, the City of Morro Bay (the "City") made an offer to purchase several easements on the property identified as Assessor's Parcel No. 066-331-046, in the City of Morro Bay, California. The City reiterates its previous offer to purchase the easements for \$200,000, subject to the conditions stated in the offer.

You are also hereby notified that the City intends to consider the adoption of a resolution of necessity authorizing acquisition of the easements in the property by eminent domain. The City's governing body will consider that resolution at a meeting to be held at the following time and place:

Date: February 11, 2020
Time: 5:30 p.m.
Location: City of Morro Bay, Veterans Memorial Hall, 209 Surf Street, Morro Bay, California

You have the right to appear at the meeting and be heard on the following issues:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned and located in the manner that will be most

compatible with the greatest public good and the least private injury;

3. Whether the easement in the property sought to be acquired is necessary for the project;
4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners(s) of record; and
5. Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

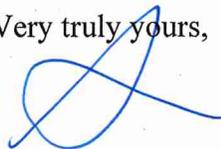
NOTICE: If you fail to file a written request to be heard at the hearing within 15 days after the date of this letter, then the City may decide not to hear or consider any evidence which you may have to present. Please also be advised that, if you do not appear and present information to the City at the hearing, then you may be precluded from later challenging the City's authority to acquire the easements in the property through its use of the power of eminent domain.

Neither the pendency of the City's consideration of the resolution of necessity, nor the initiation of formal eminent domain proceedings, in any way prevents further negotiations from occurring for the acquisition of an easement in the property, and the City will be most willing to continue such negotiations.

If you have any comments or questions, please do not hesitate to contact me at (805) 772-6200.

Thank you for your cooperation in this matter.

Very truly yours,



Scott Collins
City Manager

cc: Rob Livick, PE/PLS, Public Works Director (via email)
Christopher Neumeyer, City Attorney (via email)

RESOLUTION NO. 14-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
DECLARING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF A
PERMANENT EASEMENT INTEREST IN A PORTION OF THE PROPERTY KNOWN AS
ASSESSOR'S PARCEL NO. 066-331-036**

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

WHEREAS, for the public purposes set forth herein, the City of Morro Bay, California is authorized to acquire property through the exercise of eminent domain pursuant to Section 19 of Article 1 of the California Constitution, Section 1230.010 *et seq.* of the California Code of Civil Procedure, and Sections 37350, 37350.5 and 40404 of the California Government Code; and

WHEREAS, "Project" for the purposes of this acquisition consists of upgrading the City's wastewater treatment and water supply infrastructure, including construction of a new water reclamation facility ("WRF"), new pipelines, and pump stations, conveyance of wastewater to the new WRF and treated recycled water to new wells for groundwater injection/replenishment and potable reuse, and the decommissioning of the existing wastewater treatment plant ("WWTP") (collectively, the "Project"); and

WHEREAS, in order to carry out and make effective the principal purpose of the Project, it is necessary for the City to acquire a permanent easement interest (the "Easement Interest") in a portion of certain privately-owned real property located in the City of Morro Bay, County of San Luis Obispo, California with Assessor's Parcel No. 066-331-036 ("Property"), as more particularly described and depicted in Exhibits "A" and "B" which are incorporated by this reference; and

WHEREAS, on or about December 2, 2019, the City made a written offer to the record owner to acquire the Easement Interest in the Property at an amount that was not less than the appraised fair market value, in compliance with Government Code Section 7267.2(a), and the owner and the City have not been able to reach a negotiated agreement regarding the acquisition of the Easement Interest; and

WHEREAS, on January 24, 2020, a Notice of Intent to Adopt a Resolution of Necessity ("Notice of Intent," a copy of which is attached hereto as Exhibit "C" and incorporated by this reference) was mailed to all persons whose names appear on the last equalized County Assessment Roll as having an ownership interest in the Property, and to the address appearing on said Roll and to other addresses, which Notice of Intent advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein; and

WHEREAS, the hearing set out in said Notice of Intent was held on February 11, 2020, at the time and place stated therein and all interested parties were given an opportunity to be heard on the following matters:

- (a) Whether the public interest and necessity require the Project;
- (b) Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;

- (c) Whether the Easement Interest proposed to be acquired is necessary for the Project;
- (d) Whether the offer meeting the requirements of Government Code Section 7267.2 has been given; and
- (e) Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

WHEREAS, the staff report to the City Council regarding this matter is incorporated herein by this reference in its entirety; and, as a result of such hearing, the City Council has determined that public health, safety, and welfare require the City to acquire the Easement Interest for the stated purposes; and

WHEREAS, the City Council, as a result of such hearing, has determined that the public health, safety, and welfare require the City to acquire the Easement Interest for the stated purposes.

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby does find, determine, and declare based upon evidence presented to it as follows:

Section 1. The facts and conclusions referenced in this Resolution, and the findings made by the City Council herein, are supported by substantial evidence contained in the record of this proceeding, including, but not limited to, the staff report. The staff report, in its entirety, is supportive of all of the findings made in this Resolution.

Section 2. The Easement Interest consists of a permanent easement interest in the real property located within the City of Morro Bay, County of San Luis Obispo, State of California, Assessor's Parcel No. 066-331-036, and more specifically described in Exhibits "A" and "B" hereto.

Section 3. The City Council finds as follows:

- (a) The public interest, convenience, and necessity require the Project.

The Project consists of upgrading the City's wastewater treatment and water supply infrastructure, including construction of a new WRF, new pipelines, and pump stations, conveyance of wastewater to the new WRF and treated recycled water to new wells for groundwater injection/replenishment and potable reuse, and the decommissioning of the existing WWTP. The existing WWTP was built in 1954 and provides wastewater treatment services to the City and unincorporated communities within the surrounding area. The WWTP was built before modern State and Federal water quality standards and does not meet federal Clean Water Act (CWA) standards for full secondary treatment. Instead, the WWTP has been operating under a CWA waiver since 1984. However, in 2018, the City received a time schedule order (TSO) from the Central Coast Regional Water Quality Control Board requiring compliance with full CWA secondary treatment requirements by February 2023. Failure to be in compliance by the deadline would result in the City having to pay substantial fines and penalties, in addition to still needing to eventually bring the WWTP into compliance with current water quality standards. As a result, the Project is necessary to replace the WWTP, bring the City into compliance with all State and Federal water quality standards, and provide for water reclamation and increased water supply security for the City and surrounding community in light of climate change and water scarcity. .

(b) The Project is planned and located in a manner which is most compatible with the greatest public good and the least private injury.

The WRF itself will be located away from coastal hazard threats at a more inland and higher elevation to decrease chances of significant adverse impacts on coastal resources. The proposed location of the Project further minimizes adverse impacts on public views, public access, and recreation by being built on vacant, agricultural land further away from the coastline and outside the immediate vicinity of existing commercial and residential uses. Other potential locations for the Project are technically infeasible, provided poor hydraulics and constructability, or increased adverse environmental impacts. Furthermore, the location of the Easement Interest is on property already dedicated for public use as a bike path. Relocating the Easement Interest would adversely affect more private property not already dedicated to a public use, would adversely affect sensitive cultural resource areas, and would significantly increase construction costs and risks.

(c) The taking of the Easement Interest as described above is necessary for the Project.

Without the Easement Interest, water and effluents would not be able to be transported to and from the new WRF, the pump stations, or wells, and there would be no injection wells to provide replenishment for groundwater within the area. In other words, without the Easement Interest, the Project could not be constructed.

(d) The requirement of Government Code Section 7267.2 that a written offer to purchase the property be made has been met and the offer was made in the form and manner required by law.

A written offer to purchase the Easement Interest, based on an appraisal of the fair market value of the Easement Interest, was made to the owner of the Easement Interest on or about January 24, 2020.

Section 4. The acquisition of the Easement Interest is authorized by Section 19 of Article 1 of the California Constitution, Section 1230.010 et seq. of the California Code of Civil Procedure, and Sections 37350, 37350.5, and 40404 of the California Government Code.

Section 5. As to any portion of the Easement Interest that is currently appropriated for a public use, the use for which the Easement Interest is sought to be taken is a more necessary public use, and the City is empowered to take such Easement Interest for a more necessary public use pursuant to Code of Civil Procedure Section 1240.610. Specifically, the Easement Interest is a more necessary public use than the existing public use as a bike path easement, since the Project cannot be constructed without the Easement Interest being located at the proposed location. Moreover, the proposed Easement Interest for the pipelines, which will be underground, is not anticipated to substantially interfere with or adversely affect the public use of the existing bike path, and the two public uses may coexist on the Property.

Section 6. The environmental impacts and effects of the Project were fully addressed, and all obligations imposed by the California Environmental Quality Act have been complied with for the Project.

Section 7. The City hereby declares its intent to acquire the Easement Interest in the City's name in accordance with the provisions of the law of the State of California and finds that all conditions, statutory requirements and prerequisites to the exercise of the power of eminent domain

to acquire the Easement Interest described herein have been complied with by the City.

Section 8. The City Council authorizes the City Manager and the City Attorney to execute such documents as may be necessary to implement the acquisition of the Easement Interest and to direct the law firm of Aleshire & Wynder, LLP to commence proceedings in a court of competent jurisdiction, as may be necessary, to acquire the Easement Interest by eminent domain, including the filing of an application for an Order for Possession prior to Judgment, if necessary, in accordance with the provisions of the California Eminent Domain Law and the Constitution of California.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 11th day of February 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

Exhibit A

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
PG&E - APN 066-331-036
August 2019
Page 1 of 2 Pages

That portion of Lot 2, Lot Line Adjustment 01-97, Case MBAL 97-239, in the City of Morro Bay, County of San Luis Obispo, State of California, as described in the Certificate of Compliance recorded February 26, 1998 as Document Number 1998-010270 of Official Records of said County, and as shown on the map filed in Book 77, Page 26 of Record of Surveys in the office of the County Recorder of said County, described as follows:

Beginning at the northeast corner of said Lot 2, being the beginning of a curve to the left, concave northeasterly, the radial center of which bears $N62^{\circ}51'50''E$, a distance of 4080.00 feet;

Thence 1st, along the easterly line of said Lot 2, and along said curve, through a central angle of $02^{\circ}07'51''$, an arc distance 151.74 feet to an angle point in said easterly line;

Thence 2nd, continuing along said easterly line, $S27^{\circ}12'08''E$, a distance of 628.32 feet to an angle point therein;

Thence 3rd, continuing along said easterly line, $S44^{\circ}10'05''E$, a distance of 44.29 feet to an angle point therein;

Thence 4th, continuing along said easterly line, $S17^{\circ}19'03''E$, a distance of 136.90 feet to an angle point therein;

Thence 5th, continuing along said easterly line, $S45^{\circ}31'03''E$, a distance of 208.26 feet to the southeasterly corner of said Lot 2;

Thence 6th, along the southerly line of said Lot 2, $N82^{\circ}25'56''W$, a distance of 51.98 feet to an angle point therein;

Thence 7th, continuing along said southerly line, $N80^{\circ}32'04''W$, a distance of 49.03 feet to an angle point therein;

Thence 8th, continuing along said southerly line, $N72^{\circ}44'42''W$, a distance of 23.27 feet, more or less, to a line parallel with, and lying 70.00 feet westerly of, said easterly line of Lot 2;

Thence 9th, leaving said southerly line, and along said parallel line, $N45^{\circ}31'03''W$, a distance of 123.44 feet;

Thence 10th, continuing along said parallel line, $N17^{\circ}19'03''W$, a distance of 137.77 feet;

Thence 11th, continuing along said parallel line, $N44^{\circ}10'05''W$, a distance of 38.02 feet;

Thence 12th, continuing along said parallel line, $N27^{\circ}12'08''W$, a distance of 637.50 feet to the beginning of a non-tangent curve to the right, concave northeasterly, the radial center of which bears $N60^{\circ}45'02''E$, a distance of 4150.00 feet;

Thence 13th, continuing along said parallel line, and along last said curve, through a central angle of $02^{\circ}45'02''$, an arc distance of 195.72 feet, more or less, to the northerly line of said Lot 2;

Thence 14th, along said northerly line, $S85^{\circ}42'10''E$, a distance of 81.78 feet to the Point of Beginning.

Exhibit A
City of Morro Bay WRF Offsite Pipeline Project
PG&E - APN 066-331-036
August 2019
Page 2 of 2 Pages

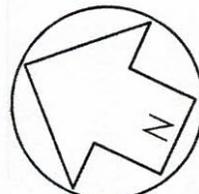
Containing 1.85 acres, more or less.

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

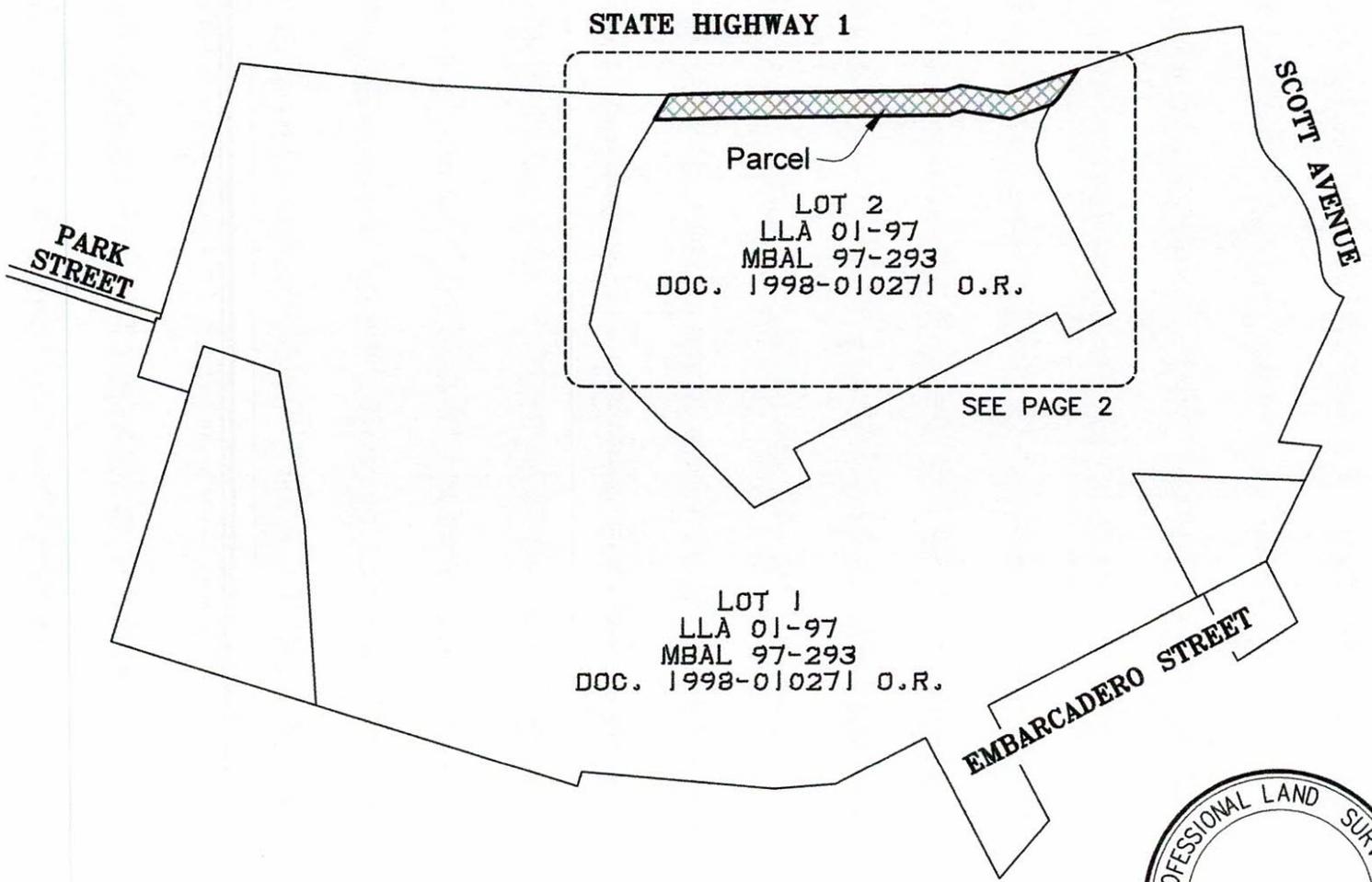
Justin P. Height, PLS 6167

Date

Exhibit B



SCALE: 1"=500'



STATE HIGHWAY 1

PARK STREET

SCOTT AVENUE

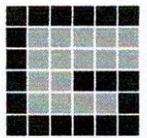
Parcel

LOT 2
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

SEE PAGE 2

LOT 1
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

EMBARCADERO STREET



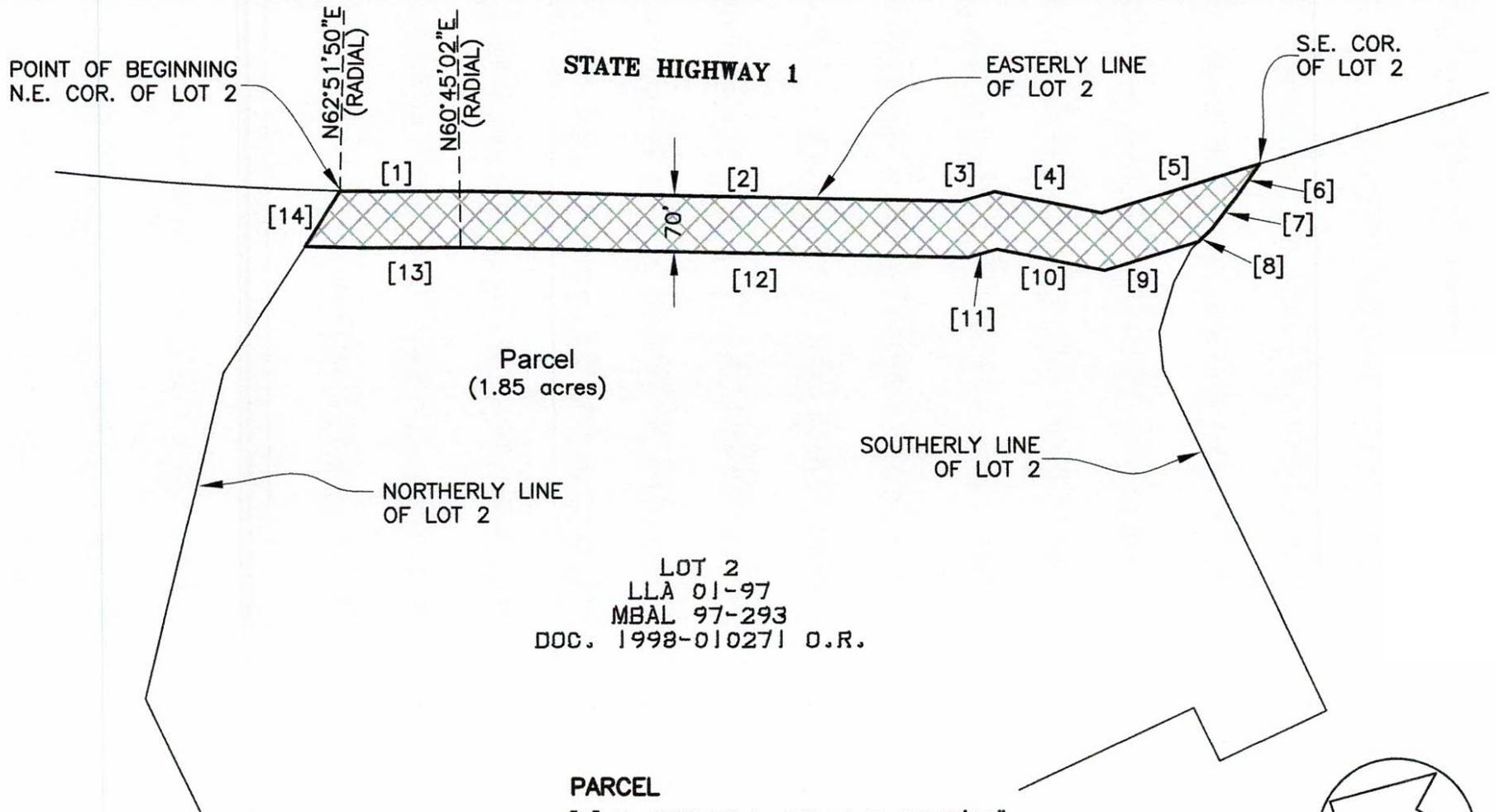
GUIDA SURVEYING INC.
9241 IRVINE BOULEVARD, SUITE 100
IRVINE, CALIFORNIA 92618
TOLL FREE 1.855.90GUIDA
WWW.GUIDAINC.COM

THIS PLAT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

EXHIBIT B
City of Morro Bay WRF Offsite Pipeline Project
PG&E APN 066-331-036
August 2019
Page 1 of 2 Pages

Job No. 0117-01961 0117-01961Legal-PGE.dwg

JUSTIN P. HEIGHT, PLS 6167 DATE

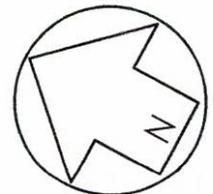


Parcel
(1.85 acres)

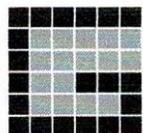
LOT 2
LLA 01-97
MBAL 97-293
DOC. 1998-010271 O.R.

PARCEL

- [1] R=4080.00 L=151.74 D=02°07'51"
- [2] S27°12'08"E 628.32
- [3] S44°10'05"E 44.29
- [4] S17°19'03"E 136.90
- [5] S45°31'03"E 208.26
- [6] N82°25'56"W 51.98
- [7] N80°32'04"W 49.03
- [8] N72°44'42"W 23.27
- [9] N45°31'03"W 123.44
- [10] N17°19'03"W 137.77
- [11] N44°10'05"W 38.02
- [12] N27°12'08"W 637.50
- [13] R=4150.00 L=195.72 D=02°42'08"
- [14] S85°42'10"E 81.78



SCALE: 1"=200'



GUIDA SURVEYING INC.

9241 IRVINE BOULEVARD, SUITE 100
IRVINE, CALIFORNIA 92618
TOLL FREE 1.855.90GUIDA
WWW.GUIDAINC.COM

Job No. 0117-01961 0117-01961Legal-PGE.dwg

EXHIBIT B

City of Morro Bay WRF Offsite Pipeline Project
PG&E APN 066-331-036
August 2019
Page 2 of 2 Pages



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

January 24, 2020

VIA REGULAR AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Pacific Gas & Electric Company
245 Market St.
San Francisco, CA 94120

Pacific Gas & Electric Co.
P. O. Box 7054
San Francisco, CA 94120

Re: APN: 066-331-036 (City of Morro Bay)
Property: Morro Bay Water Reclamation Facility Project
Subject: Notice of Intent to Adopt Resolution of Necessity

Dear Property Owner:

On December 2, 2019, the City of Morro Bay (the "City") made an offer to purchase an easement on the property identified as Assessor's Parcel No. 066-331-036, in the City of Morro Bay, California. The City reiterates its previous offer to purchase the easement for \$113,000, subject to the conditions stated in the offer.

You are also hereby notified that the City intends to consider the adoption of a resolution of necessity authorizing acquisition of an easement in the property by eminent domain. The City's governing body will consider that resolution at a meeting to be held at the following time and place:

Date: February 11, 2020
Time: 5:30 p.m.
Location: City of Morro Bay, Veterans Memorial Hall, 209 Surf Street, Morro Bay, California

You have the right to appear at the meeting and be heard on the following issues:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the easement in the property sought to be acquired is necessary for the project;
4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners(s) of record; and

5. Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

NOTICE: If you fail to file a written request to be heard at the hearing within 15 days after the date of this letter, then the City may decide not to hear or consider any evidence which you may have to present. Please also be advised that, if you do not appear and present information to the City at the hearing, then you may be precluded from later challenging the City's authority to acquire an easement in the property through its use of the power of eminent domain.

Neither the pendency of the City's consideration of the resolution of necessity, nor the initiation of formal eminent domain proceedings, in any way prevents further negotiations from occurring for the acquisition of an easement in the property, and the City will be most willing to continue such negotiations.

If you have any comments or questions, please do not hesitate to contact me at (805) 772-6200.

Thank you for your cooperation in this matter.

Very truly yours,



Scott Collins
City Manager

cc: Rob Livick, PE/PLS, Public Works Director (via email)
Christopher Neumeyer, City Attorney (via email)

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AGENDA NO: C-3

MEETING DATE: February 11, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: February 4, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Discussion Concerning an Ordinance to Regulate Tobacco, Vaping and/or Secondhand Smoke, including potentially a Tobacco Retailer Licensing Program, the Sale of E-Cigarettes (Vaping Products), and Enhancing the City's Current Secondhand Smoking Regulations by a Smokefree Policy for Multi-unit Housing

RECOMMENDATION

Staff recommends Council discuss, and consider providing direction to staff on, an ordinance to regulate tobacco, vaping and/or secondhand smoke.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

A tobacco retailer's license program will create additional administrative costs, and the new regulations may create additional enforcement costs. An ordinance can provide for the recovery of administrative and enforcement costs related to the tobacco retailer's license program through the assessment of a license fee. The tobacco regulations may have an impact on the local economy in a way that would affect City finances, but the nature and extent of such effects are currently unknown.

BACKGROUND

The City Council has reviewed and considered the regulation of tobacco, vaping and secondhand smoke at four prior Council meetings.

On October 8, 2019, a comprehensive staff report was presented to Council concerning options related to local tobacco and vaping regulations. (See Attachment No. 1.) At that October 8, 2019 meeting, Council directed staff to bring back an ordinance which, in summary, adopted recommended regulations from the American Lung Association (See Attachment No. 2), banned the sale of all vaping products, and banned the sale of flavored tobacco.

On November 12, 2019, an ordinance consistent with Council direction was introduced, and further direction was sought from Council on multiple issues including: 1) the effective date of prohibition on sale of vaping products and certain cigars; 2) menthol cigarettes; 3) sales of single cigars; 4)

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Prepared By: CN Dept Review: _____

City Manager Review: SC City Attorney Review: CFN

effective date of prohibition on smoking in multi-unit residences; 5) sale of cannabis vaping products; and, 6) tobacco retailer license. After discussion, Council asked staff to bring back an amended ordinance for further introduction.

On December 10, 2019, consistent with the Council direction from the November 12, 2019 meeting, an ordinance was introduced which addressed the above issues, and further addressed Vitamin E acetate in vaping products (which has been linked with deaths from vaping products). At that December 10, 2019 meeting, after further Council discussion, direction was provided to staff to further amend the ordinance to extend the date of the effective ban on vaping products and certain cigars, and to remove the previously proposed ban on flavored tobacco products.

On January 14, 2020, consistent with Council direction from the December 10, 2019 meeting, an ordinance was introduced (See Attachment No. 3). Additional discussion occurred at the January 14, 2020 Council meeting, and staff was directed to bring back an issues list for further deliberation concerning the details of an ordinance to regulate tobacco, vaping and/or secondhand smoke.

DISCUSSION

Council is asked to consider the following issues and provide direction to staff on an ordinance to regulate tobacco, vaping and/or secondhand smoke.

1. American Lung Association Recommended Regulations.

Notwithstanding the City's significant steps to reduce indoor and outdoor smoking where people tend to congregate (see Chapter 9.24, "Second Smoking Regulations," of the Morro Bay Municipal Code), the City in late 2018 received a "D" from the American Lung Association ("ALA") for its overall tobacco control grade. The ALA score sheet (See Attachment No. 2) identified several areas in which the City could significantly improve its score.

Council is asked to consider ALA recommendations and provide direction.

Based on prior discussions, an issue to focus on in the ALA recommendations is sale of flavored tobacco (see item "f" below), and also how to address the specific flavor of menthol.

The two major changes recommended by the ALA (which if implemented should earn the City an "A" grade from the ALA) are:

- a. **Multi-Unit Residences.** Preventing secondhand smoke in multi-unit residences (e.g., apartments and condominium) (does not include single-family homes and mobile home parks) by:
 - i. Prohibiting smoking in both the units and common areas of apartment and condo complexes, senior and assisted living facilities, and long-term health care facilities, except in designated smoking areas.
 - ii. Requiring that all new and renewed leases for occupancy of a unit in a multi-unit residence shall prohibit smoking.
 - iii. Requiring landlords of multiunit housing to provide written notice of new restrictions to tenants and to also post "no smoking" signs.

- *As introduced on November 12, 2019, effectively a two-month extension was provided to the effective date of the new regulations on multi-unit housing. If such regulations are proposed by Council for reintroduction, the question is posed whether to maintain a two-month extension.*
- b. **Tobacco Retailer License Program.** Creating a tobacco retailer's license program aimed at providing the City with a mechanism for punishing violations of local, state, and federal tobacco laws by tobacco retailers.
- *As introduced on November 12, 2019, the tobacco retailer license program was to become effective on January 1, 2021. Staff seeks confirmation that if this program is adopted then the program would start about a year after the effective date of the ordinance.*

The ALA also recommends action on the following "emerging issues" which provide bonus points for the City's Tobacco Control Grade:

- c. **Pharmacies.** Prohibiting the sale of tobacco products by retail establishments that contain a pharmacy.
- d. **Cigars.** Prohibiting the sale of (a) single cigars that cost less than five dollars, (b) any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer, and (c) any package of cigars containing fewer than five cigars.
- e. **Locations.** Retailer location restrictions.
- i. Retailer location restrictions will require Planning Commission review and a review of the zoning code. Staff seeks direction on whether this item should continue to be reviewed (as previously directed).
- f. **Flavors.** Prohibiting the sale of flavored tobacco products.
- i. **Menthol.** If flavored tobacco products are prohibited, the issue is posed of whether an exception should be made for menthol.
 - ii. **Smokeless Tobacco.** If flavored tobacco products are prohibited, the issue is posed of whether an exception should be made for smokeless tobacco.

2. Vaping Products ("E-Cigarettes")

As reported in detail in the October 8, 2019 staff report on this subject, public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use have emerged as a pressing national issue. Please refer to that staff report (Attachment No. 1) for a substantive review of this public health issue.

Recently the federal government addressed this nationwide issue by prohibiting (as of February 6, 2020) the sale of kid-friendly vape flavors (such as mint and fruit - menthol and tobacco flavors remain legal) for *some* vaping products. The ban only applies to cartridge or pre-filled pod devices,

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which are designed for one-time use and are popular with minors. All other devices will remain on the market. The prohibited devices will not be allowed until or unless they get Federal Food and Drug Administration clearance.

Council direction previously was to introduce an ordinance that prohibited the sale of all vaping products in the City. Then, after extensive subsequent Council discussion, the issue is now presented to Council on what direction, if any, Council desires to provide on a full or partial ban on the sale of vaping products in the City.

- a. **All Vaping Products** Council is asked whether staff should be directed to bring back an ordinance to prohibit the sale of all vaping products.
 - b. **Flavored Vaping Products.** In the alternative, Council is asked whether staff should be directed to bring back an ordinance to prohibit the sale of flavored vaping products (which are considered by many to be especially attractive to minors).
 - a. **Menthol.** If so, should menthol be excluded from the prohibition?
 - b. **One-Time Use Pods.** If so, should the prohibition be limited to the sale of “one-time” use pods (similar to the federal ban), or extended to the sale of all flavored vape products?
 - c. **Vitamin E Acetate.** Previous Council direction was that any vaping products allowed for sale (i.e., cannabis vaping) expressly not be allowed to contain Vitamin E acetate, which has been linked to vaping deaths nationwide. Staff seeks confirmation that any subsequent vaping regulations would include a complete prohibition on the sale of any vaping product containing Vitamin E acetate.
 - d. **Effective Date of Prohibition.** If Council desires to prohibit the sale of all or some vaping products, the question is posed when the prohibition would become effective. Council could have the prohibition as a matter of law become effective within 30 days after the second reading (adoption) of such an ordinance. Or, Council could extend the effective date of the prohibition by a set period of time to allow local retailers additional time to prepare for the prohibition. The most recent direction was to allow roughly an extra five months from the otherwise effective date of the ordinance.
3. **ID Check.** A further issue for Council discussion and direction has emerged from the prior Council deliberations. Council is asked whether to bring back an ordinance requiring a 100% ID check for all sales of tobacco, e-cigarette and legal vaping products. Enforcement could be through suspension or revocation of a tobacco retailer license (see Item 1(b) above).

CONCLUSION

Staff recommends Council consider providing direction on an ordinance to regulate tobacco, vaping and/or secondhand smoke.

ATTACHMENT

1. Staff Report from October 8, 2019
2. American Lung Association Score Card for San Luis Obispo County and Cities
3. Previously Proposed Ordinance (introduced on January 14, 2020)



AGENDA NO: C-1

MEETING DATE: October 8, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: October 2, 2019

FROM: Scott Collins, City Manager

SUBJECT: Review of Options Related to Local Tobacco and Vaping Regulations

RECOMMENDATION

Staff recommends the City Council receive the status report and provide direction with regard to local smoking regulations and the sale of tobacco and vaping products.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

None.

BACKGROUND

This report provides background on several issues related to nicotine/smoking, including public smoking / second hand smoke regulations, the growing use and dangers of vaping and the report presents several programmatic and policy options for City Council consideration designed to curtail the sale of tobacco and vaping products to underaged individuals in Morro Bay.

IMPROVING GRADE FOR OUTDOOR SMOKING REGULATIONS AND OTHER TOBACCO REGULATIONS

The City, like most local governments in California, has taken significant steps to reduce indoor and outdoor smoking where people tend to congregate. That movement occurred in the wake of irrefutable and comprehensive evidence that secondhand smoke causes numerous public health problems. Outdoor smoking also leads to litter, which can damage sensitive environmental habitats and waterways. Thus, the City has banned smoking in both indoor and outdoor public places, including places of employment, public accommodations, and public transit, with limited exceptions for private residences and vehicles and designated smoking areas, as further detailed in Chapter 9.24 of the Morro Bay Municipal Code.

More recently, City Council directed staff to review its smoking ordinance in the wake of the City receiving a grade of “D” for its anti-smoking efforts in late 2018 from the American Lung Association (ALA). The ALA score sheet (Attachment 1) identified several areas in which the City could significantly improve its score. Those include enhancing the City’s multi-family home indoor and outdoor common area smoking policy, pursuing a local tobacco retail license program to help reduce the sale of tobacco to minors, and addressing emerging issues such as vaping. Those policy options are provided in summary form in the “Discussion” section.

Prepared By: SC

Dept Review: _____

City Manager Review: SC

City Attorney Review: _____

VAPING/E-CIGARETTE USE SKYROCKETS AMONG TEENAGERS

At the same time the City began exploring options for outdoor smoking and locally regulating the tobacco market, public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use (to be referred to as “vaping” throughout remainder of report) has emerged as a pressing national issue. Over 800 cases of vaping related lung illnesses have been reported in hospitals, health clinics and emergency rooms nationwide, with twelve deaths related to vaping. In response, the U.S. Surgeon General and the California Department of Public Health (CDPH) issued health advisories to educate the public about the imminent health risk posed by vaping any product.

Vaping is inhaling aerosol from an e-cigarette or other vaping device that heats a liquid that can contain nicotine, marijuana (THC), cannabidiol (CBD) or other substances. According to the CDPH, the shapes and sizes of the device vary and include colorful vape pens, modified tank systems, and new pod devices that can look like the USB flash drives for computers, cell phones, credit card holders, and highlighters. These devices are frequently referred to as e-cigarettes, e-cigs, vapes, vape pens, electronic vaporizers, pod mods, or pod systems. The vapor can also contain toxins (including ones that cause cancer) and tiny particles that are harmful when breathed in. Vaping can deliver a significant amount of concentrated nicotine to its user, and the long-term effects of vaping have still yet to be fully explored. This is particularly troubling given the fact that teenage use of vaping products is skyrocketing.

Beyond the potential immediate health risk posed by vaping to all ages, teen use of vaping has exploded in recent years. According to a February 2019 National Institutes of Health report, over 17.6% of 8th graders, 32.3% of 10th graders and 37.3% of 12th graders reported trying vaping last year nationwide. The U.S. Surgeon General reports vaping use is higher among high school aged individuals than adults. Vape products, particularly the flavored variety, are popular among younger users and it is likely that vape product companies purposefully packaged and advertised their products to children in hopes of gaining more lifelong customers. There are over 15,000 flavors available on the market, with youth like flavors such as bubble gum, cotton candy, and fruit punch to name a few.

According to a 2017-2018 *California Healthy Kids Survey (CHKS)* of Morro Bay High School 9th and 11th graders conducted in 2018, of those surveyed, 18% of 9th graders and 22% of 11th graders used vaping products at least once in the past month. Over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products. City staff also spoke with school administrators at Morro Bay High School and Los Osos Middle School (LOMS). Use appears to have grown significantly at the high school in the past couple years, following national trends, and vaping with cannabis is becoming more popular among students. At-risk students are especially susceptible to vaping use according to administrators at LOMS, though they said vaping is not widespread among the general student population at this time. Both schools are working hard with students and parents to educate them about the dangers of vaping any product, especially nicotine and cannabis.

Unfortunately, one of the serious health risks associated with teenage use of vaping is the potential for addiction to nicotine. According to Dr. Richard Miech of the University of Michigan who led the NIH study, “vaping is reversing hard-fought declines in the number of adolescents who use nicotine...these results suggest that vaping is leading youth into nicotine use and nicotine addiction, not away from it.” As Council and community members know, nicotine addiction leads to numerous hazardous health issues for all ages, such as lung disease, cancer and early death. For youth, nicotine exposure during adolescence can harm the developing brain.

In response to the growing safety concern surrounding vaping, the U.S. Food and Drug Administration (FDA), issued more than 1,300 warning letters and civil money penalty complaints to retailers who

illegally sold vaping products to minors during a nationwide undercover operation in September 2019, and ordered vaping companies to cease selling misleading labeled and/or advertised e-liquids resembling kid-friendly food products such as candy and cookies. The top-selling national brands of vaping products must submit plans to the FDA by the end of the year describing how they will address the widespread youth access and use of their products. The FDA has yet to formally review and approve vaping and vape products, which has stated it will complete its review by 2021. It is in the process, however, of finalizing guidance to remove all non-tobacco flavors of e-cigarettes from the market.

In the meantime, many states and local communities across the nation have banned the sale of flavored vaping products that appeal to children and teenagers, and some have taken the step of instituting wholesale bans of vaping products in their communities. City Council may want to consider similar actions. Those options, along with other policies designed to curb the sale of tobacco products to minors and reduce indoor smoking, are discussed below.

DISCUSSION

OPTIONS TO IMPROVE GRADE AND ADDRESS VAPING USE AMONG TEENS:

Summary of Proposed Revisions to Morro Bay's Secondhand Smoke Ordinance

Below is a summary of the proposed changes to be made to Morro Bay's smoking regulations paired with the American Lung Association (ALA) grade criteria.

Revised Municipal Code Chapter 9.24 – Secondhand Smoking Regulations

ALA Criteria: Smokefree housing – (1) non-smoking units in apartments; (2) non-smoking units in condominiums; and (3) non-smoking common areas.

Proposed Changes to Municipal Code:

Definitions – amended to include:

- “Common area,” defined in accordance with ALA criteria as “every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use,” including hallways, lobbies, community rooms, parking garages, etc.
- “Multi-unit residence,” defined to include apartment buildings and condominium complexes, among others.

Areas where smoking is prohibited – amended to include:

- Common areas in multi-unit residences.
- All units in multi-unit residences.

Areas where smoking is permitted – amended to include:

- Private residences other than multi-unit residences – revised from *all* private residences.

Required lease terms for multi-unit residences:

- New or existing leases for multi-unit residences must be amended to ban smoking within the residences and provide other residents with ability to enforce ban. If such provisions are not included in a lease, they will be deemed to be included by law.

New Municipal Code Chapter 9.25 – Tobacco Retailer License

ALA Criteria: Reducing Sales of Tobacco Products – (1) requiring tobacco retailers to pay an annual fee that sufficiently covers administration and enforcement efforts, including compliance checks; (2) requiring that all retailers obtain a license to sell tobacco and renew it annually; (3) providing that any violation of a local, state or federal tobacco law is considered a violation of the license; and (4) creating a financial deterrent for violations through fines and penalties as well as suspension and revocation of the license.

Proposed Additions to Municipal Code:

- Requirement that all tobacco retailers, including e-cigarette retailers, obtain a tobacco retailer’s license from the City, valid for one year and requiring annual renewal.
- Provision establishing procedure for City to enforce violations of tobacco-related laws.
- License may be revoked if retailer violates local, state, or federal tobacco-related laws.
- Fines may be assessed against retailers for non-compliance.

Morro Bay’s ALA Local Grade

If the City’s municipal code was amended as described above, the City’s grade would change as follows:

Morro Bay’s current grade:

A for Smokefree Outdoor Air
F for Smokefree Housing
F for Reducing Sales of Tobacco Products
Overall Grade: D

Morro Bay’s grade following the new ordinance:

A for Smokefree Outdoor Air
A for Smokefree Housing
A for Reducing Sales of Tobacco Products
Overall Grade: A

ALA Bonus Points – Emerging Issues

The ALA also gives bonus points to cities and counties that address emerging issues. There are six areas available, and each one gives an additional 1 point towards the total score. Although Morro Bay could earn an A without the bonus points if the changes proposed above were implemented, the bonus points would serve as additional evidence of the City’s commitment to preventing harm from smoking.

The emerging issues are:

- Secondhand Smoke & Electronic Cigarettes – A bonus point is available for a jurisdiction which includes electronic cigarette smoke within its definition of secondhand smoke. (**Morro Bay already qualifies for this bonus point.**)

- Tobacco Retailers & Electronic Cigarettes – A bonus point is available for a jurisdiction which includes electronic cigarettes within its definition of tobacco products in the jurisdiction’s tobacco retailer ordinance. **(Morro Bay would qualify for this bonus point if it implements the changes proposed above.)**
- Flavored Tobacco Products – A bonus point is available for a jurisdiction which bans the sale of flavored tobacco products.
- Tobacco Retailer Location Restrictions – A bonus point is available for a jurisdiction which limits the location of tobacco retailers based on proximity to schools or parks, limits proximity of tobacco retailers to one another to avoid high concentration or limits the total number of tobacco retailer licenses which can be issued.
- Sale of Tobacco Products in Pharmacies – A bonus point is available for a jurisdiction which prohibits the sale of tobacco products at pharmacies.
- Minimum Pack Size of Cigars – A bonus point is available for a jurisdiction which prohibits the sale of cigars in individual or small packages.

The municipal code could be amended to achieve all of these bonus points if desired by the City Council.

Summary of Available Vaping Restrictions

If the City Council desires to ban or regulate vaping, the following options are available:

- Permanently ban sale of all e-cigarettes and related products and accessories.

Temporarily ban sale of all e-cigarettes and related products and accessories until they are approved by the FDA. San Francisco adopted a temporary of this kind in June 2019. (The San Francisco ordinance is attached as Attachment 2.)
- Ban only *flavored* e-cigarette cartridges (e-liquid), on the grounds that these are more likely to be used by minors.

Note: The Municipal Code already includes e-cigarette smoke in the definition of “smoke” for purposes of the secondhand smoking regulations in Chapter 9.24. Furthermore, as proposed, the tobacco retailer’s license in Chapter 9.25 would be required for the sale of e-cigarettes.

Summary of San Francisco’s New Ordinance

San Francisco recently passed a new ordinance that limits the ability of tobacco retailers to sell certain products which have not been approved by the Federal Food and Drug Administration (“FDA”). In 2008, Congress passed the Family Smoking Prevention and Tobacco Control Act (“Act”). One element of the Act is that any new tobacco products which enter the market following 2007 must be pre-approved by the FDA. Most current electronic cigarettes entered the market following 2007 but have yet to be pre-approved by the FDA. The FDA has given electronic cigarette manufacturers until May 2020 to submit their products for evaluation.

San Francisco’s ordinance addresses this extended review period. The ordinance prohibits the sale of new tobacco products or electronic cigarettes until they have been approved by the FDA. This ordinance ties the ban to the FDA’s review period, so if the FDA expedites its review process, the ordinance may have a shorter effective regulation period.

The ordinance also bans the sale of flavored tobacco products, without reference to the FDA review process.

JUUL, the leading manufacturer of vaping products, has placed a referendum on the upcoming November 2020 ballot in San Francisco to repeal the vaping product ban and replace it with less restrictive regulations. However, in late September 2019, JUUL representatives announced they will stop supporting the measure to overturn the anti-vaping regulations and will suspend all advertising of its products in the United States¹.

Potential Federal Action on Vaping

According to recent news reports, the FDA is set to release a policy restricting the sale of flavored vaping products in the coming weeks. In late September, JUUL issued a statement saying that they would not push back on a Trump administration plan to pull flavored e-cigarettes from the market until the products gain approval from federal regulators. Consequently, the federal legal landscape regarding flavored vaping products may shift in coming months.²

Questions for City Council Discussion

- Would City Council like to pursue changes to the secondhand smoke ordinance, to include restrictions on multi-family units?
- Would City Council like to pursue a local tobacco retail license program?
- Is the City Council interested in regulating sales of vaping/e-cigarette products in Morro Bay?
If yes, what level of regulation would City Council like to pursue?
 - Ban of flavors?
 - Ban on all vaping/e-cigarette products like San Francisco?
- Are there any other tobacco/vaping regulations City Council would like to pursue?

CONCLUSION

The City has an opportunity, with a few relatively minor policy changes, to significantly boost its grade with the American Lung Association regarding tobacco and secondhand smoke regulations. In addition, with the proliferation of vaping products use and early understanding now available of the dangers associated with vaping, City Council may want to consider regulating the local sales of vaping products. Several policy options are available that can help reduce the sale of tobacco and vaping products to our youth in Morro Bay.

ATTACHMENTS

1. American Lung Association Score Card for SLO County and Cities
2. City and County of San Francisco vaping ban ordinance
3. City of Morro Bay Draft Ordinance

1 Sources: JUUL Articles entitled “Statement Regarding San Francisco Ballot Initiative” dated September 30, 2019, <https://newsroom.juul.com/statement-regarding-san-francisco-ballot-initiative/> and “JUUL Labs Names New Leadership, Outlines Changes to Policy and Marketing Efforts” dated September 25, 2019 <https://newsroom.juul.com/juul-labs-names-new-leadership-outlines-changes-to-policy-and-marketing-efforts/>

2 Source: JUUL Article entitled “Juul Accepts Proposed Ban on Flavored Vaping Products as ECO Steps Down” dated September 25, 2019 <https://www.npr.org/2019/09/25/764201798/juul-will-agree-to-ban-on-flavored-vaping-products-says-its-ceo-is-stepping-down>.

ATTACHMENT 2



**San Luis Obispo
County**

	Arroyo Grande	Atascadero	Grover Beach	Morro Bay	Paso Robles	Pismo Beach	San Luis Obispo	San Luis Obispo County Unincorporated
Overall Tobacco Control Grade	C	F	C	D	C	F	B	C
TOTAL POINTS	5	1	5	4	5	1	10	5
Smokefree Outdoor Air	D	D	D	A	B	D	A	D
Dining	0	0	0	4	4	0	2	0
Entryways	0	0	0	4	4	0	4	0
Public Events	0	0	0	3	4	0	4	0
Recreation Areas	4	4	4	4	4	4	4	2
Service Areas	0	0	0	4	0	0	4	0
Sidewalks	0	0	1	1	0	0	1	1
Worksites	0	0	0	1	0	0	1	0
TOTAL POINTS	4	4	5	21	16	4	20	3
Smokefree Housing	F	F	F	F	C	F	C	F
Nonsmoking Apartments	0	0	0	0	0	0	0	0
Nonsmoking Condominiums	0	0	0	0	0	0	0	0
Nonsmoking Common Areas	0	0	0	0	4	0	4	0
TOTAL POINTS	0	0	0	0	4	0	4	0
Reducing Sales of Tobacco Products	A	F	A	F	F	F	A	A
Tobacco Retailer Licensing	4	0	4	0	0	0	4	4
TOTAL POINTS	4	0	4	0	0	0	4	4
Emerging Issues Bonus Points								
Emerging Products Definition - <i>Secondhand Smoke</i>	0	0	0	1	1	0	1	0
Emerging Products Definition - <i>Licensing</i>	1	0	1	0	0	0	1	1
Retailer Location Restrictions	0	0	0	0	0	0	0	0
Sale of Tobacco Products in Pharmacies	0	0	0	0	0	0	0	0
Flavored Tobacco Products	0	0	0	0	0	0	0	0
Minimum Pack Size of Cigars	0	0	0	0	0	0	0	0
TOTAL POINTS	1	0	1	1	1	0	2	1

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) TO TITLE 5 (BUSINESS TAX CERTIFICATES AND REGULATIONS), AND AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), OF THE MORRO BAY MUNICIPAL CODE, TO REGULATE THE SALE OF TOBACCO AND VAPING PRODUCTS AND UPDATE AND EXPAND THE CITY'S SECONDHAND SMOKING REGULATIONS

WHEREAS, the City of Morro Bay ("City") is empowered to enact legislation to protect the health, safety, and welfare of the public; and

WHEREAS, there are currently serious public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use ("vaping"); and

WHEREAS, approximately 1,300 cases of vaping-related lung illnesses have been reported in hospitals, health clinics, and emergency rooms nationwide, with at least 26 confirmed vaping-related deaths; and

WHEREAS, the U.S. Surgeon General and the California Department of Public Health (CDPH) have issued health advisories to educate the public about the imminent health risk posed by vaping any product; and

WHEREAS, teen use of vaping products has grown rapidly in recent years, with a February 2019 National Institutes of Health report finding that over 17.6% of 8th graders, 32.3% of 10th graders, and 37.3% of 12th graders reported trying vaping last year nationwide; and

WHEREAS, according to a 2017-2018 California Healthy Kids Survey (CHKS) of Morro Bay High School 9th and 11th graders conducted in 2018, 18% of 9th graders and 22% of 11th graders had used vaping products at least once in the past month, and over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products; and

WHEREAS, vaping products, particularly the flavored variety, are popular among younger users, and the packaging and advertising of vaping products by vaping companies are often attractive to younger users; and

WHEREAS, there are over 15,000 vaping flavors available on the market, including youth-orientated flavors such as bubble gum, cotton candy, and fruit punch, among others; and

WHEREAS, in addition to vaping products, several other tobacco products are flavored in ways that make them attractive to minors, thus increasing the risk that minors will use, and potentially become addicted to, these products; and

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WHEREAS, the Federal Family Smoking Prevention and Tobacco Control Act prohibits the sale of cigarettes with a characterizing flavor – other than tobacco and menthol – but does not apply to cigars, e-cigarettes, or other non-cigarette tobacco products; and

WHEREAS, the Tobacco Products Scientific Advisory Committee (TPSAC) issued a report on menthol cigarettes, concluding that they have “an adverse impact on public health in the United States” and that “[t]here are no public health benefits of menthol compared to non-menthol cigarettes.” The report recommended to the FDA that “[r]emoval of menthol cigarettes from the marketplace would benefit public health in the United States;” and

WHEREAS, in July 2013, the Food and Drug Administration published an independent report that concluded that “menthol use is likely associated with increased smoking initiation by youth and young adults,” “menthol in cigarettes is likely associated with greater addiction,” and “that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes;” and

WHEREAS, through the sale of tobacco products, pharmacies, and business establishments containing pharmacies, convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services; and

WHEREAS, tobacco products are often sold individually to make them less expensive, and more enticing to youth. Establishing policies to ensure minimum packaging, or a minimum unit in which cigars can be sold in, will increase the purchase price and help protect youth from the health dangers of smoking little cigars and cigarillos; and

WHEREAS, secondhand smoke has been shown to be extremely hazardous to the health and safety of those who are exposed to it; and

WHEREAS, the City’s existing secondhand smoke regulations focus on limiting or eliminating secondhand smoke in public areas; and

WHEREAS, these regulations have not completely eliminated the risks posed by secondhand smoke to the community; and

WHEREAS, the City desires to amend its regulations to make them more comprehensive and effective at protecting the community from the harmful effects of secondhand smoking.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE, TO READ AS FOLLOWS:

“Chapter 5.54 – TOBACCO, ELECTRONIC CIGARETTES AND VAPING

5.54.010 – Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings:

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

“Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt wrap,” or “cigar wrap.”

“Electronic cigarette,” (i.e., e-cigarettes) for purposes of solely this Chapter 5.54, means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (excluding cannabis that contains no Vitamin E acetate), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Electronic cigarette paraphernalia” means an item that is marketed as or can be used as a component part of an electronic cigarette.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacture of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

“Hearing officer” means the person or persons designated by the city manager to serve in this capacity. Compensation of a hearing officer shall not depend on any particular outcome of any hearings the hearing officer is involved with concerning this Chapter 5.54.

“Licensing agent” means a person or persons designated by the city manager to serve in this capacity.

“Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals. “Pharmacy” includes any retail

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establishment that contains a pharmacy, even if the pharmacy is not the sole or primary business of the retail establishment.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

“Tobacco product paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

“Tobacco product” means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic cigarettes or any other preparation of tobacco including Indian cigarettes called “bidis.” “Tobacco product” includes electronic cigarette paraphernalia and tobacco product paraphernalia. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes and is marketed and sold solely for such an approved purpose.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, or any tobacco product; “tobacco retailing” shall mean the doing of any of these things.

“Vaping” is a term that commonly refers to the use of an electronic cigarette.

“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.

5.54.020 – Prohibition on sale of certain tobacco products.

It is unlawful to sell, offer to sell, or exchange or offer to exchange for consideration any of the following products in the City of Morro Bay (commencing July 15, 2020):

- A. Electronic cigarettes.
- B. Electronic cigarette paraphernalia.
- C. Cigars meeting any of the following criteria:
 - 1. Any single cigar, whether or not packaged for individual sale, unless the retail price exceeds \$5.00; or
 - 2. Any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer; or

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3. Any package of cigars containing fewer than five cigars.

5.54.030 – Requirement for tobacco retailer license.

- A. Beginning on January 1, 2021, it shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur.
- B. Licenses are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration.
- C. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoking related provisions within the Morro Bay Municipal Code and Labor Code Section 6404.5.

5.54.040 – Retailer limitations.

- A. No license will be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.
- C. No license will be issued to authorize tobacco retailing in a pharmacy and no pharmacy shall engage in tobacco retailing at any time.

5.54.050 – License application procedure.

- A. Application for a tobacco retailer's license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:
 1. The name, address, and telephone number of the applicant.
 2. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.
 3. Such other information as the licensing agent deems necessary for enforcement of this chapter.

4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

- B A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.

5.54.060 – Issuance of license.

Upon the receipt of an application for a tobacco retailer's license, the licensing agent shall issue a license unless substantial evidence in the record demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for tobacco retailing at a location prohibited by section 5.54.040; or
- C. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 5.54.120 of this chapter.

5.54.070 – Display of license.

Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs.

5.54.080 – Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent.

5.54.090 – Licenses nontransferable.

A tobacco retailer's license is not transferable to a new location or to another person. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location; or, if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

5.54.100 – Noncompliance with tobacco-related laws - License violation.

It shall be a violation of a tobacco retailer's license for a licensee or his or her agents or employees to violate any local, states or federal tobacco-related law.

5.54.110 – License compliance monitoring.

Compliance with this chapter shall be monitored by City law enforcement agents. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee.

5.54.120 – Suspension or revocation of license.

- A. In addition to any other penalty authorized by law, a tobacco retailer’s license may be suspended or revoked if the city finds, after notice to the licensee consistent with Section 1.03.120 of this Code, and reasonable opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter, or that the information contained in the application, including supplemental information, if any, is false in any material respect, as follows:
 - 1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty days.
 - 2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety days.
 - 3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year.
 - 4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.
- B. During a period of license suspension, the tobacco retailer shall remove all tobacco products from public view at the retail location.
- C. The suspension or revocation of a tobacco retailer’s license shall become effective on the date specified in the notice of suspension or revocation issued by the city, which shall not be sooner than the 11th business day following the date of the city’s decision to suspend or revoke the license.

5.54.130 – Appeal of suspension or revocation.

A decision of the city to suspend or revoke a license is appealable to a hearing officer and must be filed with the city clerk no later than ten business days following the date of the city’s decision to suspend or revoke the license. Appeal procedures shall follow those contained in Sections 1.03.080-090 of this Code except when in conflict with this Chapter 5.54. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the hearing officer may be appealed to the city manager or his or her designee by filing a notice of appeal with the city clerk no later than ten business days following the date of the decision of the hearing officer. A decision of the city manager or his or her designee shall be the final decision of the city.

5.54.140 – Administrative fine – Penalties - Enforcement.

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.16 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative fines as provided in Chapter 1.03 of this code.
- B. Each day that a person acts as a tobacco retailer without a valid tobacco retailer's license shall constitute a separate violation of this chapter.
- C. Violations of this chapter are hereby declared to be public nuisances.
- D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- E. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity."

SECTION 2. CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MORRO BAY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS (NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN STRIKETHROUGH):

“9.24.020 – Purpose.

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain ~~public~~ places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. Protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;
- C. Ensure a cleaner and more hygienic environment for the city, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

9.24.020 – Definitions.

The following words and phrases, as used in this chapter or in any other applicable law regulating smoking, shall have the following meanings:

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“Business” means any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

“Cannabis” means all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“City beach” means the sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City beach shall also include the area of the Sand Spit that is owned by the city.

“City T-piers” means the municipal piers located North of Beach Street and at Tideland Park.

“Code compliance officer” means the city code compliance officer or duly authorized designee of the city code compliance officer.

“Common area” means every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

~~“Dining area” means any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.~~

“Electronic cigarette” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Employee” means any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

“Employer” means any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

“Enclosed” means any covered or partially covered space having more than fifty percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a

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covered porch with more than two walls; or any space open to the sky (hereinafter “uncovered”) having more than seventy-five percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multi-unit residence, except that “landlord” does not include a tenant who sublets a unit.

“Multi-unit residence” means a new or existing property containing two or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:

- 1. A hotel or motel;**
- 2. A mobile home park;**
- 3. A single-family home; and**
- 4. A single-family home with a detached or attached accessory dwelling unit or second unit.**

“Nonprofit entity” means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

“Place of employment” means any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

“Playground” means any park or recreational area designed in part to be used by children, that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

“Premises” means a lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

“Present” means within a reasonable distance.

“Public place” means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, city beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a “public place” does not mean a private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

“Reasonable distance” means the greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty feet.

“Recreational area” means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-piers and playgrounds.

“Restaurant” means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, **vending cart**, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

“Secondhand smoke” means smoke that is generated either from the burning end of a lighted tobacco, weed, cannabis or plant product, or from an electronic cigarette; or, smoke that is exhaled by a smoker, after inhaling or ingesting a lit tobacco, weed, cannabis or plant product, or after use of an electronic cigarette.

“Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

“Smoke or smoking” means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, cannabis, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment, including an electronic cigarette, used for burning any tobacco product, weed, plant, cannabis, or any other combustible substance.

“Sports arena” means an outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events, including the concession stand areas thereof.

“Unenclosed area” means any area which is not enclosed.

“Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.”

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9.24.030 – Secondhand smoke generally.

- A. For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Title 8 of the Morro Bay Municipal Code.
- B. For all purposes within the jurisdiction of the city, no person shall cause secondhand smoke to ~~unreasonably~~ interfere with the reasonable use and enjoyment of another person's private residence."

9.24.040 – Public and other places where smoking shall be prohibited.

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the city, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;
- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; ~~and~~
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not-;
- F. Units in multi-unit residences; and**
- G. Common areas of multi-unit residences.**

The prohibitions stated in subsections (F) and (G) of this Section shall become effective on March 15, 2020.

9.24.050 – Reasonable distance.

Smoking in unenclosed areas shall be prohibited within a reasonable distance ~~of~~ **(at least** twenty feet) from any entrance, opening, crack or vent into an enclosed area where smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

9.24.060 – Places where smoking may be permitted.

Except where prohibited by local, state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

- A. Private **residences other than multi-unit residences**. ~~Residential and Multifamily Properties~~. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated **smoking areas** ~~unenclosed areas (“smokers’ outposts”)~~ provided that all of the following conditions are met:
1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
 2. The area has a clearly marked perimeter;
 3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated ~~outdoor~~ smoking area pursuant to Section 9.24.060~~090~~ of this code;
 4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
 5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
 6. No consistent complaints of secondhand smoke are filed with the city.
- C. Smoking areas at public events which have been approved as part of the special event permit or temporary use permit issued by the city.
- D. Inside a private automobile when no minor child is present, except for as prohibited by state law.

9.24.070 – Modifications of designated **smoking areas** ~~smokers’ outposts~~.

The city reserves the right to prohibit or require modifications to a **designated smoking area** ~~smoker’s outpost~~ at a certain location if it undermines the purposes of this chapter, **or violates the requirements of Section 9.24.060(B) of this code**.

9.24.080 – Allowing, aiding or abetting smoking.

- A. No person, employer, business, **landlord** or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.
- B. ~~Except as provided in Section 9.24.050 of this code, no~~ **No** person, employer, business, **landlord** or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a “No

Smoking” sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.

- C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter’s provisions.

9.24.085 – Required lease terms for all new and existing units in multi-unit residences.

A. Every lease or other agreement (collectively, “lease”) for the occupancy of a unit in a multi-unit residence, entered into, renewed, or continued month-to-month, effective on or after March 15, 2020, shall include the following:

- 1. A clause stating that smoking is prohibited in the unit, including exclusive-use areas such as balconies, porches, or patios.**
- 2. A clause providing that it is a material breach of the lease for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, including sublessees, to (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in the unit, or (iii) violate any law regulating smoking anywhere on the property.**
- 3. A clear description of all areas on the property and in the immediate vicinity of the property where smoking is allowed or prohibited.**
- 4. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease. Such a clause shall provide that any tenant of the multi-unit residence may sue another tenant/owner to enforce the smoking provisions of the lease but that no tenant shall have the right to evict another tenant for a breach of the smoking provisions of the lease.**

B. Whether or not a landlord complies with subsection (A), above, the clauses required by that subsection shall be implied and incorporated by law into every lease to which subsection (A) applies that is entered into, renewed, or continued month-to-month on or after March 15, 2020.

C. This chapter shall not create additional liability for a landlord to any person for a tenant’s breach of any smoking provision in a lease for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.

D. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

9.24.086 – Notice requirements for landlords and unit owners.

- A. **On or before March 15, 2020, every landlord shall provide to the occupants of each unit of a multi-unit residence a written notice of the requirements prohibiting smoking in units and common areas as stated in Section 9.24.040 of this code.**
- B. **Beginning on March 15, 2020, every seller of a unit in a multi-unit residence shall provide prospective buyers with a written notice clearly stating that:**
 - 1. **Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio; and**
 - 2. **Smoking is prohibited in all common areas, except for specifically designated smoking areas.**

9.24.090 – Signs.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

- A. “No Smoking” or “Smoke Free” signs, with letters of not less than one inch in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the public services **community development** director must be conspicuously posted **at each entrance to any place in which smoking is prohibited by this chapter** by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place ~~at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the public services director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.~~
- B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a **designated smoking area** ~~smokers’ outpost~~ pursuant to Section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three inches high and eight inches long with a pictorial representation of a burning cigarette; signs shall contain “Designated Smoking Area” and shall be posted prominently between five feet and seven feet above the floor or ground; and all signs are subject to approval by the public services **community development** director.
- C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.
- D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

9.24.100 - Disposal of smoking waste.

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No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this chapter, except in a designated waste disposal container.

9.24.110 - Fires on city beaches.

No person shall build, light or maintain any fire on any city beach except in designated containers or areas approved by the city.

9.24.120 - Enforcement and penalties.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the city, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- C. Any violation of this chapter shall be deemed a public nuisance which may be abated in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.
- D. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- E. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

9.24.130 - Public education—Purposes of chapter.

The code compliance officer, in conjunction and coordination with the county health officer of the county of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

9.24.140 - Governmental cooperation.

The city manager shall request all governmental and educational agencies which maintain an office within the city to establish local operating procedures to cooperate and comply with this chapter.

9.24.150 - Other laws.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the ____ day of _____ 2020, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the ____ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number ____ was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2020, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk

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AGENDA NO: C-4

MEETING DATE: February 11, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 5, 2020
FROM: Scott Collins, City Manager
Rob Livick, Public Works Director
SUBJECT: Review Options for Improvements to Public Trash and Recycling Receptacles and Public Restroom Management in the Embarcadero and Morro Rock Parking lot Areas

RECOMMENDATION

Staff recommends the City Council review the options to improve cleanliness of public trash and recycling receptacles and City managed public restrooms in the Embarcadero and Morro Rock parking lot areas and provide direction to staff as appropriate.

ALTERNATIVES

The various options are contained within the discussion section of this report.

FISCAL IMPACT

Approval of all options would result in an overall \$20,000 impact to the City's General Fund (spread across FY 2019/20 and FY 2020/21). If those options are approved by City Council, staff will bring back the budget adjustments for Council consideration at the Fiscal Year (FY) 2019/20 Budget discussion on February 25, 2020.

The Coleman Beach bathroom replacement project, if approved, would be partially funded through State Park grant (Proposition 68) and matching City funds from the Park in Lieu fund (not General Fund). The current engineers opinion of probable cost indicates the cost of the project will not exceed \$300,000. The State Parks grant is \$200,000 with the remainder as City match.

BACKGROUND

Morro Bay has experienced a significant growth in the number of visitors over the past decade as measured by hotelier receipts and Transient Occupancy Tax (TOT) revenue. By way of example, since Fiscal Year 2008/2009, TOT receipts have increased by a staggering total of 93% overall. This growth translates into a stronger local tourism industry, with hotels/motels, RV Parks, vacation rentals, restaurants, retail and other tourist serving businesses seeing an increase in their overall revenue. The trickle-down effect of tourism growth includes increases in revenues to the City. Those revenues help fund the City's core services provided to our community members and visitors alike, including 24-hour emergency response, street improvements, code enforcement, upkeep of parks, facility maintenance, etc.

The increased number of visitors, however, does come at a cost, in terms of a strain on local services and infrastructure. This is particularly true in tourist service areas, and no truer than in the Embarcadero and Morro Rock Beach areas. In that combined area (see attached map), the City provides 63 public trash/recycling bins and 6 public restrooms (several lease sites on the waterfront

Prepared By: SC Dept Review: RL
City Manager Review: SC City Attorney Review: CFN

also provide public restrooms, and those are managed by tenants of those lease sites). During the peak tourist season (late May to early October) the City experiences negative impacts to several of the trash/recycling receptacles and more heavily used restrooms as a result of thousands of visitors using the same area simultaneously. The physical manifestation of this impact includes at times overflowing trash cans near the water and intermittent service disruptions and untidy conditions in the heavily used public restrooms (in particular, the Morro Rock parking lot).

As the City and Tourism Business Improvement District (TBID) continues their work of implementing the Tourism Strategic Plan, with eyes on further increasing the number of overnight stays in Morro Bay, we have a responsibility to manage this growth in such a way that preserves our quality of life, our local environment, while encouraging future visits to Morro Bay by our guests.

To that end, over the past several summers, the Public Works Department instituted schedule modifications and completed projects to address this important concern. Those efforts include:

- Increased Consolidated Maintenance staff hours on the weekend shifts, to allow for more maintenance time in the Embarcadero/Morro Rock area when the City experiences the greatest number of visitors.
- Added an ADA accessible porta-potty at the Morro Rock parking lot during summer months, to alleviate pressure on the regular restrooms there.
- Increased restroom cleanings to 4 times per day at each restroom along the Embarcadero and Morro Rock area (up from 2 to 3 cleanings per day).
- Removed small trash cans from the Morro Rock parking lot in some areas, consolidating many of them in larger trash containers away from the water to near the restroom facilities, which has helped reduce the amount of litter in the area.
- Posted signs in public restrooms with contact information to alert the City of any critical maintenance needs in the restroom and surrounding area.
- Assigned both Harbor Patrol and Consolidated Maintenance staff to check for overflowing trash cans along the Embarcadero (particularly on the weekends after the Saturday garbage pick-up), when they are available to do so.
- Replumbed the Morro Rock restroom, to account for greater flushing load. Have not had any backup issues since then.
- Coated the floor surface of the public restrooms with epoxy to improve drainage and reduce odors and staining.

DISCUSSION

While the City has made tremendous strides to improve restroom and trash service, some issues remain. Of key concern is litter from overflowing trash cans and the perception of clogged toilets in the public restrooms, and the recent closure of the Coleman Beach parking lot public restroom.

Public Trash and Recycling Bins

The City contracts with Morro Bay Garbage for pick-up of the vast majority of the public trash and recycling bins, with 6 days per week service (Monday through Saturday) and no Sunday pickup during the summer peak. The trash issue arises typically late in the day on Saturday and into Sunday as trash and recyclables accumulate with not pickup occurring until Monday morning. On busy summer weekends this can lead to several overflowing trash and recycling bins in heavy foot traffic and public dining areas. City staff working in the Embarcadero on those days (Consolidated Maintenance and Harbor Patrol staff) are typically very busy with their regular duties and thus cannot be relied upon to service the trash and recycling bins on a consistent basis.

Improvement Options

Last summer the City inquired with Morro Bay Garbage to add a Sunday pick up day. However, Morro Bay Garbage cannot fulfill this request because there are an insufficient number of Morro Bay commercial customer picks up to warrant hiring a driver for Sunday's only. The City would be required to front the cost for an entire full-time equivalent position for just picking up those trash and recycling bins on Sundays (a significant cost).

Another option the City could pursue is to hire a temporary maintenance worker for the summer weekends (Friday through Sunday) to service the trash and recycling bins and pick up litter. Staff estimates such a position would cost the City approximately \$6,000 in total for work between late May through early October. There is no budget for such an expense at this time and thus would require a budget amendment for FY 2019/20 from Council to move forward. It is also unclear if the City could fill such a position with strictly weekend hours. Given the position's expense and the uncertainty of being able to staff the position, City staff recommends that if Council desires to pursue this option it should be treated as a pilot program for the summer of 2020.

Embarcadero/Morro Rock Public Restrooms

As noted above, the City's Consolidated Maintenance team (in Public Works Department) manages 6 public restrooms in the Embarcadero/Rock areas. The waterfront lease sites add another 12 public restrooms, which are all privately managed. The main cleanliness issues are typically experienced on the summer weekend afternoons at the Rock restroom with the greatest number of users. Staff have responded to calls for service over clogged toilets at the Rock, often finding that the issue could be resolve simply by flushing the toilet. It appears some users are reluctant to push the flush button affixed to the wall above the toilet.

In addition, the City recently had to close the Coleman Beach restroom due to safety concerns related to the integrity of the structure. According to the City's inspection team, the building cannot be salvaged without posing a risk to the community. The Coleman Beach public restroom provides service to those who walk along the path out to the Rock as well as folks who frequent Coleman Beach and nearby basketball courts for recreational activities.

Improvement Options

City staff propose retrofitting the Morro Rock restroom toilets with touchless auto flushers to address the issues experienced over the past few summers. That replacement cost is approximately \$10,000. In addition, staff further recommend maintaining the ADA porta-potty in the Morro Rock parking lot for this upcoming summer. The cost for a porta-potty is approximately \$2,000 for the entire season.

With regards to the Coleman Beach restroom, staff recommends that the City use State Parks grant (Proposition 68) funds to fully replace the facility with a modern ADA accessible public restroom. Staff is developing a proposal to submit to the State for the grant. It is anticipated that the work could begin as early as this summer, but construction timelines are entirely dependent upon the State's processing of the Prop 68 application. The City is assured to receive \$200,000 of Prop 68 funds and must match at least \$40,000 in funds or in-kind services. Staff recommends that the City draw down park in lieu funds for this project to account for the required match. Should Council support this direction, staff will bring forward the necessary budget actions once the project has taken shape and a more detailed project cost estimate is developed.

In the meantime, staff recommends providing an ADA accessible porta-potty near the old Coleman

Beach restroom for this summer. Once the new facility is constructed at Coleman, the porta-potty likely can be removed without creating an impact on restroom accessibility and cleanliness. The cost for a porta-potty is approximately \$2,000 for the entire season.

CONCLUSION

The City understands its responsibility to properly manage the continued growth in tourism in Morro Bay. The proposed actions before City Council will address some of the more consistent areas of concern in the community, in particular trash/litter and restroom availability and cleanliness.

ATTACHMENT

1. Map of Public Trash Receptacles and Restrooms in the Waterfront area

City of Morro Bay Trash/Recycling Containers and Public Restrooms



Legend

-  Restrooms
-  Trash and Recycling Containers

