



# 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, May 12, 2020 – 5:30 P.M. Held Via Teleconference**

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-None

### PUBLIC COMMENT

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Veterans' Hall will not be open for the meeting.*

### **Public Participation:**

*In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-29-20, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:*

- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Clerk's office at [cityclerk@morrobayca.gov](mailto:cityclerk@morrobayca.gov) prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.*

Please click the link below to join the webinar:

➤ <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>

Password: 135692

➤ Or Telephone Attendee: (408) 638-0968 or (669) 900 6833 or (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press \* 9 to "Raise Hand" for Public Comment

#### 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 FEBRUARY 25, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE MARCH 10, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE APRIL 24, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF A LEASE AGREEMENT WITH THE CHAMBER OF COMMERCE FOR CITY-OWNED PROPERTY LOCATED AT 695 HARBOR STREET AND AN AGREEMENT FOR THE CHAMBER TO PROVIDE ECONOMIC DEVELOPMENT SERVICES; (CITY MANAGER)

**RECOMMENDATION: Staff recommends the City Council approve agreements with the Morro Bay Chamber of Commerce (Chamber) for the renewal of a property lease at 695 Harbor Street and provision of economic development services.**

A-5 UPDATE ON THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL DRAFT STATEMENT OF BASIS DOCUMENT FOR THE MORRO BAY POWER PLANT; (CITY MANAGER)

**RECOMMENDATION: Staff recommends the City Council receive and file the report.**

A-6 ADOPTION OF RESOLUTION NO. 42-20 ESTABLISHING A TEMPORARY MORRO BAY CARES COVID-19 UTILITY DISCOUNT PROGRAM; (FINANCE DEPARTMENT)

**RECOMMENDATION: Staff recommends Council adopt Resolution No. 42-20, establishing a temporary Morro Bay Cares COVID-19 Utility Discount Program.**

A-7 REAPPOINTMENT OF HEMANT PATEL TO THE VISIT SAN LUIS OBISPO COUNTY (VSLOC) BOARD OF DIRECTORS; (ADMINISTRATION)

**RECOMMENDATION: Staff recommends the Council reappoint Hemant Patel as the City's representative on the VSLOC Board of Directors (Board) for a 3-year term ending June 20, 2023.**

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 PRESENTATION OF HARBOR DEPARTMENT LEASE MANAGEMENT POLICY WORKING GROUP FINAL DRAFT DOCUMENT FOR CITY COUNCIL REVIEW, INPUT AND DIRECTION; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council review the final draft Harbor Department Lease Management Policy as developed by the policy update working group established by the City Council, and provide input and/or direction where requested and as-necessary.**

C-2 ADOPTION OF RESOLUTION NO. 43-20 APPROVING THE ENGINEER'S REPORT AND DECLARING THE INTENT TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends City Council adopt Resolution No. 43-20 approving the Engineer's Report and declaring the intent to levy the annual assessment for maintenance of the North Point Natural Area.**

C-3 ADOPTION OF RESOLUTION NO. 44-20 APPROVING THE ENGINEER'S REPORT AND DECLARING THE INTENT TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends City Council adopt Resolution No. 44-20 declaring the intent to levy the annual assessment for the maintenance of the Cloisters Park and Open Space for fiscal year 2020/21 and approving the Engineer's Report.**

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, May 26, 2020 at 5:30 p.m.** via teleconference.

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 UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

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.

This Page Intentionally Left Blank

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

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 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/H4jJR4J9g0g?t=103>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/H4jJR4J9g0g?t=672>

#### PRESENTATIONS

- Friends of the Morro Bay Fire Department Scholarship and Donation Presentation  
<https://youtu.be/H4jJR4J9g0g?t=730>

#### PUBLIC COMMENT

<https://youtu.be/H4jJR4J9g0g?t=1188>

Joel Anderson, Morro Bay Mobil Mart, provided the business spot.

Rigmor, Morro Bay, opposed the removal of the Surf Street staircase and raised concerns about neighborhood issues caused by Monday night dinners and plan to provide a warming shelter at the Veterans Hall.

Susan Stewart, Morro Bay, read a statement by Beverly Durrer, Grandma's Frozen Yogurt, regarding a recent vandalism, and expressed appreciation for City staff and local business owners for their immediate response.

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events.

Linda Winters, Morro Bay, announced her appointment as Chapter 1814 GSMOL representative, and shared her commitment to build a strong line of communication between mobile home park residents and city offices.

Mayor Heading closed public comment.

- A. CONSENT AGENDA  
<https://youtu.be/H4jJR4J9g0g?t=2083>

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 28, 2020, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 11, 2020, CITY COUNCIL SPECIAL  
CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 REVIEW AND RECEIVE WATER RECLAMATION FACILITY (WRF) CAPITAL  
PROJECT MONTHLY UPDATE REPORT AND PROVIDE DIRECTION, IF ANY,  
DEEMED APPROPRIATE; (PUBLIC WORKS)

**RECOMMENDATION: Council receive WRF Capital Project Monthly Update  
Report and provide direction, if any, deemed appropriate.**

- A-4 DISCUSSION OF AGENDA FOR THE CALIFORNIA MARINE AFFAIRS AND  
NAVIGATION CONFERENCE (C-MANC) ANNUAL "WASHINGTON WEEK" MEETINGS  
IN WASHINGTON, D.C.; (HARBOR)

**RECOMMENDATION: Staff recommends the Council receive this report and  
provide any desired input on the elements herein.**

- A-5 ADOPTION OF THE SHORT RANGE TRANSIT PLAN; (PUBLIC WORKS)

**RECOMMENDATION: Staff and the Public Works Advisory Board recommend the  
City Council adopt the Short Range Transit Plan (SRTP).**

- A-6 ADOPTION OF RESOLUTION NO. 15-20 AUTHORIZING SUBMISSION OF SB 1 STATE  
OF GOOD REPAIR GRANT APPLICATION AND EXECUTION OF RELATED  
DOCUMENTS UPON AWARD; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 15-  
20 authorizing the submission of SB 1 State of Good Repair Grant Application and  
execution of related documents upon award.**

- A-7 ADOPTION OF RESOLUTION NO. 16-20 AUTHORIZING SUBMISSION OF RURAL  
TRANSIT FUND GRANT APPLICATION AND EXECUTION OF RELATED DOCUMENTS  
UPON AWARD; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 16-20 authorizing submission of Rural Transit Fund Grant Application and execution of related documents upon award.**

- A-8 ADOPTION OF RESOLUTION NO. 17-20 APPROVING THE ASSIGNMENT TO AND ASSUMPTION BY CIHAN CORPORATION AND CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR THAT ASSIGNMENT AND ASSUMPTION, A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITE 91-92/91W-92W AND ACCEPTING A DEED OF TRUST RELATED THERETO (ANDERSON INN, 897 EMBARCADERO); (HARBOR)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 17-20 allowing the Mayor to authorize the assignment and assumption, and authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust related thereto secured by the leasehold interest of Lease Site 91-92/91W-92W, with documents subject to approval of the City Attorney.**

- A-9 ADOPTION OF RESOLUTION NO. 18-20 APPROVING THE ASSIGNMENT TO AND ASSUMPTION BY SMITH LIVESTOCK, LLC, AND CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR THAT ASSIGNMENT AND ASSUMPTION, A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITE 90/90W AND ACCEPTING A DEED OF TRUST RELATED THERETO (PORT HOUSE RESTAURANT, 885 EMBARCADERO); (HARBOR)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 18-20 allowing the Mayor to authorize the assignment and assumption, and authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust related thereto regarding secured by the leasehold interest at Lease Site 90/90W, with documents subject to approval of the City Attorney.**

- A-10 SECOND QUARTER INVESTMENT REPORT (PERIOD ENDING DECEMBER 31, 2019) FOR FISCAL YEAR 2019/20; (FINANCE)

**RECOMMENDATION: Receive the attached Second Quarter Investment Report (period ending December 31, 2019) for Fiscal Year 2019/20.**

Council Member Heller pulled Item A-3.

Mayor Headding opened public comment for the Consent Agenda.

Betty Winholtz, Morro Bay, raised questions regarding WRF Monthly Update.

The public comment period was closed.

MOTION: Council Member Addis moved approval of all items on Consent except Item A-3. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

- A-3 REVIEW AND RECEIVE WATER RECLAMATION FACILITY (WRF) CAPITAL PROJECT MONTHLY UPDATE REPORT AND PROVIDE DIRECTION, IF ANY, DEEMED APPROPRIATE; (PUBLIC WORKS)  
<https://youtu.be/H4jJR4J9g0g?t=2235>

Staff responded to questions raised including project costs eligible for WIFIA funding, anticipated date for issuing the Notice to Proceed, timing for award of contract for the pipeline, traffic control provisions, local labor and 90% design drawings.

MOTION: Council Member McPherson moved approval of Item A-3. The motion was seconded by Council Member Addis for discussion.

Council Member Heller stated for the record his request for 90% design drawings received by the City on February 10, 2020 and the proposed change orders be provided to the Public Works Advisory Board by the end of the week to allow Board members adequate time to review both sets of documents prior to the next scheduled meeting on March 18, 2020.

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

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

- C-1 FISCAL YEAR 2019/20 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT – SIX MONTHS ENDING DECEMBER 31, 2019; A) RECEIVE FY 2019/20 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT AND AUTHORIZE BUDGET ADJUSTMENTS AS RECOMMENDED IN THE ATTACHED SECOND QUARTER BUDGET PERFORMANCE REPORT; B) ADOPT RESOLUTION NO 19-20 AUTHORIZING STAFF TO PROCEED WITH THE SECOND-QUARTER BUDGET ADJUSTMENTS; C) RECEIVE THE FY 2019/20 CAPITAL IMPROVEMENT PLAN MID-YEAR UPDATE; AND D) CONSIDER RESOLUTION NO. 20-20 APPROPRIATING CASTLE WIND COMMUNITY BENEFIT FUNDS TOTALING \$250,000 TO THE NORTH AND SOUTH T-PIER CAPITAL PROJECTS; (FINANCE)  
<https://youtu.be/H4jJR4J9g0g?t=3259>

Finance Director Callaway provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Davis moved to receive FY 2019/20 Mid-Year Budget Performance and Status Report and authorize budget adjustments as recommended in the attached Second Quarter Budget Performance Report; adopt Resolution No. 19-20 authorizing staff to proceed with the second-quarter budget adjustments; receive the FY 2019/20 Capital Improvement Plan Mid-Year Update; and adopt Resolution No. 20-20 appropriating Castle Wind Community Benefit Funds totaling \$250,000 to the North and South T-Pier capital projects. The motion was seconded by Council Member McPherson for discussion.

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

- C-2 MORRO BAY VISITOR CENTER LOCATION AND OPERATIONAL PLAN UPDATE AND RECOMMENDATIONS; (CITY MANAGER/TOURISM)  
<https://youtu.be/H4jJR4J9g0g?t=5427>

City Manager Collins provided the report and, along with Morro Bay Chamber of Commerce CEO/President, Erica Crawford, responded to Council inquires.

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

Mimi Goldberg, Morro Bay, suggested the visitor center be located near Morro Rock or Coleman Park and that it be educational and fun.

Rich Raub suggested that if the City owns the former PG&E plant, the small building in front would be a good location for the visitor center.

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

MOTION: Council Member Davis moved to ask staff to explore other options to provide the most requested visitor services and consider letting current contract expire the end of June. The motion was seconded by Council Member Heller for discussion.

Following discussion, Council Member Davis withdrew the motion and Council Member Heller withdrew the second.

MOTION: Council Member Davis moved to ask staff to explore other options to provide the most requested visitor services during the May budget review. The motion was seconded by Council Member Heller for discussion.

Following discussion, the motion failed 1-4 with Mayor Headding and Council Members Davis, Addis, and McPherson opposed.

MOTION: Mayor Headding moved to ask Council to consider appointing a 2-member subcommittee to review visitor center best practices, identify visitor center performance measures specific to tourism, and develop specific recommendations by April 1 for changes in the visitor center concept and location for the City of Morro Bay. Council Member McPherson seconded the motion for discussion.

Mayor Headding agreed to amend the motion to extend the time limit to April 15 as requested by Council Member McPherson.

Council Members McPherson and Davis volunteered to participate on the sub-committee and received Council support.

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

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/H4jJR4J9g0g?t=8144>

None

E. ADJOURNMENT

The meeting adjourned at 7:47 p.m.

Recorded by:

Dana Swanson  
City Clerk

This Page Intentionally Left Blank

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member
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
	Cindy Jacinth	Senior Planner

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 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/KJ0Pu5q-vMk?t=121>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS - None

PRESENTATIONS - NONE

#### PUBLIC COMMENT

<https://youtu.be/KJ0Pu5q-vMk?t=1289>

Morro Bay High School students, Milagros Alegra Casares, Filippo Coponi and Kayla Burke, presented their Community Activism Project regarding negative impacts of plastics on marine life.

Ken Vesterfelt, Morro Bay, announced the 24th annual Morro Bay Car Show scheduled for the first weekend in May and expressed concern about increased event permit fees.

Larry Gorman, Morro Bay, opposed liveaboard permit fee increases to be considered at a future meeting and provided his cost analysis for review by the Council and staff.

Don Maruska stated his opposition to the proposed remedy for Morro Bay Power Plant contamination.

Phil Hill, Morro Bay, spoke in opposition to the proposed liveaboard permit fee increases.

Linda Winters, Morro Bay, requested Council and community support for the following legislation: SB 915 (Leyva) AB 2845 (Limon) SB 999 (Umberg), AB 2782 (Stone), SB 1117 (Monning), AB 2690 (Low)

Joe Wallick, Morro Bay, spoke in support of the proposed hotel project being considered in Item B-1, provided the project is limited to two stories.

Betty Winholtz, Morro Bay, urged the Council to restore trash cans at Morro Rock, agreed with concerns raised regarding event fees, and requested the Council agenda discussion of letters to Assemblyman Cunningham and Senator Monning in support of legislation mentioned by Ms. Winters.

Ken MacMillan, Morro Bay resident and business owner, urged the City to be flexible on rules and regulations that encourage economic development.

Mayor Heading closed public comment.

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

A. CONSENT AGENDA  
<https://youtu.be/KJ0Pu5q-vMk?t=3595>

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 FEBRUARY 25, 2020, CITY COUNCIL SPECIAL CLOSED MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

Mayor Heading opened the public comment for the Consent Agenda; seeing none, the public comment period was closed.

MOTION: Council Member McPherson moved approval of the Consent Agenda. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

B-1 ADOPTION OF RESOLUTION NO. 21-20 ADOPTING THE MITIGATED NEGATIVE DECLARATION AND APPROVING COASTAL DEVELOPMENT PERMIT #CDP19-039 AND CONCEPT/PRECISE PLAN CONDITIONAL USE PERMIT NO. CUP19-13 FOR A PROPOSED NEW 83-GUESTROOM 56,538SF HOTEL AT 295 ATASCADERO ROAD IN THE C-VS/PD ZONE. THIS PROJECT IS LOCATED IN THE COASTAL COMMISSION APPEALS JURISDICTION; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/KJ0Pu5q-vMk?t=3642>

Mayor Heading and each of the Council Members disclosed ex parte communications held with the applicant, the applicant's representative, and Planning Commission Chair Luhr, regarding proposed conditions provided in the staff report and the applicant's response to those conditions.

Senior Planner Jacinth provided the report and responded to Council inquires.

Mayor Heading opened the Public Hearing.

Cathy Novak, speaking on behalf of the project applicant, summarized key elements and conditions of approval, and submitted requested revisions to Planning Conditions 8 and 9; Planning Commission Conditions 13, 14, 15, 16, 17, 18 and 19; and responded to Council inquiries.

Mayor Headding opened Public Comment.

Don Maruska, Morro Bay, offered his business perspective in support of the project.

Tina Metzger, Morro Bay, spoke in support of conditions that would protect Cypress trees and visual resources, and questioned the impacts of a public use EV charging station on the Highway 41/Main Street intersection.

John Weiss, Morro Bay resident and business owner, requested the Council support the project with modified conditions requested by the applicant.

Sean Green, Morro Bay, spoke in support of the project with Planning Commission's conditions including the need to maximize level 3 EV charging stations and importance of hiring a third party arborist to manage impact to trees.

Betty Winholtz, Morro Bay, stated her support for Planning Commission and staff recommended conditions and raised questions regarding the Mitigated Negative Declaration.

Dan Sedley, Morro Bay, supported the project so long as views of Morro Rock are preserved.

Mayor Headding opened Public Comment.

The Public Hearing was closed.

Following discussion, there was Council concurrence in support of Planning Commission conditions and appreciation for the applicant's efforts to meet those conditions. With regard to the applicant's requested modifications, the Council supported the requested change to Condition #8 so the language in the Mitigated Negative Declaration and conditional approval were consistent.

**MOTION:** Mayor Headding moved to adopt Resolution No. 21-20, making the necessary findings for adoption of the Mitigated Negative Declaration (MND) and approval of Coastal Development Permit No. CDP19-039 and CUP No. 19-13 as Concept/Precise Plan approval, located at 295 Atascadero Road, with change to Item #14 and/or any other items that have language "arborist or landscape architect," that it only be limited to "arborist," secondarily, change to Item #8, to substitute MND language requested by applicant, and correction on page 19, Planned Development Overlay Finding A, replace Planning Commission finds with City Council finds. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

The Council took a brief recess at 8:14 p.m. The meeting reconvened at 8:24 p.m. with all members present.

**C. BUSINESS ITEMS**

C-1 REVIEW PROGRESS UPDATE AND CONCEPT PLANS FROM CENTRAL COAST AQUARIUM FOR POTENTIAL FUTURE MORRO BAY AQUARIUM; (CITY MANAGER) <https://youtu.be/KJ0Pu5q-vMk?t=10464>

City Manager Collins introduced Christine Johnson, Central Coast Aquarium Executive Director, who presented the project concept design and responded to Council inquires.

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

Don Maruska, Morro Bay, spoke in support of the project, stating it is key to economic development and will provide a focal point for the community.

Angelina McKee, Morro Bay, spoke in support of the project and encouraged a more robust plan.

Alexander McKee, Morro Bay, appreciated the project and believed we can do more to show union between the sea and the land.

John Weiss, Morro Bay, was supportive of the project and asked how it would be funded.

Mimi Goldberg, Morro Bay, shared her support for the project and focus on environmental education.

Linda Winters, Morro Bay, commended the City for bringing this educational opportunity to Morro Bay.

MOTION: Council Member McPherson moved the meeting go past 9:30 p.m. to a time uncertain. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

Bob Keller, Morro Bay, stated his support for the aquarium project.

Randy Russin, RRM Design Group, was grateful for the opportunity to work on this project and encouraged the City Council and staff to help keep costs down by facilitating an expedient development process.

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

MOTION: Mayor Headding moved to receive and file Milestone #3 and #4 update from Central Coast Aquarium; accept the Aquarium Concept Plans from Tenji and RRM; and direct City staff to return, by the July 2020 Council meeting, with a Consent of Landowner agreement for the Aquarium project. The motion was seconded by Council Member Addis for discussion.

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

C-2 DISCUSS LOCAL FIREARM SAFETY AND REGULATION; PROVIDE DIRECTION TO STAFF; (CITY ATTORNEY) <https://youtu.be/KJ0Pu5q-vMk?t=14565>

MOTION: Council Member Addis moved to table Item C-2 given the late hour. The motion was seconded by Council Member McPherson and carried 4-1 by roll call vote with Council Member Heller opposed.

- C-3 AMENDMENT TO THE FISCAL YEAR 2019/20 SALARY SCHEDULE ADDING THE CITY ENGINEER CLASSIFICATION AND APPROVING SALARY RANGE, APPROVAL OF REVISED CITY ENGINEER JOB DESCRIPTION, AND APPROVAL OF CITY ENGINEER EMPLOYMENT AGREEMENT; (CITY MANAGER)  
<https://youtu.be/KJ0Pu5q-vMk?t=14656>

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

The public comment period for Item C-3 was opened.

John Weiss, Morro Bay, appreciated the cost savings provided it was agreeable to Mr. Livick.

Mimi Goldberg, Morro Bay, offered her congratulations to Mr. Livick and appreciation for City staff.

The public comment period for Item C-3 was closed.

MOTION: Council Member Davis moved the City Council adopt Resolution No. 22-20 approving the proposed modification to the Fiscal Year (FY) 2019/20 salary schedule by adding the City Engineer classification to the schedule and approving salary range for this position; approve modified job description for City Engineer; and approve the City Engineer employment agreement with Rob Livick appointing Mr. Livick as the City Engineer (minimum 6 month period) and authorize the City Manager to execute the agreement. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/KJ0Pu5q-vMk?t=15193>

Council Member Heller requested consideration of letters of support for affordable housing legislation mentioned during public comment. It was agreed based on the adopted City goal in support of affordable housing, the Mayor can write letters on behalf of the City without further Council action.

E. ADJOURNMENT

The meeting adjourned at 9:46 p.m.

Recorded by:

Dana Swanson  
City Clerk

This Page Intentionally Left Blank

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
APRIL 24, 2020 – 2:00 P.M.  
TELECONFERENCE

AGENDA NO: A-3  
MEETING DATE: May 12, 2020

*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

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/Human Resources Manager  
                         Eric Endersby                    Harbor Director  
                         Scot Graham                      Community Development Director

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 3:15 p.m. with all members 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 non, the public comment period was closed.

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

**CS-1 CONFERENCE WITH LABOR NEGOTIATORS**

A closed session will be held, pursuant to Government Code § 54957.6, with City negotiator and designated labor representative Colin Tanner, special labor counsel, regarding labor negotiations with employee organizations: 1) Morro Bay Firefighters' Association, 2) Morro Bay Peace Officers' Association, 3) Service Employee's International Union - SEIU Local 620; and, regarding labor negotiations with 4) unrepresented management employees; 5) unrepresented confidential employees; and 6) unrepresented executive employees.

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

Property: Lease Site 87-88/87W-88W Under the Sea Gallery, 833 Embarcadero

Property Negotiators: Cherise Hansson and Travis Leage, TLC Family Enterprises, Inc.

Agency Negotiators: Eric Endersby, Harbor Director; Chris Neumeyer, City Attorney; Scott Collins, City Manager

Negotiation: Price and Terms of Payment

**CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**

Property: Lease Site 69-70/69W-70W, 595 Embarcadero

Property Negotiators: Chuck Nettnin, Three Stacks and a Rock Brewing Co. LLC

Agency Negotiators: Scott Collins, City Manager; Eric Endersby, Harbor Director; and Chris Neumeyer, City Attorney

Under Negotiation: Price and Terms of Payment

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

ADJOURNMENT - The meeting adjourned at 3:15 p.m.

Recorded by:

Dana Swanson  
City Clerk



AGENDA NO: A-4  
MEETING DATE: May 12, 2020

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** May 6, 2020  
**FROM:** Scott Collins, City Manager  
**SUBJECT:** Approval of a Lease Agreement with the Chamber of Commerce for City-owned Property located at 695 Harbor Street and an Agreement for the Chamber to Provide Economic Development Services

## **RECOMMENDATION**

Staff recommends the City Council approve agreements with the Morro Bay Chamber of Commerce (Chamber) for the renewal of a property lease at 695 Harbor Street and provision of economic development services.

## **ALTERNATIVES**

No alternatives are recommended at this time.

## **FISCAL IMPACT**

The Chamber lease for 695 Harbor, as proposed and in the past, is \$1.00 annually. Typically, that contract is brought forward at the same time as the Visitor Center service contract with the Chamber. However, the Visitor Center services contract was terminated with the Chamber in April 2020 as the Visitor Center was closed in the wake of the COVID-19 pandemic. The City typically budgets \$50,000 annually for the Chamber to provide Visitor Center services. Staff does not recommend entering into a new contract for Visitor Center services until we have a better handle on the pandemic and an assessment of Visitor Center needs and priorities is completed.

Approval of the proposed modifications to the economic development services contract with the Chamber will result in annual increase of \$16,000 per year, to account for the expanded scope of services being provided by the Chamber. The current annual expense for that contract is \$62,000. This proposal would increase that contract to \$78,000 per year.

## **BACKGROUND/DISCUSSION**

### **695 Harbor Street Lease Renewal**

In 2015, the Council, staff, and the community discussed ways to provide outstanding Visitor Center services at a reduced price using innovative or creative solutions. To that end, the City issued a Request for Proposals (RFP) seeking vendors for Visitor Center services. The City received three proposals based on the RFP from the Chamber, Morro Bay Tourism and Kay's Summer Cottage. Staff recommended the City Council approve an agreement with the Chamber of Commerce at its current building. That agreement has been renewed annually, and the current year agreement was scheduled to terminate on June 30, 2020. In addition, the City also entered into a formal lease agreement with the Chamber for the Chamber to occupy the City property at 695 Harbor Street. That agreement terminates on June 30, 2020.

The City and Chamber terminated the Visitor Center contract in April 2020, due to the closure of the Visitor Center in the wake of COVID-19. Prior to that, the City and Chamber representatives were reviewing different options for relocating the Visitor Center to a more opportune site. With the closure of the Center, however, and the many unknowns related to the pandemic, the City and Chamber terminated the contract. Staff recommends looking into the Visitor Center options once we have a better grasp of the pandemic, our financial position, and a sense of how best to use our limited dollars for tourism purposes.

In addition, City and Chamber staff have renegotiated a new lease for the Chamber to continue to be located at 695 Harbor Street. The new lease tracks the provisions of the current lease, with the exception that the Chamber is seeking a two-year lease. A two-year lease will provide greater organizational stability to the Chamber as its financial position has been unsettled by the COVID-19 pandemic.

### **Economic Development Services Contract**

The City and Chamber entered into a one-year agreement for Fiscal Year 2019/20, for the Chamber to provide economic development services on behalf of the City. Based upon general consensus from the City Council at the special Council meeting on March xx, 2020, the Chamber and City staff engaged in discussions about modifying the contract to account for additional services needed to support our business community resulting from the significant economic fallout from the pandemic. The attached agreement is the result of that collaboration. The proposed contract modifications include the Chamber providing additional services to our local business community, partnering at the regional level for state and federal assistance and assisting the City and business community in the long-term recovery efforts, in addition to the services provided to the City prior to COVID-19. The City would pay an additional \$1,333 per month or \$16,000 per year for those enhanced services. In addition, the proposed contract includes an extension of the services through the end of FY 2021/22. The proposed contract provides for a 90-day lease termination clause should either party seek to terminate the contract.

### **CONCLUSION**

The Chamber of Commerce has served the City and community well prior to and during the COVID-19 pandemic. The Chamber of Commerce has also managed the Visitor Center well and has created strong partnerships, better synchronization, and control of efforts related to business retention and expansion, business recruitment, and tourism. Staff recommends Council approval of the agreements.

### **ATTACHMENTS**

1. 695 Harbor Street Lease Agreement
2. Economic Development Service Agreement
3. Economic Development Services Agreement – Scope of Services

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



## Lease Agreement

### AGREEMENT

This lease agreement ("Lease") is made and entered by and between the CITY OF MORRO BAY, a California municipal corporation, and hereinafter referred to as "LESSOR" and/or "City," and THE MORRO BAY CHAMBER OF COMMERCE, a California non-profit corporation, hereinafter referred to as "LESSEE" and/or "Chamber."

### RECITALS

WHEREAS, LESSOR is the owner of a 2,400-squarefoot office building located at 695 Harbor Street, Morro Bay, CA (the "Premises"); and

WHEREAS, LESSEE is organized to encourage a strong local economy and quality of life by promoting commerce, sound government, and an informed membership and community; and

WHEREAS, LESSEE has special knowledge and experience to promote economic and business development, including business attraction and retention programs, for the benefit of LESSOR; and

WHEREAS, LESSOR and LESSEE have mutual interests in enhancing the economic growth and vitality of the community and have entered into an Amended and Restated agreement for the provisions of economic development services for Fiscal Years 2019/2020, 2020/2021 and 2021/2022; and

WHEREAS, LESSOR and LESSEE previously entered into a lease agreement for LESSEE to lease the Leased Premises (as defined below) from LESSOR, and that prior lease agreement by its terms will terminate on June 30, 2020; and

WHEREAS, LESSOR and LESSEE desire to enter into a new lease agreement for Suites A and B of Premises comprising a combined area of 275 square feet, equal to 11.5 percent of the gross leasable area of the Premises (the "Leased Premises").

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. LEASE: LESSOR hereby leases to LESSEE and LESSEE agrees to accept from LESSOR the lease of the portions of the Leased Premises as described in Section 4., below.
2. RENT: During the term on this Lease, LESSEE agrees to pay the sum of \$1.00, payable in advance on July 1<sup>st</sup> of each fiscal year covered under this agreement (the "Rent") for the use of the Leased Premises and the Additional Access Areas, define below. The Rent has been determined to be the fair market value of the Leased Premises considering the fair market rent for the Leased Premises, the direct economic benefits of LESSEE's services to City, and LESSEE's agreement to provide services to the business community in general without regard to such business's Chamber membership status; provided, however, that

01181.0020/645250.1

*Lease Agreement*

*Morro Bay Chamber of Commerce*

*May 5, 2020*

*Page 1 of 6*

Chamber reserves the right to provide preferential and varying tiers of additional service to Chamber members in accordance with its adopted membership program. LESSEE and LESSOR agree the Rent and terms and conditions specified herein are and continue to be material considerations in establishing the terms and conditions of the agreement for economic development services agreement and the LESSOR's agreement to provide services to the general business community.

3. **TERM:** The term of this Lease shall commence on July 1, 2020 and terminate without notice on June 30, 2022, unless sooner terminated as herein provided. Any holdover of possession of the Leased Premises by LESSEE beyond this Term shall constitute a month-to-month tenancy on the same terms and conditions of this Lease and LESSEE agrees to vacate the Leased Premises upon thirty-days' prior written notice from LESSOR; provided, that the Rent shall be increased to \$1.00 per calendar month due and payable on the first day of each month, commencing with July 1, 2022..
4. **LEASED PREMISES:** The Leased Premises for purpose of this Lease shall include Suite A and Suite B of Premises that, combined, total approximately 275 square feet. LESSEE shall have access to and use of, but not control of, common areas of the Premises, including both bathrooms, the foyer, the conference room, hallways, entranceways, and the kitchen (the "Additional Access Areas").
5. **USE OF LEASED PREMISES AND THE ADDITIONAL ACCESS AREAS:** LESSEE shall use the Leased Premises and the Additional Access Areas solely for the purpose of operation of Chamber business, including, but not limited to, (i) promoting all businesses and services in the City and (ii) providing services described under the Amended and Restated Agreement for Economic Development Services, or other agreements City and Chamber may enter into from time to time.
6. **FIXTURES AND ALTERATIONS:** LESSEE shall not make, or cause to be made, any alterations, additions or improvements, of a substantial nature, or make any structural changes in the building (the "Improvements") without first notifying LESSOR and obtaining prior written approval from LESSOR for the Improvements. In the event the Improvements include any structural change, LESSEE shall supply to LESSOR plans and specifications for such work, and obtain prior written approval. LESSEE shall be responsible for all costs associated with any of the Improvements. All permits necessary for the Improvements, shall be at LESSEE'S expense and obtained prior to any work on any of the Improvements.
7. **ITEMS INSTALLED BY LESSEE:** All decorations and additions and any of the Improvements in the Lease Premises, except for structural changes, made by LESSEE shall remain the property of LESSEE for the term of this Lease or any extension or renewal thereof. Upon expiration of this Lease, or any renewal term thereof, LESSEE shall remove all decorations and additions and those portions of the Improvements that are LESSEE property, and restore the Leased Premises, ordinary wear and tear excepted, to its condition at the time of original occupancy, unless written approval is obtained by LESSOR to allow such decorations, additions or the Improvements to remain.

8. SECURITY: LESSOR agrees to provide locks on doors of the Premises and the Leased Premises, the latter of which is to be used exclusively by LESSEE for the uses described herein, and to provide keys for access to Premises and Leased Premises. LESSOR shall also provide access to the Premises at the rear entrance for others to access the Premises without access to Leased Premises.
9. MAINTENANCE: LESSOR shall be responsible for the overall interior and exterior maintenance of the Premises and Leased Premises, and for the maintenance and repair of major building systems, including HVAC, mechanical, plumbing, and electrical systems and access to telephone, cable, and internet services. LESSOR shall have no duty, obligation, or liability whatever to rebuild and portion of the Premises or surrounding grounds, if any or all of them are destroyed, except at its sole discretion. LESSEE shall be responsible for routine janitorial and maintenance of the Leased Premises and Additional Access Areas and for cable, phone and internet service to the Leased Premises.
10. SURRENDER OF LEASED PREMISES AND ADDITIONAL ACCESS AREAS: At the expiration of the tenancy hereby created, LESSEE shall surrender the Leased Premises and Additional Access Areas in the same condition as the Leased Premises and Additional Access Areas were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty not within the reasonable control of LESSEE excepted, and shall surrender all keys for the Premises and Leased Premises to LESSOR. LESSEE shall thereupon remove all its fixtures, and any alterations or improvements as provided above before surrendering the Leased Premises and shall repair any damage to the Leased Premises and Additional Access Areas caused thereby. LESSEE's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.
11. INSURANCE: LESSEE shall, during the full term of this Lease, keep in full force and effect an appropriate policy of liability and property damage insurance with respect to the Leased Premises and Additional Access Areas in the minimum amounts of \$1,000,000 each. The policies shall name LESSOR and its officers, employees and representatives as additional insureds and shall contain a clause the insurer will not cancel or change the insurance without first giving LESSOR 10-days' prior written notice. LESSEE shall exhibit to LESSOR, at any time upon demand, a certificate of insurance, or other evidence of insurance, and shall keep such policies in effect during the full term of this Lease or any extensions thereof.
12. FIRE, EXTENDED COVERAGE: LESSEE agrees to purchase and maintain, during the full term of this Lease or any extensions thereof, a policy of fire, extended coverage, insurance, which policy shall not be less than 100% of the replacement value of the Leased Premises. The cost of such insurance shall be at the sole cost of LESSEE.
13. INDEMNIFICATION: LESSEE agrees to indemnify, defend and hold harmless LESSOR, its offices, directors and agents, from and against any and all claims, actions, damages, liability, expenses, costs and reasonable attorney's fees resulting or related to any loss of life, personal injury or damage to property, or any other liability, arising out of any occurrence related to the Leased Premises, the Additional Access Areas or the occupancy or use by LESSEE of the Leased Premises, the Additional Access Areas or any part thereof,

occasioned wholly or in part by any act or omission of LESSEE, its agents, contractors, employees, servants, lessees or concessionaires, or for any act or omission by LESSOR in furtherance of the interests of LESSEE for any reason in connection with this Lease.

14. UTILITIES, COMMON AREA MAINTENANCE & TAXES: LESSEE shall be responsible for and promptly pay 11.5 percent of all charges for heat, water, gas, electricity or any other utility used or consumed on the Premises, including any deposits demanded by any utility, based on the previous Fiscal Year average monthly cost for all identified utilities, but not to exceed \$75.00 per month. LESSEE shall pay the aforementioned rate plus an annual Cost of Living Adjustment based on the July CPI-U from the Los Angeles-Riverside-Orange County area beginning with the City's FY 19-20 Budget Year. LESSEE agrees to pay, at its sole cost and expense, any possessory interest tax that may be assessed as a result of this Lease.
15. ASSIGNMENT AND SUB-LETTING: LESSEE will not assign this Lease, in whole or in part, nor sub-let all or any part of the Leased Premises.
16. GOVERNMENTAL REGULATIONS: LESSEE shall at LESSEE's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable government authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises, and shall faithfully observe in the use of the Leased Premises all municipal and county ordinances, and all state and federal statutes now, or which may hereafter be, in force.
17. DESTRUCTION OF LEASED PREMISES: If the Leased Premises shall be damaged or destroyed by fire, the elements, unavoidable accidents, or other casualty, then all insurance proceeds payable by reason thereof shall be applied to the repair, reconstruction, and renovation of Leased Premises.
18. CONDEMNATION: In the event any or all of the Premises are taken, in whole or in part, through the exercise of any power of eminent domain exercised by any state, federal or local agency (including LESSOR) having the power thereof, any sums paid by such condemning authority shall be paid to LESSOR. LESSEE hereby waives any and all of its rights and benefits payable under applicable federal or state relocation assistance laws if the City is the condemning authority.
19. DEFAULT: In the event of any failure of LESSEE to perform any of the terms, conditions or covenants of this Lease to be observed or performed by LESSEE for more than 30 days after written notice of such default shall have been given to LESSEE, or if LESSEE shall abandon the Leased Premises and the Additional Access Areas, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and properties from the Leased Premises and the Additional Access Areas without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.
20. ENTIRE AGREEMENT: This Lease, and any exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understand-

01181.0020/645250.1

*Lease Agreement*

*Morro Bay Chamber of Commerce*

*May 5, 2020*

*Page 4 of 6*

ing between the parties concerning the Leased Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than or herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by both.

21. NOTICE: Any notice, demand, request or other instrument which may be required to be given under this Lease shall be deemed delivered when sent by ordinary United States Mail, postage prepaid, addressed to LESSOR care of its City Manager, or LESSEE care of its then acting President.
22. PARTIAL INVALIDITY/SEVERABILITY: If any term, covenant or condition of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby; and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. If the length, term or duration of this Lease, in any way is in violation of any statute, law or Constitution or is invalid for any reason whatsoever, then this Lease shall be deemed a Lease from year to year, and all other provisions hereunder shall remain the same.
23. CALIFORNIA LAW: This Lease shall be interpreted, construed, and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Lease shall be instituted in the Superior Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
24. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES: No officer or employee of the City shall be personally liable to the LESSEE, or any successor in interest, in the event of any default or breach by the LESSOR or for any amount, which may become due to the LESSEE or to its successor, or for breach of any obligation of the terms of this Lease.
25. INTERPRETATION: The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply.
26. COUNTERPARTS: This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_\_\_ day of May, 2020, at Morro Bay, California

01181.0020/645250.1  
*Lease Agreement*  
*Morro Bay Chamber of Commerce*  
*May 5, 2020*

*Page 5 of 6*

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Erica Crawford, Chief Executive Officer

By: \_\_\_\_\_  
Chairman, Chamber Board of Directors

Approved As To Form:

Approved As To Form:

\_\_\_\_\_  
CHRIS F. NEUMEYER  
City Attorney

\_\_\_\_\_  
Jane Heath, Chamber Counsel

**RESTATED AND AMENDED AGREEMENT  
BY AND BETWEEN THE CITY OF MORRO BAY  
AND THE MORRO BAY CHAMBER OF COMMERCE FOR  
ECONOMIC DEVELOPMENT SERVICES FOR  
FISCAL YEARS 2019/2020, 2020/2021 and 2021/2022**

This AGREEMENT is made and entered into by and between the City of Morro Bay, a municipal corporation (hereinafter called "City"), and the Morro Bay Chamber of Commerce, a California non-profit corporation (hereinafter called "Chamber"), collectively, "parties."

WHEREAS, City and Chamber will benefit from viable and vibrant business retention, expansion and development within City's jurisdictional boundaries; and

WHEREAS, Chamber and City have worked together for several years to attempt to achieve that viable and vibrant business community; and

WHEREAS, Chamber and City desire to continue and enhance those efforts through renewed focused efforts and City funding; and,

WHEREAS, Chamber and City entered into an agreement dated July 10, 2019 for the purpose of securing the services of Chamber to achieve a vibrant and viable business community (the "Previous Agreement"); and

WHEREAS, since the declaration of emergency by the State, County and City for the COVID-19 crisis ("the Crisis") has required an expansion of the duties assigned to Chamber contemplated under the Previous Agreement; and both parties desire to continue to have Chamber perform those services, and, further, expects those services may be needed through the 2021/2022 fiscal year.

NOW, THEREFORE, the parties agree as follows:

**Section 1. Intent and Term**

- A. Intent. City and Chamber recognize the strength and successes of collaboration and cooperation. It is the intent of this Agreement to reflect a formalized cooperative agreement between the two parties to assist local business in achieving relief from the Crisis, adjusting to reduced demand, assisting with phased re-opening for the local economy, and improving the business climate in City's jurisdiction in an effective and efficient manner. City and Chamber intend to work collaboratively to achieve this goal. This Agreement describes the expected Scope of Services Chamber will provide with funding provided by City during City's 2019/2020, 2020/2021 and 2021/2022 Fiscal Years (FY). Both parties recognize and agree, while certain services are set forth herein, many of the actual tasks and services will evolve over time as new Federal, State and County directives are issued, and this Agreement is not intended to limit the services to be provided by Chamber to achieve the intent stated in this Section 1. As the needs of the City and community evolve, the parties agree to assess the needed Scope of Services and memorialize any changes through administrative addenda. It is also the intent of the parties for sufficient funding to be provided under this Agreement so the Chamber's Chief Executive Officer, Erica Crawford, and other Chamber employees or contractors, may commit the time necessary to provide the services hereunder, with the understanding of the parties the City cannot legally commit to ensure that funding will be provided

over the amounts set forth herein. Neither the Chamber nor its CEO shall be required to devote all of its time to the scope of work herein. However, Chamber shall devote such time and energy as may be necessary. In addition, Chamber shall contribute its best efforts to perform all of the duties delegated to it pursuant to this Agreement.

- B. Term. The term of this amended and restated agreement shall be deemed to have commenced on April 1, 2020 and continue through June 30, 2022; provided, that City or Chamber may terminate this Agreement with 90-days' prior written notice.

## **Section 2. Funding and Use of Funding.**

For the last quarter of City's 2019/2020 Fiscal Year (April, May and June), City shall compensate Chamber at a rate of \$6,500 per month for staff services. Thereafter for the 2020/2021 and 2021/2022 Fiscal Years City shall compensate Chamber at a rate of Seventy-eight Thousand Dollars (\$78,000.00) (the "Funding") per year for each year of the Agreement to Chamber from City's General Fund with a monthly payment of Six Thousand Five Hundred Dollars in exchange for the services set forth in Attachment 1, or as may be amended from time to time by mutual agreement of the parties (the "Scope of Services"). Chamber shall also be reimbursed, in addition to the Funding, for any direct expenses to perform the Scope of Services, including but not limited to speaker fees, venue rental and reception expense, relocation guide production expense, and travel expenses to and from regional economic development meetings. Reimbursable expenses shall not to exceed \$1,500 for the 2019/2020 Fiscal Year, and \$5,000 per Fiscal Year thereafter, and shall be subject to prior written approval of the City Manager or City Finance Director.

## **Section 3. Other Activities; Prohibited Activities; Additional Requirements**

- A. Chamber shall also do the following:
1. Ensure no funding provided by City shall be used to support activities that generally serve and benefit only Chamber membership or programs not directly related to the economic development program described in this Agreement. Notwithstanding this prohibition against serving only Chamber members, the Chamber may provide preferential pricing and access for educational sessions, and other additional services to its members;
  2. Focus the activities funded under this agreement on businesses in the City of Morro Bay, for the promotion of business, industry, and trade within the City of Morro Bay;
  3. Make its books and financial records, concerning the funds expended under this Agreement, available to City for inspections, review and audit upon reasonable notice; and
  4. Establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs, and comply with any applicable State and Federal standards.
- B. Chamber shall not use City funding for any of the following:

1. Lobbying or attempting to influence legislation, other than legislative advocacy to accomplish the purposes and intent identified herein;
2. Directly advocating for the approval or disapproval of a specific development project on a particular piece of property. However, Chamber may advocate for policies and procedures which serve the basic purposes and intent of this agreement. Chamber shall also disclose to City any policy position that may have the effect of disproportionately benefitting any member of the Chambers Board of Directors, or its advisory committees. Chamber shall require all of its board members and advisory body members sign and adhere to the Chamber's Code of Ethics, Public Civility Policy, and its Conflict of Interest policies.
3. Organizing or engaging in protests, petitions, boycotts, or strikes;
4. Assisting, promoting or deterring union organizing;
5. Impairing existing contracts for services or collective bargaining agreements;
6. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office;
7. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation (except for those activities identified in B1 above), or elected officials. This prohibition shall not prohibit Chamber from participating in professional associations that may advocate for specific planning and economic development policies;
8. Engaging in religious instruction; conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; or
9. Any other activity prohibited by any law, rule or regulation or that City cannot legally perform or participate in.

C. City shall provide office space in accordance with the lease agreement dated May \_\_, 2020 (the "Lease Agreement").

#### **Section 4. Payments.**

City shall pay Chamber in accordance with Section 2., herein. On the first day of each calendar month, beginning, retroactively for April 1, 2020, Chamber shall submit a written invoice each month with a detailed itemization of the staff services and reimburseable expenses provided in the prior month. City shall review such invoices within 10 days after submittal and notify Chamber in writing of any dis-

crepancies. City shall pay the uncontested portion of the invoice within 15 days after the 10-day review period.

### **Section 5. Reports.**

Chamber shall present quarterly updates (September/December/March/June) to the City Council at a regularly scheduled City Council meeting on the status of the Key Deliverables identified in Section 2 of this agreement.

### **Section 6. Ownership of Work Product.**

Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber, in the performance of this Agreement, if paid in whole by the funding provided by this Agreement ("Work Product") is, shall be and shall remain the property of Chamber. This section 6 shall survive termination of this Agreement.

**Section 7. Assignment.** This Agreement shall not be assigned by Chamber without the written consent of City.

### **Section 8. Independent Contractor.**

At all times during the term of this Agreement, Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City. Chamber shall retain all authority to staff the delivery of services under this Agreement. City shall have no authority to direct which Chamber employees or contractors may perform services under this Agreement, nor the manner or means of performance.

### **Section 9. Personnel.**

Chamber represents it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. Chamber shall be solely responsible for the work performed by third party contractors, including timely performance and payment.

### **Section 10. Term.**

This Agreement shall be deemed to be in full force and effect from April 1, 2020, through June 30, 2022, unless terminated earlier as provided in Section 11 of this Agreement.

### **Section 11. Termination of Agreement.**

City or Chamber may terminate this Agreement at any time, with or without cause, upon ninety-days' written notice to the other party. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in satisfactorily performing its services under this Agreement prior to the date of termination, and such payment shall be in full satisfaction of City's obligations hereunder. Chamber shall have no further obligation to provide



- D. Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.
- E. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+; VII in the latest edition of Best's Insurance Guide.
- F. If Chamber fails to keep the aforesaid insurance in full force and effect, then City shall notify Chamber it is a breach of this Agreement and Chamber has three days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, then City may terminate this Agreement or, if insurance is available at a reasonable cost, then City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon. Chamber is under a continuing obligation to maintain the aforesaid insurance irrespective of whether City provides such notification to Chamber.
- G. At all times during the term of this Agreement, Chamber shall maintain on file with City's Risk Manager a certificate or certificates of insurance on the form required by City, showing the aforesaid policies are in effect in the required amounts. Chamber shall, prior to commencement of work under this Agreement, file with the Risk Manager such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming City, its officers, employees and agents as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty-days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
- H. The insurance provided by Chamber shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.
- I. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

#### **Section 14. Indemnification.**

Chamber shall defend, indemnify, and hold harmless City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from any and all claims, demands, causes of action, costs, including reasonable attorney's fees and court costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, ("Damages") in any manner arising out of or incident to any act or omission of Chamber or any of its employees or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of any of the Indemnitees; provided, that the obligation to indemnify and hold harmless is only to the extent Chamber or its officers, employees or agents cause the Damages. All

duties of Chamber under this Section shall survive termination of this Agreement as to any actions taken or services provided prior to termination of the Agreement.

**Section 15. Extent of Agreement.**

This Agreement, including the Previous Agreement and the addenda referred to in Subdivision 1. A and not including the Lease Agreement. represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, instrument signed by all parties to this Agreement This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

**Section 16. Severability.**

Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

**Section 17. Waiver.**

No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**Section 18. Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

**Section 19. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**Section 20. Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Chamber, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Chamber or to its successor, or for breach of any obligation of the terms of this Agreement.

**Section 21. California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California.

[Signatures on the following  
page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 1<sup>st</sup> day of April, 2020,  
at Morro Bay, California

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Erica Crawford, Chief Executive Officer

By: \_\_\_\_\_  
Chairman, Chamber Board of Directors

Approved As To Form:

Approved As To Form:

\_\_\_\_\_  
CHRIS F. NEUMEYER  
City Attorney

\_\_\_\_\_  
JANE HEATH  
Chamber Counsel

**ATTACHMENT 1**  
**TO**  
**RESTATED AND AMENDED AGREEMENT**  
**BY AND BETWEEN THE CITY OF MORRO BAY**  
**AND THE MORRO BAY CHAMBER OF COMMERCE FOR**  
**ECONOMIC DEVELOPMENT SERVICES FOR**  
**FISCAL YEARS 2019/2020, 2020/2021 and 2021/2022**

**SCOPE OF SERVICES**

1. During the COVID-19 Pandemic (until all government-imposed restriction, whether local, state, or federal remain in effect), the Chamber shall:
  - a. Serve on the City’s Emergency Operations Center to inform the City of issues associated with the adjustment of businesses to new COVID-19 business regulations.
  - b. Hold virtual meetings such as “Ask Me Anything” or webinars on special topics to inform businesses of evolving regulations during the COVID-19 pandemic and economic crisis.
  - c. Conduct monthly business walks as permissible by County and City orders, and host working groups in economic centers focused on branding, revitalization, and economic center-specific needs.
  - d. Assist and inform businesses through emails and virtual training sessions about loan and grant opportunities for business and economic adjustment assistance in collaboration with SBA and SBDC.
  
2. Concurrently with the Pandemic, and for the duration of the contract:
  - a. Attend regularly scheduled meetings with the City Manager to coordinate economic development activities in the community and region.
  - b. Provide direct assistance to new businesses using the Chamber’s “Roadmap to Success” program, and other strategies, that expands their marketing channels in their launch and equips them with the tools necessary to plan for key challenges that new businesses experience.
  - c. Collaborate, through virtual meetings, telephonic calls and meetings with regional economic development entities such as the County of San Luis Obispo, CalPoly Small Business Development Center, CalPoly Center for Economic Innovation and Entrepreneurship, REACH, and the Central Coast Coalition of Chambers to align

Morro Bay's economic recovery, reinvention and resiliency efforts with those of the region.

- d. Provide business and entrepreneurship training events (virtual and/or in person) that are available to the general business community, focused on customer service and eCommerce expansion, among other demand-driven topics. Collaborate with SBA funded business resource agencies in the region to deliver this content, as needed.
  - e. Collaborate with Morro Bay Tourism Business Improvement District (MBTBID) as needed to align local and regional economic development efforts with the recovery of Morro Bay's Tourism industry.
  - f. Serve on a City-led working group and attend meetings to assess the steps necessary to diversify the City's commercial and industrial base and to identify other ways to provide less volatility in City revenues and less dependency on visitor-serving uses.
3. Post-Pandemic (after all government-imposed restriction, whether local, state, or federal are no longer in effect):
- a. Prepare an assessment of Visitor Center delivery service models, to include budget and economic impact of each, and provide a recommended course of action to the City Council in collaboration with City and MBTBID staff. Key Deliverable: Assessment and Recommendation for City of Morro Bay Visitor Services
  - b. Host a link to the City website on a Chamber website Economic Development page. Chamber Economic Development page content to include "Talking to the City" and "Starting your Business," developed in collaboration with City staff when appropriate.
  - c. Lead the effort to rebrand Morro Bay as a place to conduct business with the slogan "New Day in the Bay," to market Morro Bay to the region and beyond as a place to do business. The Chamber representative will contact and meet with owners of opportunity sites that are identified in the Economic Roadmap, establish connections with commercial brokers and developers in the region, and engage appropriate City representatives in those discussions. Key Deliverables for "New Day in the Bay" initiative;
    - i. produce and distribute a relocation guide in the 2020/2021 and 2021/2022 fiscal years
    - ii. conduct and facilitate quarterly developer and broker roundtables to assess Morro Bay's competitive position.

- d. Conduct a review of the City’s development permit processes to identify revisions to enhance commercial development. There are two components to this proposed service:
  - i. The Chamber representative will conduct surveys with past and prospective commercial developers to identify issues associated with permit processing including cost, predictability, timeliness, and the objectiveness of the application of development standards. The Chamber will convene a community and stakeholder working group in association with its Governmental Affairs Committee to assess opportunities for expediting commercial permits. The Chamber will assess “best practices” by other jurisdictions in the County. The Chamber will prepare a Draft Report on its findings, and consult with City staff on its findings.
  - ii. Subsequent to this review, the Chamber will prepare a Final Report to the City Council. Following the preparation of the report, the Chamber will identify an implementation and action plan to assist businesses with pre-planning and the other is to assist the City in reviewing and making improvements to the permitting process for commercial/business development.
- e. Key Deliverables for Development Review Process: Draft and Final Report and an Implementation Plan.

This Page Intentionally Left Blank



AGENDA NO: A-5

MEETING DATE: May 12, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** May 6, 2020

**FROM:** Scott Collins, City Manager

**SUBJECT:** Update on the Department of Toxic Substances Control Draft Statement of Basis Document for the Morro Bay Power Plant

## RECOMMENDATION

Staff recommends the City Council receive and file the report.

## ALTERNATIVES

None.

## FISCAL IMPACT

None.

## BACKGROUND/DISCUSSION

The Department of Toxic Substances Control (DTSC) public comment period is open through May 22, 2020, regarding the draft Statement of Basis for the Morro Bay Power Plant (MBPP), located at 1290 Embarcadero in Morro Bay, California. The Statement of Basis explains the proposed remedy for contamination at eight Areas of Concern (AOCs) at the MBPP site. The proposed remedy addresses chemicals of concern found in soil and groundwater mostly due to past power generating activities. Community members are encouraged to review the attachments (from DTSC), which explain the process and outline how community members can provide public comment directly to DTSC.

Following the public comment period, DTSC will review and consider all public comments before making a final decision on the draft Statement of Basis. DTSC is proposing to manage contamination on the MBPP site by implementing a land use covenant (LUC) that restricts the areas of the MBPP site that have contamination to future commercial/industrial uses and restricts use of groundwater across that site. They further propose the owner prepare a soil management plan for safe handling and disposal of contaminated soils and require the owner to report to DTSC the land uses at the site are in compliance with the LUC and the site use remains protective overtime.

Overall, it is important to note the City's existing wells on the MBPP site and the components of Water Reclamation Facility (WRF) project that will run through that site (i) will not be impacted by this effort, (ii) is not impacted by the chemicals of concern and (iii) do not impact the concerns DTSC has raised. The wells and WRF components (pipeline and injection sites) are not located in any of the AOCs. That was verified with staff at DTSC. Conversely, the WRF project and City wells will not impact the Statement of Basis for the Morro Bay Power Plant.

Prepared By: SC

Dept Review: \_\_\_\_\_

City Manager Review: SC

City Attorney Review: JWP

In addition, community concerns have been raised about impacts to future redevelopment of the MBPP site. The proposed remedies outlined by DTSC does not mean no future residential or mixed-use development can occur on that site. It does mean, however, any residential or mixed-use project could be developed on the MBPP site, as long as the developer mitigated the contamination sufficiently for DTSC to approve uses beyond commercial/industrial, which would be allowed by the proposed LUC.

The DTSC serves as the gatekeeper to ensure the use of the MBPP site is commensurate with the contamination on that site. Further, the DTSC is not positioned to require the immediate removal of the contamination. That being said, the City does have some leverage with any current or future owners of the MBPP site, as the City can take possession of that site for \$1, because the MBPP has not provided at least 876,000 megawatts of power after September 30, 2013, and if the MBPP infrastructure is not fully demolished on or before March 31, 2034. That may incentivize the current or any future owner to demolish the plant and address contamination in order to make a profitable commercial, industrial, residential or mixed-use development possible. The City also retains its land use entitlement regulatory control of the MBPP site.

### **CONCLUSION**

This matter is being brought to the Council at its request, in light of public input received during a previous Council meeting. The Council is not being specifically requested to provide direction regarding public comments to be made to DTSC, although staff would certainly abide by any direction that may be given by the Council. As previously advised during that same Council meeting, staff will be reiterating to DTSC comments previously made by DTSC staff agreeing there are and will be no impacts caused by or to the WRF project as a result of the LUC.

### **ATTACHMENTS**

1. DTSC Community Update Flyer
2. DTSC Public Notice

# COMMUNITY UPDATE

The mission of DTSC is to protect California’s people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

## Morro Bay Power Plant Public Comment for Draft Statement of Basis Document



Morro Bay Power Plant Areas of Concern (AOCs), Figure 1

**Public Comment Period**

**March 4, 2020 to  
April 22, 2020**

DTSC invites you to review and comment on the draft Statement of Basis for the Morro Bay Power Plant. All comments must be mailed or emailed by **April 22, 2020** to:

John Bystra  
DTSC Project Manager  
8800 Cal Center Drive  
Sacramento, CA 95826  
Phone: (916) 255-3669  
Email: [John.Bystra@dtsc.ca.gov](mailto:John.Bystra@dtsc.ca.gov)

The Department of Toxic Substances Control (DTSC) invites you to review and comment on the draft Statement of Basis for the Morro Bay Power Plant (Site), located at 1290 Embarcadero in Morro Bay, California. The Statement of Basis explains the proposed remedy for contamination at eight Areas of Concern (AOCs) at the Site. The proposed remedy addresses chemicals of concern found in soil and groundwater mostly due to the past power generating activities, including total petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), metals, pesticides, and volatile organic compounds (VOCs).

### Site Location and History

The 131-acre Site is on the northern shore of Morro Bay near the southern part of Estero Bay. Starting in 1941, the Site was owned by the US Navy as an amphibious training base. Pacific Gas and Electric Company (PG&E) purchased the property in 1951 and began constructing the former power plant in 1953. The plant began generating electricity in 1955, using natural gas and oil as fuel in the process. Fuel was stored in six aboveground storage tanks until 1995, when the plant switched to using only natural gas. In 1998, Duke Energy purchased the Site. Then in 2006, LS Power acquired the Site, then merged with Dynegy in April 2007. The power plant closed in 2014. PG&E remains responsible for investigating and addressing Site contamination from historical power generation activities.



### Areas of Concern Environmental Investigations

Investigations identified contaminants above levels for unrestricted use in soil and groundwater in the AOCs.

In 2006, DTSC and PG&E entered into a Resource Conservation and Recovery Act (RCRA) Corrective Action Consent Agreement that identified eight AOCs for environmental investigation and potential cleanup.

As shown in Figure 1, these include:

- AOC 1- the former tank farm area
- AOC 2- the beach valve area
- AOC 3- fire house #1
- AOC 4- the storage area
- AOC 5- the switchyard area
- AOC 6- the multi-use area
- AOC 7- the power building
- AOC 8- the metal waste cleaning ponds

AOCs 5 and 7 are currently inaccessible due to existing buildings and/or active operations and will be addressed in the future. AOC 8 was addressed by the facility in accordance with the RCRA closure process in 2008.

### Proposed Remedy

Based on an evaluation of the alternatives, DTSC is proposing to manage contamination in place by:

- Implementing a land use covenant (LUC) that restricts AOCs 1, 2, 3, 4 and 6 of the Site to future commercial/industrial uses and restricts the use of groundwater across the Site.
- Preparing a Soil Management Plan that describes the safe handling and disposal of contaminated soil should it be disturbed during any future work and requiring annual inspections of the Site.
- Requiring the property owner to report to DTSC to ensure the land use is compliant with the LUC and that the site use remains protective over time.

If the Statement of Basis is approved in early 2020, then DTSC would work with Dynegey to record the LUC with San Luis Obispo County and prepare the Soil Management Plan later this year.

### California Environmental Quality Act (CEQA)

The remedy will not require construction or implementation of a physical remedy, thus this activity is not a “project” within the definition of CEQA. Therefore, this project is exempt from CEQA.

### Next Steps

DTSC will review and consider all public comments before making a final decision on the draft Statement of Basis. At the end of the public comment period, DTSC will evaluate all comments received and make any necessary changes to these documents. DTSC will send a Response to Comments document to all those who commented and provided contact information.

### Information Repositories

The draft Statement of Basis and other Site-related documents are available to review at the following locations:

- Morro Bay Public Library, 625 Harbor Street, Morro Bay, CA 93442, (805) 772-6394; call for hours
- DTSC – File Room, 8800 Cal Center Drive, Sacramento, CA 95826, (916) 255-3758; call for an appointment

You can also view Site-related information on DTSC’s EnviroStor database at:

[https://www.envirostor.dtsc.ca.gov/public/profile\\_report?global\\_id=80001832](https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=80001832)

### Contact Information

For more information about the cleanup process or related documents, contact:

- John Bystra, Project Manager at (916) 255-3669 or [John.Bystra@dtsc.ca.gov](mailto:John.Bystra@dtsc.ca.gov)
- Kerry Rasmussen, Public Participation Specialist at (916) 255-3650, toll-free at (866) 495-5651 or [Kerry.Rasmussen@dtsc.ca.gov](mailto:Kerry.Rasmussen@dtsc.ca.gov)
- **For media requests, please contact:** Sandford Nax, Public Information Officer at (916) 327-6114 or [Sandford.Nax@dtsc.ca.gov](mailto:Sandford.Nax@dtsc.ca.gov)



# Public Notice

The mission of DTSC is to protect California's people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

## Draft Statement of Basis Available for Public Review Morro Bay Power Plant

**Extended Public Comment Period: March 4, 2020 to May 22, 2020**

**WHAT IS BEING PROPOSED?** The California Department of Toxic Substances Control (DTSC) invites you to review and comment on a draft Statement of Basis, for the Morro Bay Power Plant located at 1290 Embarcadero in Morro Bay (Site). Pacific Gas and Electric Company (PG&E) began generating electricity at the power plant in 1955 using natural gas or oil as a fuel source. In 1998, PG&E transferred ownership of the Site to Duke Energy Morro Bay, LLC and then to Dynege. In 2014, Dynege closed the power plant. As the original owner of the power plant, PG&E remains responsible for investigating and addressing environmental conditions resulting from historical power generation activities. Any actions to demolish or redevelop the property are not a part of this project and will be handled separately by Dynege.

PG&E has conducted environmental investigations at the Site that have found the presence of total petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), metals, pesticides and volatile organic compounds (VOCs) in soil and groundwater that are greater than residential levels. The Statement of Basis proposes managing impacts in place by implementing a land use covenant (LUC) that restricts areas of the Site to future commercial/industrial uses and restricts the use of groundwater across the site. A Soil Management Plan would also be established that describes the safe handling and disposal of contaminated soil should it be disturbed during any future earthmoving work. DTSC would also require the current property owner to conduct annual inspections and reporting to ensure the land use remains compliant with the LUC and that the site use remains protective over time. This proposed remedy would offer long-term protection of human health and the environment under approved land uses without causing any disruption to the community.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):** The remedy will not require construction or implementation of a physical remedy; thus this activity is not a "project" within the definition of CEQA. Therefore, this project is exempt from CEQA.

**HOW DO I PARTICIPATE?** During the extended public comment period, that was changed from March 4 to April 22, and **now extended to March 4 to May 22, 2020**. Send comments to John Bystra, Project Manager, DTSC Sacramento Office, 8800 Cal Center Drive, Sacramento, CA 95826 or by e-mail to [John.Bystra@dtsc.ca.gov](mailto:John.Bystra@dtsc.ca.gov).

**WHERE DO I GET MORE INFORMATION?** Due to COVID-19, there are two places to view Site documents:

- DTSC – File Room, 8800 Cal Center Drive, Sacramento, CA 95826; (916) 255-3758; call for an appointment
- DTSC's EnviroStor database: [https://www.envirostor.dtsc.ca.gov/public/profile\\_report?global\\_id=80001832](https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=80001832).

**CONTACT INFORMATION:** For questions or additional information regarding the Site, please contact:

- John Bystra, Project Manager, at (916) 255-3669, or [John.Bystra@dtsc.ca.gov](mailto:John.Bystra@dtsc.ca.gov)
- Kerry Rasmussen, Public Participation Specialist, at (916) 255-3650, toll free at (866) 495-5651, or [Kerry.Rasmussen@dtsc.ca.gov](mailto:Kerry.Rasmussen@dtsc.ca.gov)

- **For media requests:** Sandford Nax, Public Information Officer, (916) 327-6114 or [Sandford.Nax@dtsc.ca.gov](mailto:Sandford.Nax@dtsc.ca.gov)



[www.calepa.ca.gov](http://www.calepa.ca.gov)



[www.dtsc.ca.gov](http://www.dtsc.ca.gov)



[www.ca.gov](http://www.ca.gov)

This Page Intentionally Left Blank



AGENDA NO: A-6

MEETING DATE: May 12, 2020

# STAFF REPORT

**TO:** Honorable Mayor and City Council

**DATE:** May 6, 2020

**FROM:** Jennifer Callaway, Finance Director

**SUBJECT:** Adoption of Resolution No. 42-20 Establishing a Temporary Morro Bay Cares COVID-19 Utility Discount Program.

## RECOMMENDATION

Staff recommends Council adopt Resolution No. 42-20, establishing a temporary Morro Bay Cares COVID-19 Utility Discount Program.

## FISCAL IMPACT

Uncertain impact given unclear how many customers will qualify under the program guidelines.

## DISCUSSION

### Temporary Morro Bay Cares COVID-19 Utility Discount Program

On April 28, 2020, the City Council directed staff to return to Council with a temporary extension to the City's Utility Discount program, allowing for utility customers who have been impacted by COVID-19 with loss of employment, either due to layoff or, if self-employed, they have had to close their business due to the Shelter at Home orders. As a result, staff has developed a Temporary Morro Bay Cares COVID-19 Utility Discount Program which extends a maximum of a 10% discount of the customer's Water/Sewer bill per month through the June 2020 billing cycle, at which point the customer would be removed from the discount program unless the program was extended beyond the June billing cycle by Council action.

The proposed program is temporary given that we are uncertain as to how long the shelter at home orders will last, the number of customers who will qualify under the program guidelines and, subsequently, the impact to the Utility Discount Fund. Therefore, staff will return to Council in July with an update and option to extend the program at that time when more information is known about the continuing impact of the COVID-19 pandemic, the phased re-opening of our city, customer need, and fund capacity.

Enrollees in the program must submit an application and verification that they have been laid off work during the COVID-19 pandemic such as documentation from the Employment Development Department. In the case of self-employed individuals, supporting documentation that demonstrates they had to close their business due to the impact of COVID-19 and shelter at home orders.

## CONCLUSION

Staff recommends the Council adopt Resolution No. 42-20 Temporary Morro Bay Cares Utility Discount Program establishing a Temporary Utility Discount Program for those utility customers

01181.0001/480956.1	
Prepared By: <u>  JC  </u>	Dept Review: <u>          </u>
City Manager Review: <u>  SC  </u>	City Attorney Review: <u>  CFN  </u>

who have been impacted by COVID-19.

**ATTACHMENT**

1. Resolution No. 42-20

**RESOLUTION NO. 42-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
ESTABLISHING A TEMPORARY MORRO BAY CARES COVID-19  
UTILITY DISCOUNT PROGRAM**

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

**WHEREAS**, on August 28, 1995, the Morro Bay City Council adopted Resolution No. 103-95, which established economic hardship criteria for utility rates, and a program for water rate adjustments; and

**WHEREAS**, on July 14, 2015, the Morro Bay City Council adopted Resolution No. 54-15, which established economic hardship criteria for utility rates, and a program for water/sewer rate adjustments; and

**WHEREAS**, on June 13, 2018, the Morro Bay City Council adopted Resolution No. 42-18, which re-established a Utility Discount Program for eligible customers; and

**WHEREAS**, on August 14, 2019, the Morro Bay City Council adopted Resolution No. 62-18, which piloted a one-year rolling enrollment period for the Utility Discount Program and eligible customers; and

**WHEREAS**, on July 9, 2019 the Morro Bay City Council adopted Resolution No. 64-19 which permanently expanded the utility discount program to include on-going enrollment; and

**WHEREAS**, the continuing COVID-19 pandemic has resulted in, and continues to generate, temporary loss of employment, either due to layoff or, if self-employed, due to business closures; and

**WHEREAS**, the City Council wishes to establish a temporary Morro Bay Cares COVID-19 Utility Discount Program.

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

1. The City wishes to establish a temporary Morro Bay Cares COVID-19 Utility Discount Program, whereby a Water/Sewer customer that has been impacted by COVID-19, meaning laid off or for those that are self-employed have had to close their businesses, may enroll in the Utility Discount Program; and
2. Customers who wish to enroll in the Morro Bay Cares COVID-19 Utility Discount Program must submit a completed Utility Discount Program application and submit evidence, satisfactory to City staff, of being laid off due to COVID-19, such as documentation from Employment Development Department (EDD) and/or similar documentation for those that are self-employed and have had to close their business due to impact of COVID-19 pandemic and Shelter at Home orders.
3. The funding for this Program will come from the prior fiscal year's actual water and sewer penalties, voluntary donations, fund balance and other non-rate revenue Council deems appropriate.
4. The maximum discount is 10-percent of the customer's Water/Sewer bill per month through the June billing cycle, after which the customer will be removed from the

program (if added to the program pursuant to the COVID-19 Utility Discount Program) unless the Morro Bay Cares COVID-19 Utility Discount Program is extended by Council action.

5. The required unemployment documentation must match the customers utility address to qualify.
6. Staff is directed to make changes to the Utility Discount Program application material reflecting the aforementioned criteria, as appropriate.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 12<sup>th</sup> day of May 2020, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk



AGENDA NO: A-7

MEETING DATE: May 12, 2020

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: May 5, 2020**

**FROM: Dana Swanson, City Clerk**

**SUBJECT: Reappointment of Hemant Patel to the Visit San Luis Obispo County (VSLOC) Board of Directors**

## **RECOMMENDATION**

Staff recommends the Council reappoint Hemant Patel as the City's representative on the VSLOC Board of Directors (Board) for a 3-year term ending June 20, 2023.

## **ALTERNATIVES**

The Council may choose to direct staff to conduct an open recruitment to fill the seat and/or may direct that appointment be made by either Council or City Manager.

## **FISCAL IMPACT**

There is no fiscal impact associated with this action.

## **BACKGROUND/DISCUSSION**

### VSLOC Board of Directors

In December 2014, the City Council adopted Resolution No. 82-14 consenting to the inclusion of the City within the proposed San Luis Obispo County Tourism Marketing District (SLOCTMD) (Attachment 1). The SLOCTMD Management District Plan (Plan) provides each community has a representative of an assessed lodging business on the Visit SLO CAL Board of Directors, a nonprofit corporation, which serves as the Owner's Association for the SLOCTMD.

Hemant Patel has served as the City's representative to the Visit SLO CAL Board of Directors since August 2018. He has expressed a willingness and desire to continue to serve as the City's representative on the board.

The Plan provides the following selection process:

- One lodging business representative from each of the cities shall be appointed by the respective jurisdiction's city council or tourism organization, as each city determines.
- One lodging business representative shall be appointed by the County Board of Supervisors.
- One additional representative at-large shall be appointed by the County Board of Supervisors.
- Nominations shall be sought from the assessed lodging businesses for the remaining at-large seats. Nominations will be verified by the nominating committee, and a slate provided to the Board of Directors for election. The slate will take into consideration the requirement for various business types.

Chuck Davison, President & CEO of Visit SLO CAL submitted a letter of recommendation for Mr.

Prepared By: DS

Dept Review: \_\_\_\_\_

City Manager Review: SC

City Attorney Review: CFN

Patel, which is provided as Attachment 3. Given the latitude provided in the Plan, the Council has the authority to appoint Mr. Patel to the Board for the 3-year term. Alternatively, the Council may direct staff to advertise for recruitment and conduct interviews at a later date, or consider some other method consistent with appointment directed by the Council. The next Visit SLOCAL Board Meeting is scheduled for May 20, 2020.

**ATTACHMENTS**

1. San Luis Obispo Tourism Marketing District Management District Plan [Link](#)
2. Letter of recommendation from Visit SLO CAL

## Dana Swanson

---

**From:** Jennifer Little  
**Sent:** Monday, April 27, 2020 11:48 AM  
**To:** Dana Swanson; Heather Goodwin  
**Subject:** Fw: Visit SLO CAL Appointed Board Seat

---

**From:** Chuck Davison <chuck@slocal.com>  
**Sent:** Monday, April 27, 2020 11:38 AM  
**To:** Jennifer Little <jlittle@morrobayca.gov>; Scott Collins <scollins@morrobayca.gov>  
**Cc:** Hemant Patel <Hemant96@yahoo.com>; Brendan Pringle <brendan@slocal.com>  
**Subject:** Re: Visit SLO CAL Appointed Board Seat

Thank you Jennifer. Please let us know if you need anything from us on this. Be Well!

All the Best,

Chuck



**Chuck Davison, CDME | President & CEO**  
**Visit SLO CAL**  
[Chuck@SLOCAL.com](mailto:Chuck@SLOCAL.com)  
O: 805.541.8000 ext. 105 | C: 805.270.5005  
SLOCAL.com

---

**From:** Jennifer Little <jlittle@morrobayca.gov>  
**Date:** Monday, April 27, 2020 at 9:59 AM  
**To:** "Chuck Davison (Business)" <chuck@slocal.com>, Scott Collins <scollins@morrobayca.gov>  
**Cc:** Hemant Patel <Hemant96@yahoo.com>, Brendan Pringle <brendan@slocal.com>  
**Subject:** Re: Visit SLO CAL Appointed Board Seat

Chuck -

Mr Collins and I both are thrilled to have Hemant Patel renew his position on your board. He is a great representative for Morro Bay and has been a good link for SLOCAL with other hotels in Morro Bay.

Thank you,  
Jennifer Little

---

**From:** Chuck Davison <chuck@slocal.com>  
**Sent:** Sunday, April 26, 2020 9:13 PM  
**To:** Scott Collins <scollins@morrobayca.gov>  
**Cc:** Hemant Patel <Hemant96@yahoo.com>; Brendan Pringle <brendan@slocal.com>; Jennifer Little <jlittle@morrobayca.gov>  
**Subject:** Visit SLO CAL Appointed Board Seat

Hi Scott,

I hope you are doing well during these challenging times.

I wanted to reach out on Morro Bay's appointed seat on the Visit SLO CAL Board of Directors. **The seat term is scheduled to expire on June 30, 2020 and will need to be renewed for a new term.** As appointed by the City, Hemant Patel currently holds the seat, and has been an active and productive member of our Board. Hemant has been instrumental in the formation of our current and new strategic plan, the renewal of the Tourism Marketing District and is a valued partner of Visit SLO CAL working to advance awareness of the destination, including the City of Morro Bay.

With the term expiring in two short months, we would like to begin the reappointment process for this seat, which has a three year term (July 2020 to June 2023). **Visit SLO CAL would like to recommend and request the re-appointment of Hemant Patel to this seat. If there was ever a time for consistency of well-developed strategies, programs and partners, now is that time based on the current crisis of our economy and our industry.**

**The reappointment of the seat will need to be finalized by the City of Morro Bay by the first week in June so that it can be ratified at the June Executive Committee meeting and June (Annual) Board of Directors meeting, and the board member can begin their service on July 1.** We wanted to ensure you have sufficient time for this process to occur.

Thank you again for your ongoing partnership with Visit SLO CAL. Please let me know if you have any questions.

All the Best,

Chuck



Chuck Davison, CDME | President & CEO  
Visit SLO CAL  
[Chuck@SLOCAL.com](mailto:Chuck@SLOCAL.com)  
O: 805.541.8000 ext. 105 | C: 805.270.5005  
SLOCAL.com



AGENDA NO: C-1

MEETING DATE: May 12, 2020

# Staff Report

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

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Presentation of Harbor Department Lease Management Policy Working Group Final Draft Document for City Council Review, Input and Direction

## RECOMMENDATION

Staff recommend the City Council review the final draft Harbor Department Lease Management Policy, as developed by the policy update working group established by the City Council, and provide input and/or direction where requested and as-necessary.

## ALTERNATIVES

No alternatives are being presented.

## FISCAL IMPACT

There is no fiscal impact associated with this item at this time.

## BACKGROUND

Beginning with the City Council's desire for more clarity and definition in certain aspects of the Harbor Department Lease Management Policy, the City Council established a 2018 goal of updating the City's policy on lease site auditing with auditing to occur on a three-year basis, as opposed to the current five-year basis. The Council subsequently established a 2019/2020 goal of updating the entire lease management policy as a goal objective under Goal #1, Achieve Financial and Economic Sustainability, Objective #9, Establish Waterfront lease Site Policies and Implementation Plan.

On November 13, 2018, staff brought an item to Council seeking input and direction on the Lease Management Policy (LMP) update process, where Council accepted a new proposed timeline and directed staff to engage former Interim City Manager Marty Lomeli as the process facilitator to help staff manage a working group to execute the update. Staff and Mr. Lomeli canvassed the Morro Bay community and sought volunteers to serve on the working group.

The initial LMP update working group consisted of Mark Blackford (Harbor Advisory Board), Erica Crawford (Morro Bay Chamber), Bob Fowler (Morro Bay Landing leaseholder), Cherise Hansson (Harbor Advisory Board), Smith Held (Harbor Center leaseholder), Joan Solu (Morro Bay citizen and former hotelier), and staffers Eric Endersby (Harbor Director) and Lori Stilts (Harbor Business Coordinator). The first group meeting was held in January, 2019.

On February 13, 2019, an update on the process, including review of initial policy work, was brought

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

to the Council for review and input. A few months into the effort, Mr. Blackford and Mr. Held resigned from the group for personal reasons. With the Harbor Advisory Board's approval, Harbor Advisory Board Chair Ron Reisner was selected to replace Mr. Blackford on the group, and because Ms. Hanson is also a waterfront leaseholder, it was decided that replacing Mr. Held's position on the group was not necessary.

The City Attorney and Council subcommittee members assigned to the LMP update, Councilmembers McPherson and Davis, have reviewed and provided input on the working group's draft at different stages; and on February 7, March 13, October 3 and December 5, 2019, the working group's draft work products and progress to date were brought to the Harbor Advisory Board for updating and/or input. Additionally, the Morro Bay Chamber of Commerce's Government Affairs Committee has reviewed the document and provided comments, which were approved by the Chamber Board on March 17, 2020, and are included with this staff report in Attachment 3. Finally, Steve McCarty and Steve Davis of the commercial real estate development firm McCarty and Davis were consulted on portions of the LMP document.

The collective input received from those sources was all considered and, where deemed appropriate by the working group, incorporated into the draft LMP document being presented.

## **DISCUSSION**

Included with this staff report, as Attachment 1, is a conveyance letter from the working group providing their overview of the process, key findings, detailed analysis on some issues and recommendations on policy implementation and management. Attachment 2 to this staff report is the draft LMP document.

In addition to providing input and direction on the actual LMP document, staff are seeking Council input and direction, as outlined in the conveyance letter from the working group. Council comments and direction on the policy document will be incorporated into a final draft document for future Council consideration and approval.

The conveyance letter largely mirrors staff comments and recommendations regarding the policy document and process; and thus, staff see no need for discussion of additional issues or matters. Staff would, however, like to offer the following input on the bulleted points 1-5 in the working group's letter:

1. **Policy Implementation and Future Lease Management**

Successful implementation and long-term management and adherence to the LMP is critical to its effectiveness and ultimate success. As stated in the conveyance letter, overall Tidelands lease management could remain "in-house" within the City, or contracted to a private management entity.

Staff, therefore, agree with the suggestion from the group the LMP implementation structures and strategies be researched and brought back to the Council for future consideration and decision. That would include analysis of both in-house and contracted management, and estimated costs of each.

Whatever the City Council ultimately decides, however, staff agree with the working group's recommendation the overall oversight of the waterfront lease program remain with the Harbor Department, as it is best situated to see and take into account the many factors, issues and constituencies on the waterfront and bay.

2. Formula for Determining Lease Term (duration)

The policy update group was well aware of the Council's desire for a more objective method by which to determine the number of years of a lease's term; in short, a formula that could be applied that would remove any subjective, political or other bias. As stated in the conveyance letter, only San Diego was found to have such a formulaic approach. Although it could possibly be adapted for use in Morro Bay, the group felt, as do staff, such an approach would tie the City's hands when it comes to the uniqueness of waterfront development and flexibility in lease negotiation.

For information, staff have historically relied primarily on the following list of factors to determine a new lease's term (or years added for an amendment) based on site development and/or redevelopment:

- A. Historical precedence, in other words, is a term in line with what the City granted in the past for similar size sites and developments?
- B. Degree or amount of investment by the tenant. The amount a tenant is willing to invest is the primary factor in determining a lease's term in years. Several things, however, such as the factor of inflation, the size of the lease site and its development potential or the actual development/redevelopment itself (high-end finishes or low-end, Leadership in Energy and Environmental Design ("LEED") or other attributes, degree of non-revenue generating features such as public benefits, to name a few) can significantly cloud the ability to assign a simple "spend this – get that" approach.
- C. Other lease terms the tenant is willing to accept, for example, no initial rent breaks upon project opening or a higher percent rent on a revenue source.
- D. The uniqueness of each lease site, its history and its tenant, and how the site was and is managed and maintained.

Staff, therefore, caution taking a strictly formulaic approach to determining the length of a lease's term, as it could hamper lease negotiations at several levels, in addition to tying the hands of future Councils in their ability to be creative and flexible in encouraging and aiding lease site redevelopment. A strictly formulaic approach could also hamper the City's ability to be in the "driver's seat" with regard to lease site development and redevelopment, as discussed further in bullet point #4 below.

3. Lease Site Financing

As stated in the conveyance letter, the consensus of the group on the matter of lease site financing was to be less restrictive than the current policy stipulations, in order to make Morro Bay waterfront investment and development more attractive on a broader scale. The City Attorney researched and has provided a memo analyzing the legal implications of allowing private parties to use Tidelands Trust Land leasehold interests as security for funding of private projects. Additionally, the State Lands Commission was asked for their view of such a proposal. The conclusion is relaxation of the LMP to allow such financing off the lease site - but remaining within the Tidelands - is consistent with state law. However, to allow such financing outside the Tidelands is not supported by state law. That memo is included as Attachment 4, and the State Lands Commission letter is Attachment 5.

Staff do recommend the Council approve relaxation of the current policy, as provided in the updated draft LMP, allowing use of funding secured by a Tidelands leasehold *anywhere* in the Tidelands, and not just on the leasehold being used for that security, as that practice is deemed consistent with the Tidelands Trust.

4. City Control of Future Lease Site Development and Redevelopment

In lease site development/redevelopment, historically the City has let the tenant decide what they wanted to develop, including building size, design and scale (within the confines of the City's land use documents, of course) and business mix. In executing this LMP update, it is the group's opinion, which is reflected in the draft LMP, the City have more control and "be in the driver's seat" when it comes to lease site development and redevelopment by more proactively charting a lease site's future.

If the Council agrees with that new policy, then staff will need Council guidance as to what degree and how the City should be in control. This could also be an opportunity to consider developing an overall vision for the lease and lease site management of the Waterfront area. Although the Downtown and Waterfront Master Plan will provide that general direction.

That issue is not one we need decisions on tonight, but rather, one that will need further thought and development for future projects. For information, from now and into the next ~ten years approximately nine significant lease site agreements are up for renewal and/or renegotiation and decision on their future operations.

5. Financial Auditing

The aim of the new LMP with regard to financial auditing is to simplify, make more efficient and hopefully bring down costs, by bringing more of the auditing "in-house" on an annual basis and tapping resources already utilized by the City (our HdL Companies sales tax auditing and reporting firm).

In order to do that, more involvement by the City's Finance Department team will be necessary; and staff will have to further research and bring back to Council for decision its findings. Is there any input and/or direction the Council has regarding the auditing process at this time?

**CONCLUSION**

Several exhibits to the draft LMP are still "works in progress" and thus not included in the draft. Those are:

- Lease process flow charts. These are to chart the administrative process for several lease actions, including the request for proposals (RFP) process, lease site development and redevelopment, assignment and assumption (lease sale) and lease amendment.
- Maps/Surveys of the City's lease sites.
- A Zoning Chart of the City.
- A Master Lease template. This is perhaps the most important of the exhibits, as it will engender the policy itself by implementing the policy through lease terms. The policy update group has worked on this template periodically throughout this process.
- The Sublease, Assignment and Assumption and Lease Amendment application forms for tenants/subtenants, as well as the City's current insurance requirements.
- Lease site physical inspection checklists.

Those exhibits will be completed and brought back with the final LMP document for Council approval.

Staff would like to thank the working group members, including Mr. Blackford and Mr. Held, for their many dedicated volunteer hours to this process. Without their research, input, assistance and passion, this LMP update would not have been as thorough nor as effective as it was. Thanks must

be extended to Mr. Lomeli, as well, who not only helped facilitate the process with his own time on a volunteer basis, but also provided valuable input based on his several decades of public service as a city manager.

**ATTACHMENTS**

1. Lease Policy Update Group conveyance letter
2. Draft Harbor Department Lease Management Policy document
3. March 17, 2020 Morro Bay Chamber of Commerce Board of Director's comment letter
4. May 5, 2020 memo from the City Attorney regarding lease site financing
5. March 20, 2020 letter from State Lands Commission regarding lease site financing
6. Original Harbor Department Lease Management Policy document

May 5, 2020

TO: Morro Bay City Council  
FROM: Harbor Department Lease Management Policy Update Group  
COPY TO: City Manager, City Attorney, Harbor Director  
SUBJECT: Conveyance of Updated Draft Harbor Department Lease Management Policy from the Policy Working Group

Honorable Mayor Headding and City Councilmembers,

At the direction of the Morro Bay City Council, the Harbor Department Lease Management Policy Update Group was formed in the Fall of 2018. Beginning in January 2019 and through February 2020, this group met consistently once or twice a month for two to four hours. In addition, significant work was conducted via email, especially after the Corona virus shelter at home orders went into effect, that took place well into the first week of May. We began by diligently researching available waterfront lease management policies from numerous California jurisdictions, large and small. In addition, some of us paid personal visits to other jurisdictions during personal travels to research and gather policy information. Between group meetings, we shared information and developed language for consideration of inclusion in the draft updated policy document, being put forth for your consideration and adoption. We collaborated with staff to discuss, review and write or rewrite every section in this draft policy presented to you. Some sections were discussed at great length, and often repeatedly, until we were satisfied the draft was ready for Council consideration.

Our research found that lease policy documents vary greatly based on the size, nature and complexity of the jurisdiction in question. Our draft policy was written using the existing Morro Bay policy as a starting point, and revised as deemed appropriate. Many elements of the existing policy were retained and/or modified, many new elements added and some elements eliminated. Key findings resulting from the process are:

- A. This policy, properly implemented, will help drive the near-, mid- and long-term future of the Morro Bay waterfront.
- B. Morro Bay's lease rents and percentage gross formulas were found to be currently reasonable and in the norm, when compared to other municipal lessors.
- C. Lease terms are equally as important as minimum and percentage rents are to effective fiscal management of the waterfront.
- D. The City's planning, vision and guidance documents should create a framework for all lease negotiations and lease site improvements, and the City should more proactively dictate what it envisions for the development, redevelopment and replacement process on all lease sites – in harmony with those documents. In short, "put the City in the driver's seat" more, with regard to guiding what the City wants in lease site redevelopment.

E. The updated policy:

- Establishes the margins for lease parameters and negotiations.
- Better defines the City's fiscal and management responsibilities, and how to pursue those responsibilities through improved fiscal and lease site auditing policies.
- Improves the definition of a "tenant in good standing" - a critical lease concept.
- Frames increased responsibility for master leaseholders relative to maintenance and upkeep of public and common spaces that abut lease sites.
- Clarifies the process for treatment of Tidelands lease sites whose leases are nearing expiration.
- Strives to be an economic development tool by making the Tidelands lease sites more attractive to investment through clarification of policy, process and practice.
- Will in the long term provide a more attractive and vibrant waterfront, thereby enhancing the public's use and enjoyment.

The draft policy strengthens the financial auditing sections for lease site revenues, as well as for lease site condition monitoring and compliance with the law. We strongly recommend such audits and monitoring take place regularly to maximize lease compliance, to create fiscal transparency, and to improve and maintain the quality of the Embarcadero facilities and infrastructure.

In the process of researching and writing this policy document we learned there are no standard rate structures that jurisdictions of our size and complexity have adopted. Policies vary tremendously throughout the State. Attached is a chart we developed that compares Morro Bay Tidelands Trust lease site percent rent rates to 17 other jurisdictions. Relatively speaking, Morro Bay is competitive, and in most instances sets percent rates appropriately by types of sales.

With regard to equating a lease's term in years to the amount of investment on the lease site, there is no widespread "magic formula" that equates dollars invested in developing or redeveloping a site with establishing the lease term. One jurisdiction researched (the Unified Port of San Diego) does utilize a formulaic approach that is based on the magnitude of capital investment in the property to be made by the tenant and the life expectancy of the development. In this methodology, a "standard" lifespan of a given building type is assumed (when a single type of use), as well as the new replacement cost of that building/development. Then that cost number is equated to the leaseholder's proposed investment dollar amount as a percentage. That percentage is then multiplied by the standard lifespan to derive the maximum length of the lease in years.

For example, if the building/development proposed by the leaseholder has a “standard” life of 40 years, and the new replacement cost of that building/development is a million dollars, if the leaseholder is proposing to spend \$750,000 on the lease site (75% of a million dollars), the lease length will at a maximum be 75% of 40 years, or 30 years. While this may appear a simple methodology to emulate, such methodology relies on employment of sophisticated valuation services, cost estimators and a potentially complex lease management system and structure. This group felt that adopting such a formulaic approach could hamper negotiations by limiting flexibility and options.

One of the major policy issues we considered was the concept of refinancing a leasehold interest, with the loan proceeds not being restricted to use only on the lease site in question (as is required in the current lease management policy). We were interested in conditionally allowing leaseholders to use loan proceeds on a leasehold interest for other than leasehold purposes, because it could make investment in the Embarcadero more competitive and attractive for future leaseholders. The City must be competitive in the investor marketplace in order to obtain the best possible development opportunities for the Embarcadero, and to maximize revenues.

Unfortunately, we learned through the City Attorney that the State Lands Commission would not support such financing, and the City Attorney has provided a memorandum to the Council of his opinion and recommendations on the subject. This memo will be included with the policy staff report. This Lease Management Policy Update Group remains strongly in favor of maximum flexibility being provided leaseholders when financing or refinancing their leasehold interests.

It is crucial that the final version of this draft policy be effectively administered, and that the City develop a plan to implement and administer the policy. This may entail hiring an in-house property or lease manager, or contracting with a third-party commercial property management firm to manage various aspects of the draft policy. Our research found three public jurisdictions (Vallejo, Redwood City and Pittsburg) that have a contracted third-party property manager. This approach could be studied by staff and presented for Council consideration as part of the annual budget process. While third-party management may cost incrementally more, it could pay off in the long run through better lease site accountability and facility maintenance, leading to an enhanced Embarcadero and increased revenues. Development of fees to recover some of the associated cost could be an option.

It should be noted that because of much larger revenue bases and multiple levels of institutional complexity, many of the other entities researched and referenced in this policy update have sophisticated internal independent real estate or property management departments or divisions that handle all aspects of lease and property management because their income streams and staffing can support it.

In addition to providing input on the new draft policy document itself, the City Council may want to consider the following:

1. Direct staff to develop and bring back to Council options to implement and administer this policy, which would include consideration of contracted or “outside” lease management versus continued “in-house” management on the waterfront. And if “in-house” management is retained, whether or not to consider establishing a position whose primary duties are lease and property management. Whichever approach is chosen, we strongly recommend the Harbor Department retain overall oversight of the waterfront leasing program.
2. Direct staff to research and bring back to Council costs and administrative issues relative to adopting a Port of San Diego-like lease term formulaic approach as previously described.
3. Provide staff direction on the previously described lease financing issue relative to whether or not to change our policy to allow lease site financing loan proceeds to be used for other than Tidelands purposes.
4. Provide staff input and/or direction on the recommendation the City be more proactive or “in the driver’s seat” with regard to charting a lease site’s future in terms of City development and vision.
5. Provide staff input and/or direction on making the financial auditing process more efficient and effective by researching and bringing back to Council options for including more directly the Finance Department and/or outside resources in lease financial auditing measures.

Finally, we are developing a new draft for the standard lease agreement template which will reflect and implement the changes made to this policy. It will be brought to Council at a later date, once the final lease management policy is established, and perhaps when the final draft policy is brought to Council for final approval and adoption. We are also in the process of developing a license agreement process and policy for the Tidelands area of the City, which will be presented for Council consideration at a later date.

We would like to acknowledge the work of Eric Endersby and Lori Stilts in working with us on this important draft policy update. Their leadership and guidance were essential to our mission.

Respectfully submitted,

Erica Crawford, Morro Bay Chamber Executive Director  
Bob Fowler, Embarcadero Leaseholder  
Cherise Hansson, HAB representative and Embarcadero Leaseholder  
Ron Reisner, HAB representative  
Joan Solu, Morro Bay Citizen  
Marty Lomeli, Facilitator and Morro Bay Citizen

	MORRO BAY	PORT SAN LUIS District	MARINA DEL REY COUNTY OF LOS ANGELES	VENTURA PORT District	SANTA BARBARA Harbor	SANTA CRUZ District	SAN DIEGO PORT	MOSS LANDING District	MONTEREY HARBOR	SAN FRANCISCO	NEWPORT BEACH	PORT of LA	LONG BEACH	DANA POINT	OCEANSIDE HARBOR District	CITY of SAN DIEGO	SAN DIEGO Port Authority	Chanel Islands	Median % Paid	Average % Paid	
<b>Ground or Building Lease</b>	Ground	Building						1 ground						Operating Leases	Ground					-	-
			not tidelands											Tidelands	only tidelands						
<b>TYPE OF SALES</b>																					
<b>FOOD SERVICE</b>																					
RESTAURANT/DINING ROOM	3%		4%	3%	10%	5%-8%	4.50%	3%	3%-6%		3%	3%		9%		3%	3%		6%	4.95%	
SNACK BAR/FAST FOOD/DELI	5%	4.5%-5%	3.50%			5%-8%		3%	3%-6%										4.75%	5%	
BAR/LOUNGE	5%-10%	5.5%-7%	10%	0.05%	10%	5%-8%	7.50%	3%			5%	5%		9%		5%	5%		7%	6.11%	
GROCERY												3%	5%		6%		3%				
OFF-SITE BEVERAGE														9%	6%		3%				
<b>RETAIL SALES / SERVICE</b>																					
RETAIL SALES / SERVICE	3%-5%	5%	5%	3%-5%	10%	6.50%	5%-6%		4%-6%		5%	3.50%		3%	6%	6%	4%		5%	4.95%	
<b>HOTEL/MOTEL</b>																					
HOTEL FULL SERVICE	5%	none	8%	n/a	n/a	n/a	8%-12%	n/a	n/a										9.50%	9%	
MOTEL	5%	12%	8%																8%	8.33%	
<b>FISH AND SEAFOOD</b>																					
RETAIL SALES	3%-5%	4.50%	5%	0.01%				2%	0%												
WHOLESALE	0								0%												
<b>MOORINGS, TIES &amp; SLIPS</b>																					
PIER FIXED PILES	10%																				
PIER FLOATING	10%																				
<b>BOAT REPAIR &amp; SALES</b>																					
BOAT & MARINE REPAIR	3%		4%-5%											4%	6%	4%	5%		4.50%	4.42%	
NEW BOAT SALES	1%		6%																5.50%	3.50%	
USED BOAT SALES	2%		6%																4%	4%	
<b>FUEL</b>																					
GASOLINE	\$0.02/GAL		0.15%																		
DISEL	\$0.015/GA		0.06%																		
<b>OTHER</b>	5%										10%		5%	1%-9%	6%	10%			5.50%	5.78%	
CRUISE/CHARTER					15%	0	6%TOURS - 3%FOOD - 5%BEV - 5%RET	\$1 PER VESSEL PASSENGER CAPACITY PER MON	4%-4.5%												
KAYAK RENTAL/PADDLESPORTS	5%	15%	6%			0	10%														
SPORT FISHING	3%	6%					6%		4%										5%	5.33%	
YACHT CLUB	52% discount		10%-15% OF MEMBERSHIP FEES +% OF ALL OTHER SALES AND				10% MEMBERSHIP DUES - 10% RENTAL		0%												
MEETING/BANQUET ROOM SPACE			10%																		
Coin-op														20%	20%	25%-50%	5%				



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

**Adopted by the City Council  
\_\_\_\_\_ , 2020**

**CITY OF MORRO BAY**  
**HARBOR DEPARTMENT LEASE MANAGEMENT POLICY (*Policy*)**

**TABLE OF CONTENTS**

I.	Vision Statement .....	1
II.	History .....	2
III.	General Policy, Purpose and Benefits .....	3
IV.	Background .....	3
	A. General Lease Management .....	3
	B. Leasing Areas .....	4
V.	Lease Administration .....	5
	A. Master Lease Format .....	5
	B. License Agreements .....	5
	C. Building Leases .....	5
	D. Approved Uses .....	5
	E. Fair Market Rent .....	6
	F. Lease Term (duration) .....	7
	G. Lease Negotiation .....	8
	H. Lease Amendment, Renewal and Extension .....	8
	I. Lease Expiration and Termination .....	9
	J. Rent Collection .....	10
	K. Putting Lease Sites up for a Competitive RFP Process .....	10
	L. Lease Site Redevelopment and Coordination with Community Development Department .....	11
	M. Lease Site Consolidation .....	11
	N. Lease Site Monitoring, Inspection and Maintenance .....	11
	O. Environmental Considerations .....	12
	P. Lease Terms and Site Entitlement Compliance .....	12
	Q. Percentage of Gross Sales Audits .....	13
	R. Lease Sale, Assignment and Assumption .....	13
	S. Sublease Approval .....	14
	T. Financial Criteria and Financing Considerations .....	14
	U. Force Majeure .....	15
VI.	Exhibits to Policy .....	16
	A. Definitions and Acronyms .....	16
	B. Flow Charts .....	tbd
	C. Maps/Surveys .....	tbd
	D. Zoning Chart .....	tbd
	E. Percent Gross Schedules .....	tbd
	F. Master Lease Template .....	tbd
	G. Forms .....	tbd
	H. Lease Site Inspection Checklists .....	tbd

## I. VISION STATEMENT

The long-term vision of the City of Morro Bay is to manage and maintain the City's Tidelands Trust Land (TTL) lease sites along the western side of Embarcadero Road as a vibrant working waterfront, incorporating tourism and various commercial and recreational uses. Positive cash flow to the Harbor Fund is crucial to maintain the integrity of the waterfront and environmental health of the bay and its resources. In order to provide a quality experience for the public, tourism and other recreational uses of the Embarcadero are encouraged and considered in lease management decisions. The waterfront will be pedestrian-friendly with ample access and view corridors to coastal resources.

The principal tenets in the State Tidelands Grant will be followed and future development or redevelopment of the TTL will conform with the City's General Plan, Downtown and Waterfront Master Plan, Local Coastal Program and the voter-approved initiative known as Measure D that protects commercial and recreational fishing uses, while remaining true to the historic fishing heritage of the harbor and community.

This Policy is intended as an advisory tool to provide guidance for current and future lease site management, development, and redevelopment decisions considered by the City, with the ultimate dual goals of maintaining the vitality of the City's waterfront, as well as the fiscal health of the department charged with managing it.

This Policy will follow guiding principles that are designed to serve as a bridge between the Harbor's goals, purpose, and regulatory environment, and management and leasing needs. These guiding principles are:

- A. The City shall foster a spirit of partnership with its tenants in the application of this Policy, while fulfilling its duties as a steward of vital public enterprise, assets and resources.
- B. The City will make TTL lease sites available on fair and reasonable terms without discrimination.
- C. The City, in its role as a TTL trustee, may consider more than just the maximum revenue that can be generated by a new lease. The City will also consider what is in the best interests to ensure the public's enjoyment of the TTL, as well as to serve the City of Morro Bay, including the essential role all parties and businesses play in maintaining growth and job creation, as well as the need to maintain a diversified mix of water dependent uses.
- D. The City shall retain effective management controls over the use of TTL assets and will structure management controls in all leases and rental agreements in order to:
  - E. Achieve highest and best use of TTL assets;
  - F. Ensure timely development as-needed; and
  - G. Foster open and competitive access for new entrant and incumbent TTL tenants.
- H. The City will establish and maintain a level and structure of rents, fees, and charges that are fair and equitable for all tenants, and which are based on current appraised lease site values.
- I. The City will establish minimum operational maintenance standards for users of TTL lease sites in order to promote safety and maintain appropriate levels and quality of service.
- J. The City and its leaseholders will at a minimum follow good environmental practices, including but not limited to all applicable environmental laws, regulations, established guidelines and best management practices.

- K. The City will actively monitor compliance with provisions of lease agreements, file timely notice of non-compliance and employ available remedies to enforce compliance when appropriate.
- L. The City shall be open and transparent in its selection of new tenants and in lease negotiations per State law, including exercising the City's right to negotiate confidentially under Government Code Section 54956.8.

## II. HISTORY

Tracing back to English Common Law, the Public Trust Doctrine establishes navigable water or lands subject to tidal influence are "sovereign," held open to the public for commerce, fisheries or navigation. As cited in the Doctrine, "by the law of nature these things are common to mankind, the air, running water, the sea, and consequently the shores of the sea."

In order to establish a Navy amphibious training base to aid the war effort, in 1942-44 the federal government constructed a revetment along the Morro Bay waterfront and filled most of the area now known as the commercial strip along the Embarcadero. After the war, the State of California claimed ownership of the newly created land as at least a portion of it had previously been below the high tide line. In 1947, the State of California granted those public trust lands in Morro Bay to the County of San Luis Obispo (Chapter 1076 of the California Statutes of 1947, and amended by Chapter 1874 of the California Statutes of 1957). After many years of dispute with private property owners, who also claimed an interest in the land, most title issues were settled in the 1950s-1960s by designating those lands west of Embarcadero Road as public trust lands owned by the State, and those lands east of Embarcadero Road as privately owned. The City of Morro Bay assumed trusteeship of the granted lands upon incorporation in 1964-1965. The Tidelands Grant in Morro Bay is in perpetuity; provided, that the City conforms to the terms of the legislative grant. Exhibit B is a map of the Tidelands Grant in Morro Bay.

The granted lands must be used for commerce, fisheries, navigation, recreational purposes, parklands, public access, public parking and environmental protection or enhancement. Residential use of these public lands is specifically prohibited. The City will lease out these lands to private businesses, government entities or non-profit organizations for a period up to 50 years and all revenues from such leases must be expended within the area of the granted lands for the purposes of the public trust.

Over the years, the City has changed its leasing practices and policies to better protect the public interest by adopting modern lease formats and standards for fair market rent and periodic rental adjustments. Prior to the mid 1980's, the City's leasing process included the active participation of a ten-member Harbor Commission. In addition to leasing activity, the Commission set policies and had an active role in managing the business of the harbor. In 1985, the City created the Harbor Department to focus property management efforts in the TTL and to assure the State TTL revenues were properly accounted for; and, in 1987, the City Council reorganized the Harbor Commission into a seven-member Harbor Advisory Board whose role became advisory-only in nature. The result of those changes was a streamlined process, more responsive to the business environment and improved lease management because Harbor Department familiarity on each lease site's history, operator and lease terms allows for smoother lease negotiations and hastened resolution on contract interpretation and other issues. The Harbor Department has multiple, and often

competing, roles in both aiding in the success of its leaseholders, while at the same time carrying out the policies, planning, zoning, land use, legal and insurance issues of the City. As the most informed entity, the Harbor Department will take all those factors into account when managing and administering the City's waterfront leases.

The Harbor Department is operated through a City enterprise fund known as the Harbor Fund. Similar to the Water and Wastewater enterprise funds, all Harbor services are funded with either user fees or property management income (no sale, property or transient occupancy tax revenues). The Harbor Fund is the sole-source for management of the TTL leases, Harbor Patrol and various public and other facility management including maintenance, repair and capital improvements.

### **III. GENERAL POLICY, PURPOSE AND BENEFITS**

The City of Morro Bay shall manage the TTL to provide, support and enhance harbor facilities, and must act in accordance with the stipulations of the Tidelands Grant and granting statutes as interpreted and managed by the State Lands Commission. With those obligations fully in mind, the primary goal of this Policy will be to maximize the City's financial return from valuable public real estate assets in a manner, which:

- A. Is consistent with the City's General Plan, Local Coastal Program, Downtown and Waterfront Strategic Plan, zoning ordinances and all other adopted plans and policies, consistent with the City's goals of maintaining a small commercial and recreational fishing harbor, a working waterfront and visitor-serving environment,
- B. Provides for, supports and enhances harbor facilities and services in a manner which its residents can be proud of,
- C. Protects and enhances the environment, while serving the broader economic and recreational needs of the community,
- D. Allows tenants to earn a fair return on their investments in a predictable business climate,
- E. Appropriately accounts for TTL revenues and expenses in compliance with State law and the Tidelands Grant, and
- F. Promotes and enhances economic development to serve the Morro Bay community's present and future generations.

### **IV. BACKGROUND**

#### **A. General Lease Management**

Under the supervision of the Harbor Director, the Harbor Department is responsible for the negotiation of leases, the Request for Proposals (RFP) process for lease site development and redevelopment and for the day-to-day administration of the leases under this Policy. The Harbor Director has the authority to interpret the provisions of the Leases and Subleases and where appropriate, in the Harbor Director's discretion, to seek counsel from the City Attorney, City Manager or the City Council.

The Harbor Department is also tasked with the collection of rents and fees, property inspections, financial audits communications with Master Tenant and subtenants and

coordinating lease activity with the administrative, community development, legal and governance (City Council) functions of the City.

The Harbor Director, with oversight by the City Manager and guidance/direction from the City Council, will conduct negotiations with Master Tenants for new and existing leases, and manage the process for marketing vacant lease sites and sites subject to redevelopment. The terms and conditions of the leases and/or the processes for negotiation, as adopted in this Policy, shall be observed and applied consistently throughout the TTL area. All leases, and unless otherwise provided in a lease, all amendments to leases, all license agreements and requests for proposals to develop/redevelop lease sites must be approved by a majority vote of the City Council, and the Harbor Director shall keep the City Manager and/or the City Council informed of progress, as well as to seek direction from them on specific lease issues. In the event of a dispute between the leaseholder and the Harbor Director as to the application of policies and procedures, the parties may submit the dispute to the City Manager and/or City Council for resolution.

The Harbor Director will confer and coordinate with the Community Development Department on specific development, permitting, land use and zoning issues concerning the development, redevelopment or management of lease sites subject to this Policy. Master Tenants must work directly with the Community Development Department for use permit applications for development or redevelopment. The Harbor Director will coordinate insurance issues with the City's Risk Manager, and legal issues with the City Attorney.

The Harbor Director approves subleases under the Consent to Sublease process providing subleases conform to the terms and conditions of the Master Lease under which they are being approved, including compliance with the uses allowed in the site's Conditional Use and other permits, as-applicable.

B. Leasing Areas

The City recognizes there are three distinct zoning areas on the waterfront that require different considerations in leasing and lease issues; in managing waterfront development and redevelopment, the City's leasing practices shall recognize and implement the City's vision for the leased properties as reflected in the City's General Plan, Local Coastal Program, Zoning Code and applicable Master Plans. The three areas from north to south are as follows:

1. Embarcadero Road from Beach Street North. This area is designated with specific voter-approved zoning known as "Measure D" to preserve commercial and non-commercial recreational fishing-dependent uses. Measure D stipulates all TTL subject to City lease between Beach Street and Target Rock be primarily for the purposes of serving or facilitating licensed commercial fishing activities, or non-commercial recreational fishing activities, or is clearly incidental thereto. Measure D further stipulates existing non-conforming restaurants or retail uses are allowed but cannot be expanded or enlarged. The City will strongly encourage Master Tenants who propose enhancements of commercial fishing uses or marine dependent uses by considering new long-term leases that facilitate those types of projects. Leases for existing restaurant/retail sites may be amended to provide a longer term, or a new lease executed, if the Master Tenant can develop plans to maintain the lease site and improve public benefits and access, enhancing the general business environment and marine-related uses in the TTL. Within the general outlines of this Policy the City Council will provide specific direction to the City's designated negotiator on the Morro Bay Power Plant outfall lease.

2. Embarcadero Road from Beach Street to Tidelands Park/Public Boat Launch. In this core commercial area of the waterfront, the City controls and manages the public property on the west side of Embarcadero Road, where land and water area leases exist for commercial development. In this area, Master Tenants are encouraged to propose redevelopment of lease sites to improve public benefits, enhance the business and working waterfront environment in the TTL and renegotiate leases to modern terms.
3. Tidelands Park South Water Area Only Leases. In this area the City leases only the water areas, as the upland property and access to the water is owned and controlled by private parties. The City will encourage continuation/enhancement of marine dependent uses such as boat slips and boat repair facilities where feasible; however, this area is not suitable for large redevelopment projects.

## **V. LEASE ADMINISTRATION**

### **A. Master Lease Format**

The City has developed a master lease format based on modern leasing practices and similar formats used by other public agencies. The Master Lease Template attached to this Policy in Exhibit F, will be the template for all future master leases, until such time as modified by the City Council. Terms such as rental amount, term of the lease and other data or circumstances particular to an individual lease or lease site may be altered within the text of the Master Lease Template to suit a particular leasing situation. Section 13 of the Master Lease Template is for special provisions peculiar to a particular lease such as redevelopment or improvement provisions, special circumstances or other provisions not common to all Master Leases.

### **B. License Agreements**

A License Agreement format will be used for temporary, interim or non-exclusive use of TTL property, or for regulating non lease site-based businesses operating in the TTL areas when appropriate. A separate License Agreement Policy will be used to manage License Agreements.

### **C. Building Leases**

If a City lease site reverts to City ownership for any reason and recognizing there is a potential conflict of interest if the City is both landlord to Master Tenants and a building lease landlord competing with Master Lessees to fill vacancies on the waterfront, then the City will only enter into building leases for those sites under one or more of the following circumstances:

1. When it becomes absolutely necessary,
2. To maintain the improvements,
3. For business continuity or
4. To take advantage of an unusual opportunity.

Such building leases will be only on a short-term basis (generally three years or less), provide for fair market value terms and conditions and be in compliance with the Tidelands Trust Act.

### **D. Approved Uses**

Only those uses as-described in Article 3 Use of Premises section of the master lease and as-provided in a City-approved applicable Conditional Use Permit or other entitlement for the lease site, all in conformance with the Tidelands Trust, will be allowed. Those uses must

conform with the applicable City land use entitlement regulations and policies. Master Tenants proposing new uses for a lease site shall be referred to the Community Development Department of the City for review and approval through the applicable land use entitlement process; and, upon such approval, the new permitted uses of the subject lease will be incorporated into the lease by amendment.

E. Fair Market Rent

State Law requires fair market rent be charged for use of the TTL and City leases and licenses thereon. Fair market rent will be determined by the City through the use of an independent appraiser to appraise the fair market value of the leased property, and the City will set an annual rent minimum of 8% of the appraised value of the land and/or improvements if the improvements have reverted to the City. The lease will be structured to provide for a minimum annual fair market rent or a percentage of gross sales rent, whichever is greater, per the City's adopted percent gross rent schedules included in Exhibit E.

In order maintain fair market percent rent rates, the City will periodically conduct or have conducted a percent rent rate study of then-current percent rents of other similar coast-wide public agencies on an as-needed basis, and all new leases and/or applicable lease amendments will incorporate the most current percent rent rates, unless the City Council determines the public interest can be better served by a different rate.

In cases where the Master Tenant is proposing complete site redevelopment or an improvement project involving remodeling or replacement of 50% or more of the existing improvements, or of a lease site requiring significant private investment costing 50% or more of the appraised value of the property, the City may allow both temporary reductions in the outlined minimum rent to offset the Master Tenant's period of reduced revenues during construction, as well as a reduction in the standard percentage of gross sales requirements as negotiated with the Master Tenant, on a case-by-case basis.

1. Non-Profits/Public Benefit

It is recognized both community-based non-profit organizations and public benefit entities, because of their purpose and function, provide intrinsic benefits to the City at large. Those organizations, however, must pay market lease rates on all operations/uses to provide needed revenue for the Harbor Fund, unless they provide direct or indirect benefits to the TTL areas, waterfront, or harbor community, which are sufficient to justify a reduction in rent based on the following criteria;

- a) An independent fiscal and/or cost-benefit analysis is conducted, at the cost of the non-profit or public benefit organization, to quantify the direct or indirect economic or other impacts (positive and/or negative) to other businesses in the TTL, and determine if there are other (positive and/or negative) fiscal or other impacts associated with the use, including those of potential unfair competitive advantages over the private sector. Lease rates can be negotiated at less than market rate if it is determined other quantifiable direct or indirect financial, public or other benefits, as determined by the City Council.

- b) Other revenue options may be considered in establishing leases with revenue-generating non-profit entities, such as an admission tax or fee, a lease payment based on a percentage of membership fees or dues, an in-lieu sales tax fee, or any other alternative measures developed through negotiation with the City, as approved by the City Council.

2. Government

Government Master Lessees that provide coastal or marine-dependent services to the City, the bay or boating community, and enhance the quality of life of in the City should be allowed to lease space on the Embarcadero. Governmental uses may pay reduced rent based upon the limitations and restrictions of the agency and the value of the services provided by it to the City.

- F. Lease Term (duration)

The appropriate term for a new lease will be determined by the City Council based generally on the size of lease site and the level of private investment proposed for the site and TTL public property. The term of a lease is primarily related to the dollar amount of the investment in improvements made on the site and TTL, and relative to the size of the lease site in relation to its revenue-generating capacity. Because of the differing values and revenue-generating potentials of the different leaseholds, the relationship of the investment to the term of the lease needs to be assessed on a case-by-case basis, and can be difficult to define in a centralized numerical formula.

Because lease and property negotiations are a fluid and dynamic environment, in negotiating the lease term the City Council may take into consideration recent past negotiations as examples of appropriate term-to-investment ratios. In addition, the City Council may also consider other relevant information in determining if a longer lease term is warranted in approving a term of the lease, such as:

1. The desirability or marketability of the leasehold in question,
2. Business or revenue-generating potential of the site and improvements,
3. Useful life of the improvements,
4. Jobs potentially created by the business mix of the facility,
5. Challenges or other limitations inherent in a particular leasehold (such as land use entitlement limitations or physical conditions or obstacles to development),
6. The extent of the capital investment being expended by the potential Master Tenant,
7. If the capital investment is expected to generate above average returns to the City, and
8. The investment/redevelopment will reposition the lease site to a higher aesthetic, increase the site's property value or inherent revenue-generating potential or increase/improve public benefits.

Capital investment can take the form of: purchase of leasehold interest and improvements; cost of remodeling and refurbishing existing improvements; the cost of new improvements/site redevelopment; the cost of public benefits; or other public improvements, provided that personal property and Tenant Improvements (or "TI's") will not qualify as capital investment toward measuring lease term.

#### G. Lease Negotiation

Negotiations relative to leasing public tidelands shall commence and remain at the appropriate staff levels and follow appropriate chains of command, with the Harbor Director serving as the main point of contact with the prospective Master Tenant. Participation from the Administration, Community Development, Legal or Public Works departments may be necessary when issues relative to their respective departments arise.

The City Council may exercise its authority under California Government Code Section 54956.8 to meet in Closed Session to give instructions to the City's negotiator(s) regarding negotiations for lease of real property. During the Closed Session, the City's negotiators will be properly instructed and authorized to finalize negotiations and the lease with the prospective Master Tenant/Subtenant. Negotiations are to be conducted to the maximum extent possible in private at the staff level, prior to City Council consideration of the lease in regular open session, to avoid the City Council negotiating a lease in public.

In some cases, parties who are considering buying a Tidelands Master leasehold interest may desire to renegotiate portions of the existing lease prior to completing the sale/assignment of the lease. Normally, City staff will not negotiate with prospective Master Tenants due to the fact the City does not have a leasehold relationship with a prospective Master Tenant, and the potential impact on the "sale" price of a lease. Prospective buyers of leasehold interest are buying the existing lease agreement only.

All lease sites eventually need to be reconstructed or significantly remodeled. In general, the City desires such reconstruction to bring improvements up to then current modern building codes, design criteria, and market conditions. The City acknowledges Leaseholders will need to renegotiate leases in those instances. The normal stage for lease negotiation to commence in a reconstruction redevelopment situation is when the Master Lessee has received City Council approval of a Concept Plan for a land use entitlement (many times a Conditional Use Permit (CUP)) for the site. The project will then be at a stage when the land use entitlement approval can be attached to a lease, and the Master Tenant can be required to construct the improvements in compliance with the land use entitlement in a given period of time.

Upon execution of any new Master Lease, as a matter of course a Memorandum of Lease will be recorded with the County Clerk-Recorder for the leased property to ensure the public and any interested parties can be made aware of the existence of the lease.

#### H. Lease Amendment, Renewal and Extension

##### 1. Amendment

Lease amendments may be used for various functions where the existing lease agreement is retained, including, but not limited to, the addition of time to the lease term. Master Tenant-desired amendments may be contingent on updating other sections of the lease, or a rent adjustment desired by the City, depending on the nature of the Master Tenant amendment.

Lease amendments must be consistent with the City's then applicable land use entitlement regulations and vision for the lease site, and conform to then-current standard lease language in effect at the time, and will only be made with Master Lessees in Good Standing, as-defined herein.

A lease amendment process flow chart is included in Exhibit B.

2. Renewal

Leases will not be renewed, as-defined herein, because automatically renewing a lease with an existing Master Lessee can lead to a false sense of private ownership of the lease site, with the consequence some Master Lessees may not maintain or reconstruct the improvements prior to the expiration of a given lease term.

3. Extension

Leases will not be extended, as-defined herein. Any additional lease term (duration) to a lease must be by lease amendment, and generally only in exchange for additional consideration from the Master Tenant. Lease “extension” is not to be confused with lease “holdover,” as defined in the individual lease agreements.

I. Lease Expiration and Termination

In general, there are three options for leases that are nearing their expiration or are terminated:

1. Advertise the lease site is available through a Request for Proposals (RFP) process. The RFP process is addressed in Section K.
2. Keep the site in a short-term interim lease arrangement until the City Council determines its intent for lease site’s future, including but not limited to consolidation with another lease site or site redevelopment.
3. Work with the existing Master Tenant on a new, replacement lease.

In the case of an expiring lease when an existing Master Tenant proposes to continue occupancy and they desire to make additional or new capital improvements, or when the Master Tenant proposes to completely redevelop the site, they must make their intentions known to the City no less than five years prior to the expiration of their existing lease. Such a proposal must be consistent with the City’s vision for the lease site in terms of business mix, amenities and public benefits and improvements, as such vision is previously determined by the City Council. In the absence of such a proposal from the existing Master Tenant, or if such a proposal is rejected by the City Council, the City may utilize an RFP process to solicit the lease site opportunity, with the intent that such solicitation will be initiated not less than four years prior to the expiration of the existing lease, at the City’s discretion.

For a new lease request not involving significant new capital investment, other consideration, such as higher rents to the City or additional public benefits, may be employed. Additionally, the City may, with the assistance of professional property inspectors and/or the City’s Building Inspector, Fire Marshall and Code Enforcement Officer, evaluate existing facility conditions, and propose additional site capital investments that would justify a new lease with an existing Master Tenant.

Proposals for a new lease will be evaluated on a case-by-case basis upon, but not necessarily limited to, the following:

- a. Master Tenant is in Good Standing, as-defined herein.
- b. The City desires to continue a proven, mutually beneficial leasing relationship.
- c. Master Tenant’s proposal is desirable, their plan is acceptable, it matches the City’s vision and plan for the site, and is in compliance with the City’s land use entitlement regulations.

- d. Proposed capital or other improvements (including public benefits) justify amortizing the Master Tenant's investment over a longer period of time than is available in the existing lease.
- e. An older lease is to be replaced with a new lease incorporating then current modern leasing terms and fair market rates, and be consistent with the City's vision.
- f. Competitiveness or desirability of proposed lease terms.

A new lease establishment process (with an existing Master Tenant) flow chart is included in Exhibit B.

J. Rent Collection

Master Tenants must pay to the City minimum guaranteed annual rent as-stipulated in their individual lease agreements.

Additional percentage rents for the twelve-month periods ending June 30 are due by July 31 for that prior fiscal year. In order to calculate percent gross rents due, Master Tenants are required to provide records of their gross sales and/or the gross sales from their subtenants and slip tenants, with percent rents calculated per the requirements in their individual lease agreements. The calculated total dollar value of all percentage rents, minus the minimum guaranteed annual rent (but no refund if less than zero) is the amount of the percentage rent due to the City.

Acceptable payment methods are to be made by check, money order, cashier's check, credit card or cash, received by mail or hand delivered to the Harbor Department.

Receipts will be available if payment is hand delivered to the Harbor Department.

If rent is not received within ten days following the date on which the rent first become due, then the Master Tenant must pay a late fee of ten percent of the amount of the rent, or as stipulated in the lease agreement, as well as the full rental amount due. In addition to the late fee, the Master Tenant must pay interest at the rate of one percent per month or fraction thereof, the amount stipulated in the lease agreement or the maximum amount permitted by law as of the date the lease is signed, whichever is greater, on the amount of the rent, exclusive of the late fee, from the date on which rent first became delinquent until paid.

Returned checks shall be handled by the terms of the City's current Return Check Policy.

K. Putting Lease Sites up for a Competitive RFP Process

Where it is desired to solicit competitive proposals from the public for a given lease site, a RFP process will be employed. That process can be done "in-house" with City staff or be done in conjunction with or by a real estate development broker or other qualified private party, as determined by the City Council. In general, putting a site out for public proposals shall have the following top four priorities:

1. Ensuring lease sites match the City's plans and vision for the sites in terms of business mix, amenities and public benefits.
2. Redeveloping or upgrading lease site improvements to then current modern designs, codes and market conditions,
3. Enhance and/or maximize revenues to the City, and
4. Improved public benefits.

A lease site RFP process flow chart is included in Exhibit B.

L. Lease Site Redevelopment and Coordination with Community Development Department

When lease site remodels or redevelopments are being considered, close coordination with the Community Development Department is necessary to ensure consistency with the City's policies, plans, zoning and economic development goals and objectives, especially where multiple site consolidation is under consideration.

In addition, past land use entitlements and history on a given site will be consistently interpreted and applied to future development and use, which can only be established with close inter-departmental coordination.

M. Lease Site Consolidation

Lease expiration dates may be established to coincide where adjoining sites might have mutual planning benefits. In some cases, the City may not add time to the term of an existing lease, either for the purpose of consolidating sites or to pursue other extenuating public benefit.

Lease site consolidation may be considered in instances where:

1. Opportunities exist for financial economies of scale not otherwise achievable with smaller sites,
2. Achieving long-term planning goals as identified in the City's General Plan, Local Coastal Program and various master plans,
3. Policy implementation, or
4. Realizing desired public amenities or benefits.

N. Lease Site Monitoring, Inspection and Maintenance

1. Lease Site Monitoring and Inspection

The City has a paramount interest in ensuring the improvements on the City's lease sites are being properly maintained and are in a safe and secure condition. The City shall have the lease sites inspected and a report made on such inspections at least every five years, or as often as the Harbor Director or City Manager deems necessary, with approximately one-fifth of the lease sites inspected every year on a rotating basis. A checklist for lease site criteria is included in this Policy under Exhibit G. In conducting lease site inspections, the City may utilize any or all of the following:

- a. Harbor Department staff,
- b. Fire Marshall,
- c. Building Inspectors,
- d. Code Enforcement Officers, including reports from agencies such as County Health and others,
- e. Private Contractors, and
- f. Other resources as-identified

City staff will require deficiencies noted in the lease site inspection reports to be repaired or cured by Master Tenants in a timely manner, depending on the nature and urgency of the deficiencies identified. Any deficiencies that pose, in the sole determination of the Harbor Director, in consultation with the Building Official and/or Fire Marshall, a public or life-safety issue must be cured immediately.

Ultimate disposition of any uncured deficiency will be handled according to the provisions in the individual lease agreements.

As long-term leases draw close to expiration, there can be a tendency for maintenance deferment. The City must carefully monitor and strictly enforce lease maintenance provisions to protect the reversionary interest in the lease site improvements. Site inspections shall be conducted with appropriate and reasonable advanced notification.

2. Maintenance of Improvements and Leased Premises

Unless otherwise provided in individual lease agreements, Master Tenants are solely responsible for the upkeep and maintenance of the leased premises and improvements, including any seawalls and/or revetments, and must, at the Master Tenant's sole cost and expense, repair, replace, restore and otherwise maintain the leased premises and all improvements thereon in a fully functional, safe and secure condition per the terms of their leases.

In addition, Master Tenants must, at all times during the term of their leases, repair, keep and maintain the interior and exterior appearance of their premises and improvements in good, clean, vermin-free and sanitary order. Such repair and maintenance will include, but not necessarily be limited to, removing all obstructions, trash, debris, vermin and refuse, and maintaining improvement appearance and landscaping in an attractive manner.

For all maintenance and repair performed under the provisions of a lease agreement, Master Tenants must comply with all applicable laws, codes, ordinances, regulations and requirements of any governmental agency having jurisdiction over the leased premises. Ultimate disposition of uncured deficiencies will be handled according to the provisions in the individual lease agreements.

3. Maintenance of Public Spaces, Common Areas, Rights-of-Way and Sidewalks

Public spaces, common areas, rights-of-way, sidewalks and other areas or spaces not necessarily on a given lease site's premises, but utilized as part of a lease site's business operations (the path of travel for a site's dumpsters to the roadway for collection, for example) will be cleaned and kept free of litter, debris and contamination, and maintained without surface contamination in a "broom clean" condition at all times by the Master Tenants utilizing those areas.

O. Environmental Considerations

Lease negotiations shall be consistent with the City of Morro Bay's intent to be protective of natural and human resources in and around Morro Bay Harbor. Leases should specifically include or incorporate by reference applicable environmental regulations that may include, but not be limited to, boater and/or marina Best Management Practices, the Clean Marina Program, or similar programs and initiatives of the Morro Bay National Estuary Program.

P. Lease Terms and Site Entitlement Compliance

The City will monitor compliance with, inspect for and ensure compliance with all lease terms, conditions and provisions on an ongoing basis. In addition, as part of the five-year site inspections, the City will inspect for and ensure compliance with Master Lessee adherence to all entitlements (permits and permit conditions, including sign permits) associated with the premises and improvements.

Deficiencies noted in the lease terms or entitlements must be repaired or cured by Master Tenants in a timely manner, depending on the nature and urgency of the deficiencies identified. Ultimate disposition of uncured deficiencies will be handled according to the provisions in the individual lease agreements.

Q. Percentage of Gross Sales Audits

Without limiting the City's right of audit and oversight contained in its individual lease agreements, it will be the City's policy to require the annual submission to the City of all applicable business sales tax records as-submitted to the State of California, in addition to the hotel room night sales and transient occupancy tax ("TOT") payments as-submitted to the City, with the Master Tenant's annual percent gross sales reports each year. Harbor Department staff, with the assistance from the Finance Department and/or other resources, will annually audit the submitted documents for accuracy against each other, and with the sales tax records received by the City from the State and the City's sales tax reporting service. The disposition of any amounts owed or owing will be handled in accordance with the terms in the individual leases themselves.

While sales tax reporting, TOT reporting and percent gross reporting should match in terms of sales numbers reported, discrepancies between the reporting will be handled as follows:

1. Any discrepancy that constitutes a difference in gross receipt reporting versus sales tax and/or TOT reporting of less than 5% will result in no further auditing action.
2. Any discrepancy that constitutes a difference in gross receipt reporting versus sales tax and/or TOT reporting of 5% or more will result in City taking whatever further auditing action is necessary to satisfy City the amounts reported are correct, including but not limited to conducting a full traditional financial audit.

For lease sites that have sales or revenues that are not subject to sales tax or TOT, those sales will be subject to traditional financial auditing every three years as-follows:

1. The non-taxable sales of one-third of the sites with such sales will be audited each year on a rotating basis, with sites chosen to reflect approximately one-third of the total non-taxable sales in the TTL, and
2. Each audit will select any one or more of the immediate past three years to review.

In any event, the City reserves the right to conduct a full traditional financial audit of any lease site, within the limits of any lease agreement's terms, should, in the City's sole determination, such an audit be justified.

R. Lease Sale, Assignment and Assumption

All City leases require City Council approval for the sale or assignment and assumption of a lease agreement. Any Master Lessee requesting such approval will be required to:

1. Pay the appropriate fees noted in the City's Master Fee Schedule,
2. Complete the appropriate forms,
3. Submit financial and other documentation to indicate the qualifications and experience of the proposed Leaseholder to the satisfaction of the Finance Director, Harbor Director and City Attorney,
4. Be a Master Lessee in Good Standing, as defined herein, in full compliance with the terms and conditions of their lease agreement, and

5. Provide proof of proposed Master Tenant's City of Morro Bay current valid business license/tax certificate, general liability insurance and all applicable governmental licenses.

If the proposed assignment or sale includes a change in use of the site, then the change in use shall be reviewed by the Community Development Department for conformance with planning and zoning regulations. Proposed changes in uses for lease sites must comply with the City's land use entitlement regulations, including, but not limited to, the adopted General Plan, Local Coastal Program, and Measure D's limitations for properties north of Beach Street. Where zoning allows a variety of uses, whenever possible preference will be given to coastal-related uses.

S. Sublease Approval

All leases require City approval of subtenant/sublease agreements. Any Master Lessee requesting subtenant approval will be required to:

1. Pay the appropriate fees noted in the City's Master Fee Schedule,
2. Complete the appropriate forms,
3. Submit documentation to indicate the qualifications and experience of the proposed subtenant to the satisfaction of the Harbor Director,
4. Submit a properly executed copy of the City's standard Consent to Sublease/ Subtenant Agreement,
5. Submit a copy of the proposed subtenant/sublease agreement between the Master Lessee and subtenant, and
6. Obtain proposed subtenant's City of Morro Bay current valid business license/tax certificate, general liability insurance and all applicable governmental licenses.

T. Financial Criteria and Financing Considerations

In making a determination of whether or not a Master Tenant, proposed Master Tenant or Subtenant is a financially acceptable partner the City wishes to do business with, the City may use any or all of the following criteria:

1. Experience and history in commercial leasing situations, property management and development/redevelopment,
2. Demonstrated financial capacity and capitalization,
3. Financial strength and current relationships with financing sources, including credit scores,
4. History, if any, of defaults, bankruptcies or litigation that indicates a bad partnership risk, and
5. Properly and professionally-prepared business plans and/or financial proformas with industry-standard elements expected of such documents.

While there is the need to foster financing, refinancing and investment on the waterfront, while protecting the City's interests and fiduciary responsibility, the City will not approve financing related to or using the lease site, or leasehold interest as collateral, unless such financing is for sole investment upon the TTL, for City-requested public improvements or benefits in the TTL or to reduce the interest rate of existing debt secured by the lease.



## VI. Exhibits to Policy (under construction)

### A. Definitions and Acronyms

1. **Annual Minimum Rent:** Also known as “Minimum Rent” or “Base Rent.” The minimum rent charged a Master Tenant on an annual basis for use of the premises. The Annual Minimum Rent is established as a percentage of the Appraised Value of the property, as-defined, and established in individual lease agreements.
2. **Appraised Value:** the estimated fair market value of a subject property as-determined by a qualified commercial property appraiser. Assumptions made for appraising a leasehold property are:
  - a. “Fair market value” is the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgably and assuming the price is not affected by undue stimulus.
  - b. The property rights appraised are those of the fee simple interest in the subject property as if free of all liens, leases and encumbrances.
  - c. The subject property is vacant and available for development to its highest and best use.
3. **Base Rent:** also known as “Annual Minimum Rent” or “Base Rent.” See “Annual Minimum Rent.”
4. **Building Lease:** a lease in which the City owns and maintains the building and improvements, and tenants lease space on a monthly or annual basis and perform their own Tenant Improvements.
5. **City Council, Departments and Staff:** all references in this document to City Council, Departments or Staff refer to the Council, Departments and Staff of the City of Morro Bay, California.
6. **Closed Session:** A meeting of the City Council to discuss confidential matters, as-allowed by law, such as litigation, employee relations or property/lease negotiations, conducted in private without the attendance of the public to avoid revealing information that could jeopardize the public interest and City’s position on those matters.
7. **Coastal Development Permit:** a permit for any development within the Coastal Zone that is required pursuant to subdivision (a) of Section 30600 of the California Public Resources Code.
8. **Concept Plan:** a basic conceptual development plan for a property requiring approval from the Planning Commission and City Council to move forward to full permitting approval and construction.
9. **Conditional Use Permit or “CUP”:** a use that is generally compatible with other uses permitted in a zoning district, but that requires individual review of its location, design, configuration, and intensity and density of use and structures, and may require the imposition of conditions pertinent thereto to ensure the appropriateness of the use at that particular location.
10. **Downtown Waterfront Strategic Plan:** the purpose of this Strategic Plan is to connect and enhance Morro Bay’s downtown and waterfront areas and provide a more uniform feel to each district. The Strategic Plan summarizes the outcomes of a community-based visioning process and will serve as a guide for private development and public investment and decision-making over the downtown and waterfront areas.
11. **Fair Market Rent:** the rent charged a tenant (through negotiation) based on the Appraised Value of the leased property and including Percent Gross Sales Rent in the case of a Ground Lease. Ground Lease Annual Minimum Rent is typically set at

8% of the Appraised Value of the leased premises. In the case of a Building Lease, the rent charged a tenant will be based on current average waterfront per-square-foot space rent rates.

12. **Fair Market Value:** see “Appraised Value.”
13. **General Plan or “GP”:** the City’s comprehensive, long-term plan for the physical development of the City.
14. **Ground Lease:** a long-term lease of land only, with improvements that are built by the lessee that usually revert to the City at the termination of the lease.
15. **Harbor Fund:** a fund of the City of Morro Bay with revenues and expenditures separate from the City’s General Fund, managed by the Harbor Department as an enterprise fund to account for all revenues and expenses connected with the operation of the harbor in accordance with the Tidelands Trust Land granting statutes. The sole sources for all Harbor Fund revenues are lease site minimum and percent gross of sales rents and boating and boating facility-related fees.
16. **Holdover:** occupancy of the leased premises after the lease term has expired, in accordance with the terms of the individual lease agreements.
17. **Interim Lease:** a short-term lease, typically five years or less, executed for an intervening period of time while a lease site’s future is being contemplated or developed.
18. **Internet Sales:** sales physically conducted on the internet, although conducted as part of a business entity on a lease site.
19. **Lease Amendment:** any formal revision or change to an existing lease by adding, deleting or changing a provision, or by modifying the wording.
20. **Lease Assignment:** transfer by sale or other arrangement of a leasehold interest from a Master Lessee to a new owner. All such assignments must be approved by the City Council. Also referred to as “Assignment and Assumption.”
21. **Leases Assumption:** see “Lease Assignment.”
22. **Lease Extension:** the continuation of an existing lease with no changes in its terms and conditions other than providing a longer period of time (term) for which the lease is valid. “Extension” is not to be confused with nor affect lease “holdover,” as defined in individual leases.
23. **Lease Renewal:** the exact re-creation of an existing lease that is expiring with no changes to that lease, including duplication of the original term.
24. **Lease Term:** the period of time in which a lease agreement is valid.
25. **License Agreement:** an agreement for use of public property that does not convey the typical exclusive use or rights as in a lease agreement.
26. **Local Coastal Program or “LCP”:** the documents included in the LCP implement the California Coastal Act at the local level in Morro Bay. This includes addressing all major policy topics of the Coastal Act, incorporating analysis needed to support coastal policies and incorporating local context in conjunction with the legal requirements of the Coastal Act.
27. **Master Lease:** the ground lease agreement or contract held by a Master Tenant for rightful possession of the City’s Tidelands Trust Land lease sites along the Embarcadero.
28. **Master Lease Template:** the City Council-approved “standard” lease agreement from which all lease negotiations for new leases are to be initially based.
29. **Master Tenant:** the tenant or lessee named in a lease agreement who holds or possesses a given leasehold.
30. **Master Tenant in Good Standing:** The Master Tenant has a good history of performance and lease compliance and the improvements on the site are well maintained. Example standards for determining “good history” of Master Tenant performance are:

- a. The Master Tenant’s record with respect to the prompt and accurate payment of rent and related fees due the City, and cures any audit discrepancies in a timely and appropriate manner;
  - b. Master Tenant maintains accurate and complete financial records in accordance with the lease agreement that are made accessible to the City and/or City’s auditors when requested;
  - c. The Master Tenant’s record of compliance with existing lease conditions, and corrective measures for any non-compliance issues taken in a timely manner;
  - d. The appropriateness of the proposed Master Tenant business and/or subtenants with respect to the long-term planning and vision goals of the City;
  - e. The Master Tenant’s financial and personal investment in the leasehold improvements, Master Tenant business and overall management of the site;
  - f. Master Tenant has proven investment and maintained accurate financial records for the amounts committed in the lease for redevelopment, remodeling and/or improvements;
  - g. The contribution to the surrounding business community made by the Master Tenant’s business;
  - h. The quality and value of goods and services provided to the public by the Master Tenant, their tenant and/or its subtenant(s);
  - i. The Master Tenant has obtained, maintained and remained in compliance with all required permits and entitlements;
  - j. The total financial return (revenue) to City from the leasehold is maximized and within industry norms;
  - k. Other pertinent considerations as may be appropriate as determined by the City Council.
31. **Measure D:** a 1981 land use ordinance of the City of Morro Bay restricting lease site development and use between Beach Street and Target Rock to those uses “primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational activities.”
32. **Minimum Rent:** also known as “Annual Minimum Rent” or “Base Rent.” See “Annual Minimum Rent.”
33. **Minor Use Permit or “MUP”:** a discretionary permit which may be granted by the appropriate City of Morro Bay authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted by right, but which may be approved upon completion of a review process and, where necessary, the imposition of special conditions of approval.
34. **Percent Gross Sales Rent:** rent based on a percentage of a tenant’s gross sales according to Exhibit E. Percent gross rent is typically only owed in the amount the percent gross rent exceeds the annual minimum rent.
35. **Sublease:** a lease to a third party, commonly known as a subtenant, by a Master Tenant, conveying some or all of the Master Tenant’s leased property.
36. **Subtenant:** a third-party tenant or lessor that enjoys a sublease.
37. **Temporary Use Permit of “TUP”:** a discretionary permit which may be granted by the appropriate City of Morro Bay authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted by right, but which may be approved upon completion of a review process and, where necessary, the imposition of special conditions of approval.

38. **Tenant Improvements or "TI's"**: removeable personal or business property or trade fixtures affixed to leased premises for business purposes that the tenant can detach and take away.
39. **Tidelands Trust Land or "TTL"**: those properties on Morro Bay's waterfront and surrounding areas, in some cases formerly underwater and filled, owned by the public and held in trust by the City for the people of the State of California. Per the California Constitution and State Law, those properties are to be used in furtherance of navigation, commerce, fisheries, environmental protection, recreation and open space.

B. Flow Charts (TBD)

- I. RFP Process
- II. Development/Redevelopment/Lease Extension
- III. Assignment and Assumption (lease sale)
- IV. Lease Amendment

C. Maps/Surveys (TBD)

D. Zoning Chart (TBD)

E. Percent Gross Schedules

**SCHEDULE A**

**PERCENTAGE RENT FOR GROUND LEASES**

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

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

**SCHEDULE B**

**PERCENTAGE RENT FOR BUILDING LEASES**

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

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



**Morro Bay Chamber of Commerce**  
**Tidelands Trust Lease Policy and Administration**

**Recommendations**

**Revised and Adopted: March 17, 2020**

The recommendations contained in this document are the result of research by the Chamber and by the Tidelands Lease Policy (TLP) subcommittee. We commend the work of the TLP subcommittee and believe it is time for the Council to deal with some of the needed surgical updates to the TLP recommended by the subcommittee, to consider others that the Chamber thinks are needed, and to resolve some the structural and sustainability issues associated with maintenance and improvement of the waterfront. The TLP and the financial solvency of the waterfront are inextricably tied together.

First, let us say that in terms of comprehensiveness and sophistication the City of Morro Bay's Lease Management Policies compare favorably to larger and better-funded agencies. For a smaller jurisdiction with a smaller Tidelands lease area, and with a small Harbor Department staff, TLP is an exceptional document. That being said, the community, staff and Council recognize that it is time to freshen it up, modernize it and make it fairer and more predictable.

The Chamber provided comments in 2019 about various waterfront issues, and those are restated and updated below, followed by the new ones proposed by the TLP committee and Harbor administration. Note that the Chamber is not providing an item by item review of the new TLP. We leave that to the TLP committee and City staff. We are fortunate to have many existing and former Tidelands master lease holders and sub-lease holders (tenants) on our committee and board, as well as commercial brokers, and others familiar with this special and peculiar type of real estate and municipal function. Some of these recommendations involve future studies and work, and some of them can be used to modify the existing lease management policy and lease template. For those items that affect the actual leases, the City should allow leaseholders to modify their leases to comply with these changes, and the changes should apply to all future leases.

Since 2018, the City has been consulting with a group of local stakeholders on updating the Tidelands Least Policy (TLP). This policy is intended to provide guidance to the City and the Harbor Department to fairly and equitably administer leases for the Tidelands Trust properties that were granted (given) to it by the State of California. The proposed TLP still contains many unanswered questions, and the Chamber has taken initiative to address some of those here.

We have also reviewed some to the waterfront/Harbor Department's structural budget issues, although we have not had the benefit of a deep dive into this. Followup work is needed.

The GAC reviewed the existing TLP in July of last year, the full report of which is attached. The Chamber makes the following updated observations and recommendations:

1. The Harbor District is currently running on empty. There are insufficient scheduled revenues to pay for Harbor District operations (enforcement, administration and management of the waterway), for services and amenities that are necessary for the visiting public to enjoy their State lands (normal sanitation, public bathrooms, sidewalk maintenance, signage and roads), and to pay for the depreciation and repairs on the Lease assets such as fixed piers and docks, buildings, lease site sea walls and revetments. All of these types are necessary for a thriving and successful business district on the waterfront. There is also a reliance on added revenue from percentage rents each year to balance the Harbor Department's budget, revenues that may not occur in slower years.
2. The City should evaluate the cost allocation and fair market rents for the Tidelands Lease sites and ensure that, over time, they are comparable to, and do not exceed market rates. The City has a statutory duty to charge no less than fair market value for franchises, leases and other uses of improvements. In our Cost Allocation Study comments, we recommended that any substantial adjustments that are needed be phased in over a five-year period, and that those rates not exceed those for similar facilities elsewhere in the County. We also recognize that there is a difference in "fair market value" of an improvement such as a slip, dock or mooring, and allocated cost analysis. Based on information provided by the City, some sites have not had a formal re-appraisal in decades.
3. The City should re-evaluate the decision to eliminate the Business Services position in the Harbor Department, or it should outsource that function to a professional property management firm. It is believed that there will be increased efficiencies, greater revenues, more certainty, fairness, and greater collections. It is believed that outsourcing will also reduce conflicts between the City's "landlord" functions and its "enforcement" functions, add an element of objectiveness to lease administration, and ensure timely completion of the City's obligations under the leases. It is also believed that this function/position should be responsible for developing a long-term business plan for the waterfront's commercial areas (there are at least

- three), which is essential to halting the decline and decay of Harbor assets. Under its current staffing model, the City is attempting to perform an essential real estate management function on a \$12 million commercial asset without added expense. The burdens of this function can be reduced (possibly making this a part-time position) by setting up the leases so that they do not require the intensity of monitoring and auditing that is required now (for example, no percentage rents).
4. The City should evaluate the appropriate use and sources for Tidelands Lease revenues and determine which portion of the revenues should be reserved to maintain and improve the asset being leased, which portion is for “common area maintenance” such as Harbor operations and maintenance, and which portion is for base rent of the asset. The City should also establish a financing mechanism so that non-Tidelands Lease properties pay an equitable share of Waterfront area’s maintenance and operations through a Business Improvement District, Parcel Tax, paid parking or other mechanism so that all properties contribute to such funding. The city owned parking areas should be converted to paid parking. It is believed that this would not have a material impact on waterfront businesses and would create a revenue stream for parking lot maintenance and improvement, and for other improvements. We believe that the assumption that paid parking only covers enforcement expenses is incorrect. For example, the City of Pismo Beach reported parking revenues of \$1.1 million against expenses of \$682,000 for their 2018/2019 fiscal year, generating net operating income of over \$400,000 per year.
  5. The City should create sub-funds for the lease facilities in the Measure D/CF zone district, and the remainder of the Waterfront. This would eliminate commingling reserve funds and treatment of each of these sub-areas as their own internal funds. Each geographic area is functionally and economically different, with the measure D area functioning like an industrial park with a substantial amount of city owned fixed assets (piers, moorings, slips, parking, etc.), compared to the non-Measure D areas with are primarily land and water leases with the master lease holders responsible for the “rocks to the roof” improvements. The visitor-serving area south of Beach Street represents 78% of the appraised value of the Tidelands properties, while the Measure D area represents approximately 16%. (Note: the information provided on the leases appraisals and rent was incomplete and these percentages may vary somewhat.) This kind of analysis will reinforce the appreciation for the critical con-

tribution that existing restaurants and retail in the Measure D area make towards maintaining the facilities necessary for the commercial fishing fleet. This kind of analysis does not seek to jeopardize nor diminish the significant contribution of the commercial fishing fleet to the city.

6. The City should (more) pro-actively time the renewal of the lease sites so that they can be combined, comprehensively redeveloped, and placed on longer term master leases. Combining lease sites has economic, financial and administrative advantages. It also provides smaller tenants who may not be economically able to lease and redevelop a lease site with opportunities. It will also insulate the City and Harbor District from wide variations in lease revenues as individual properties sit vacant for months or years. The current proposal is to make this permissive; stronger language is called for to encourage consolidation of lease sites.

New comments and recommendations to the above, based on the TLP committee's report and recommendations are as follows:

1. **Harbor Facilities Funding.** The Harbor District is currently running on empty, and the City has not yet identified a feasible business plan to ensure operation of the Harbor, maintenance of depreciating and decaying infrastructure. There are insufficient scheduled base revenues to pay for Harbor District operations (enforcement, administration and management of the waterway), to pay for services and amenities that are necessary for the visiting public (normal sanitation, public bathrooms, sidewalk maintenance, signage and roads), and to pay for the depreciation and repairs on the Lease assets such as fixed piers and docks, buildings, lease site sea walls and revetments. **The update of the Cost Allocation Plan relative to Harbor facilities is still unresolved, as is how the City will maintain the value of the assets granted to it by the State.** Using Tidelands Lease monies for the exclusive purpose of operating the Harbor Department is unsustainable. Other revenue sources must be identified, including parking revenues, Business Improvement District Revenues, or other sources. All of the Harbor facilities and the Tidelands assets need to be leased at fair market return, and the City should not "discount" any rents, slip charges, leases or other facility charges unless the user and operator is providing remedial improvements that would otherwise be the responsibility of the City. The Harbor Advisory Committee has done a significant amount of work on identifying need, but a sustainable revenue model is not yet established.

2. **Cost Allocation and Fair Market Rent.** City should evaluate and conclude the cost allocation and fair market rents for the slips, docks and other rental facilities that was started last year. These should be at fair market rents, which may be different than the “Cost Allocation” basis. If there are substantial increases, they should be phased in over time consistent with the Chamber’s previous recommendations. Although the TLP committee spent a considerable amount of time assessing lease rates, percentage rents, etc., they demurred on making a recommendation because they believed this needed be determined by a qualified appraiser. The City should also provide a third-party analysis of the fair market rent for lease sites, including the depreciated fair market value of the Tidelands Lease sites assets (including water land and improvements owned by the City) for each lease site, and reconfirm the fair market annual lease rate. These fair market leases should be based on local economic conditions. Currently the City uses an eight percent (8%) lease rate; however, it is noteworthy that the State Lands Commission uses a 9% lease factor (but without apparent percentage rents). The percentage rents should also be validated, as well as the City’s target rate of return. The TLP is not clear when the last appraisal was done to determine fair market rents, if that is done during each lease negotiation. According to the City’s records some of the lease sites have not been re-appraised in decades.
  
3. **Fixed Rent vs. Percentage Rents.** The Lease Management Policy should provide for a fixed percentage rent as the preferred basis determining lease payments. This approach would set the rents at a standard percentage of the appraised value. The current “base rent” is set at eight percent (8%) with those paying sales taxes being assessed an additional amount based on reported taxable sales. Converting to a fixed rent would solve a number of current problems: 1) it would provide more stability and predictability for the Harbor Department and enterprise fund; 2) provide businesses with a more predictable rent structure, and potentially reduce turnover and vacancies by sublease holder businesses along the waterfront; 3) treat all lease holders more equitably and not penalize retailers and restaurants; and, 4) would eliminate much of the “auditing” and “enforcement” associated with lease administration. Such a fixed rent would be established at some level above the current base rent, and below the current maximum. For example, the State Lands Commission uses a base nine percent (9%) lease rate for the properties that it administers. This adjustment would also provide the Harbor Department with less volatility in its annual revenue (see attached historical trends). Certainly, the goal is not to substantially increase everyone’s rent, but to make the rent revenue more predictable and easier to enforce, and more like typical commercial leasing practices. The City should provide all current leaseholders with the option to convert to a fixed lease.

4. **Tidelands Lease Management Entity.** The City has a daunting task of trying to effectively manage a complicated \$12 million real estate asset (really multiple assets if you consider the Measure D area an “industrial park”, the non-Measure D area as a “shopping center”, and the moorings and slips as a separate asset), but on a part-time basis. The Harbor Director is challenged with trying to do too many things—chief Harbor law enforcement officer, first responder, chief code enforcer, chief rent collector, chief land use compliance enforcer, diplomat, politician and goodwill ambassador to visitors and tenants. Commercial leasing is a skill and a licensed profession. We should not expect that skill in a Harbor Director or staff; and, few commercial leasing agents have special knowledge in ground leasing and other special intricacies of the Tidelands properties. The position also requires an advocate for development of a sound and sustainable Harbor business plan. There should not be the kind of reliance on volunteers to assist with this. Commercial property leasing is normally budgeted at between 5% and 10% of base monthly rent, which means that the City should be allocating at least \$80,000 for this function. The City should reinstate the Business Services position, either in the Finance Department or the City Manager’s office. The City should also contract out the lease development function to a qualified commercial brokerage company, and a professional business plan for the Harbor.
  
5. **Use of Tidelands Funds.** Up until the mid-1990s, the City regularly augmented the Harbor Department budget to make improvements and the cover operations. With the elimination funds from the power plant, such transfers have been eliminated, and Tidelands lease revenues cover only the daily operations of the Harbor Department. This means that no money is being regularly set aside to fund the depreciation of the assets being leased and rented, and the City will eventually only own the granted “mud”. This situation is unwise and unsustainable. The first obligation of the City under the State Tidelands trust is to “...construct and maintain” the lands and improvements. Operations at the expense of maintaining these improvements is not a viable alternative, nor is it in the best economic interest of the City’s businesses.

The City should also take a broad view how these funds can be used to promote the purposes of the trust, including improving and maintaining the trust and upland lands so that the citizens of the state (our visitors) can enjoy their State lands. The City should also consider how it can broaden the definition of the uses compatible with Measure D to encourage redevelopment and new development in the Measure D/CF area so that additional revenues can be generated. We should recognize that the actual needed “footprint” of commercial fishing has changed substantially because of new technology, change in business practices and efficiencies, and the reduced value of commercial fishing “landings” in Morro Bay. Properties that are underdeveloped and do not generate adequate revenues to sup-

port operations. “Grandfathered” restaurant and retail properties (Tognazzini’s, Dockside Too, GAFCo, Harbor Hut, etc.) provide significant revenues to support commercial fishing operations and Measure D Tidelands properties. The City should create sub-funds for the lease facilities in the Measure D/CF zone district, and for the remainder of the Waterfront. This would eliminate commingling reserve funds and treatment of each of these sub-areas as their own internal funds. Each geographic area is functionally and economically different.

6. **Timing and Length of Leases.** The City should continue to pro-actively time the renewal of the lease sites so that they can be combined and comprehensively redeveloped. Combining lease sites has economic, financial and administrative advantages. It also provides smaller tenants who may not be economically able to lease and redevelop a lease site with opportunities. It will also insulate the City and Harbor District from wide variations in lease revenues as individual properties sit vacant for months or years. “Pop-up” and short-term leases should be encouraged, such as the arrangement with Three Stacks and a Rock, as licensing agreements with users who are not brick and mortar tenants but are water oriented commercial contractors. Lease terms should be set with specific regard to enabling a leaseholder to realize a return at least equal to 2.5 times the city established lease rate (given the relative risk of each investment type). The City should commission a professional appraisal and financial analysis to boil this down. The current version of the LMP does not appear to provide any specific guidance on this matter, and there should be some formulaic guidance to ensure that investors have an adequate length of lease to fully amortize their investment and realize an acceptable rate of return (measured as an “Internal Rate of Return” (IRR)).
  
7. **Financings and Refinancings.** While the City may not pledge its Tidelands assets as collateral for someone else’s private investment, there are no state restrictions that otherwise prevent a leaseholder from pledging his/her owned improvements and rents to secure financings. However, the City’s current policy does exactly that. In fact, many agencies that administer Tidelands leases have explicit policies that permit conventional financing and refinancings if they are not pledging the City’s revenue or the City’s asset (the “rocks”). Both Newport Beach and the San Diego Unified Port Authority have such policies (See, for example Section III of San Diego Unified Port District’s “Real Estate Leasing Policy”, attached.) There is also a presumption in the City’s current and proposed TLP that the City is legally prohibited from allowing leaseholds to convert their invested cash to debt that is secured by net lease revenues. This is an inaccurate assessment of the Tidelands lease restrictions and an unnecessary and onerous restriction on business and development. Other Tidelands grantees have more “business friendly” provisions that allow a leaseholder to finance and

refinance over time. The City's current position that such financings and refinancings can only be used to pay for improvements on the lease site is legally incorrect, punitive and anti-business. These sorts of projects are normally paid for in different ways and structures depending on the phase of development as follows: 1) during the "entitlement", permitting and preconstruction phase, the leaseholder normally pays for all expenses out of his/her own funds; 2) during "construction" of the leaseholder improvements (buildings, etc.), the leaseholder may use funds from a lender with security provided by other leaseholder assets; 3) after construction and before full lease-up and stabilization, the leaseholder will be on some sort of extended construction loan, "mini-perm" or "bridge loan" of a limited term; and, 4) after "stabilization" the leaseholder will attempt to place bank debt on the property and recover the equity that he/she has had to commit to the project. Any City/lease limitations on the ability to eventually borrow money that is secured by the leaseholder net lease revenue from a project is inappropriate, punitive and does not recognize the difficulties and realities of a commercial real estate development on the waterfront on a Tidelands Lease property. (We have reviewed the court case referenced by staff and legal counsel and believe that it does not apply to this matter.)

Attached: Morro Bay Harbor Department Budget History  
San Diego Unified Port District, "Real Estate Leasing Policy"  
Chamber Waterfront Policy Recommendations, August, 2019.

	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020 (Budget)
<b>Revenues</b>																
Intergovernmental	61,200	18,000				18,820	71,778	144,462					48,122	343,000	33,000	28,000
Charges for Services (Leases)	1,241,585	1,213,611	1,930,192	1,580,500	1,726,000	1,358,185	1,387,292	1,802,399	1,379,835	1,636,512	1,875,848	1,949,963	1,845,581	2,017,851	1,928,955	1,950,800
Charges for Services (Boat Launch)						2,208	24,392	25,875	25,000	27,000	30,962	29,250	24,204	28,000	30,000	30,000
Fines and Forfeitures											38,032	14,924	8,855	8,000	5,000	1,200
Use of Money and Property	48,465	29,242	2,000								3,220	5,870	2,980	2,000		
Other Revenues	295	5,795	15,000	7,500	7,500	406,458	309,866	7,884	363,450	4,300	22,086	10,226	9,572	4,118	4,300	
Other Revenues-Lifeguards																
Castlewind Contribution (In Capital)												1,125				1,000
Interest																
<b>Total Revenues</b>	<b>1,351,545</b>	<b>1,266,648</b>	<b>1,947,192</b>	<b>1,588,000</b>	<b>1,733,500</b>	<b>1,785,671</b>	<b>1,793,328</b>	<b>1,980,620</b>	<b>1,768,285</b>	<b>1,667,812</b>	<b>1,970,148</b>	<b>2,012,276</b>	<b>1,939,755</b>	<b>2,402,969</b>	<b>2,001,255</b>	<b>2,011,000</b>
Transfers In																
Boat Launch											27,924	25,697	19,518			
Interfund Transfers In														45,000		
Operating/Capital	443,099					115,128		39,503			113,708	107,052	14,778	11,624		
<b>Revenues and Transfer In</b>	<b>1,794,644</b>	<b>1,266,648</b>	<b>1,947,192</b>	<b>1,588,000</b>	<b>1,733,500</b>	<b>1,900,799</b>	<b>1,793,328</b>	<b>2,020,123</b>	<b>1,768,285</b>	<b>1,667,812</b>	<b>2,111,780</b>	<b>2,237,685</b>	<b>1,974,051</b>	<b>2,459,593</b>	<b>2,001,255</b>	<b>2,011,000</b>
<b>Expenditures</b>																
Salaries and Benefits	1,748,433	2,399,086	2,171,735	1,067,631	1,179,515	1,007,712	917,443	923,603	885,141	916,444	931,221	977,764	1,320,736	1,137,603	1,058,070	1,060,016
Supplies						54,545	86,981	66,231	55,100	66,400	90,458	86,354	98,430	76,128	63,830	68,735
Services						255,196	422,686	458,066	265,090	254,723	358,175	415,390	389,660	383,860	404,947	410,378
Capital Outlay (See Capital Accum Fund)																7,000
Other	17,538	17,538	87,859			129,860	90,216	15,534			252,885	261,227	174,500	1,000	5,000	500
Debt Service	135,000	135,000	135,000	135,000	135,000	135,000	135,000	135,000	135,000	135,000	40,027	35,760	31,300	134,859	134,859	134,859
<b>Total Expenditures</b>	<b>1,900,971</b>	<b>2,551,624</b>	<b>2,394,594</b>	<b>1,202,631</b>	<b>1,314,515</b>	<b>1,582,313</b>	<b>1,652,326</b>	<b>1,598,434</b>	<b>1,340,331</b>	<b>1,372,267</b>	<b>1,672,766</b>	<b>1,776,495</b>	<b>2,014,626</b>	<b>1,733,450</b>	<b>1,666,706</b>	<b>1,681,488</b>
Transfers Out	271,428	897,715	393,684	385,369	242,734	273,704	304,714	645,919	424,295	291,986	555,538	418,593	309,804	323,708	334,168	309,758
<b>Expenditures and Transfers Out</b>	<b>2,172,399</b>	<b>3,449,339</b>	<b>2,788,278</b>	<b>1,588,000</b>	<b>1,557,249</b>	<b>1,856,017</b>	<b>1,957,040</b>	<b>2,244,353</b>	<b>1,764,626</b>	<b>1,664,253</b>	<b>2,228,304</b>	<b>2,195,088</b>	<b>2,324,430</b>	<b>2,057,158</b>	<b>2,000,874</b>	<b>1,991,246</b>
Annual Net Cash	[377,755]	[2,182,691]	[841,086]	-	176,251	44,782	[163,712]	[224,230]	3,659	3,559	[116,524]	42,597	[350,379]	402,435	381	19,754
Cumulative Net Cash	2,836,234	653,543	[187,543]	[187,543]	[11,292]	33,490	[130,222]	[354,452]	[50,793]	[347,230]	[463,758]	[421,161]	[771,540]	[369,102]	[368,724]	[348,970]

(28)



## BPC Policy No. 355

**SUBJECT:** REAL ESTATE LEASING POLICY

**PURPOSE:** To Establish General Policies for Leasing the San Diego Unified Port District (District) Real Estate Assets

**INTRODUCTION:** The Real Estate Leasing Policy establishes general real estate leasing policies that have been adopted by resolution of the Board of Port Commissioners (Board). The Real Estate Leasing Policy does not supersede the District's existing leases. The attached *Administrative Practices -- Real Estate Leasing*, describes the practices and procedures to be used in establishing rent; conducting rent reviews; extending existing leases and granting options; and states the conditions for the District's approval of subleases, leasehold financing, lease assignment and lease amendment, including processing fees associated with the above. The Practices also state the District's commitment to meet and confer in good faith with the San Diego Port Tenants Association (SDPTA) regarding changes to the Practices and to conduct a public workshop on the changes when requested by the SDPTA.

### **POLICY STATEMENT:**

#### **1. Leasing Authority**

- a. *Short-Term Leases (Five Years or Less)* – The Executive Director may, without prior Board approval, enter into leases and use permits (including Tideland Use and Occupancy Permits; rental agreements; easements; licenses; and other similar types of real estate agreements) for terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such tenant; location; use; area; rent; and term.
- b. *Long-Term Leases (More than Five Years)* – All leases for terms more than five (5) years in duration shall be presented to the Board for approval at a public meeting.

#### **2. Tenant Qualifications**

To become a District tenant or subtenant, the prospective tenant or subtenant and its principals shall: (i) be reputable (the absence of a reputation for dishonesty, criminal conduct, or association with criminal elements); (ii) possess sufficient

experience to conduct the proposed business; and (iii) possess the financial means to perform the tenant's obligations under the lease.

### 3. Rents

The District shall seek market rent when leasing its real estate assets and the District's leases shall reflect market terms and conditions. The Board retains the right to grant rent discounts, waivers or other concessions, but only after the Board has been advised of the value of the discount, waiver or concession and the reasons supporting it.

In considering whether to grant a rent discount, waiver or other concession, the Board should consider its duty to balance the promotion of fishing, navigation, commerce and public access with the obligation to the citizens of California to be fiscally self-supporting, to optimize revenues<sup>(1)</sup> and to reinvest proceeds in the tidelands.

### 4. Leasehold Improvements

District leases shall provide for tenants to maintain all improvements on their leaseholds, except for multi-tenant buildings where the District's rent includes specific maintenance responsibilities.

District leases shall provide that when a lease terminates, the District shall have the option to: (i) require the tenant to remove the tenant-owned improvements at the tenant's expense; or (ii) take title to the improvements.

### 5. Subleases

*Short-Term Subleases (Five Years or Less)* – The Executive Director may, without prior Board approval, consent to subleases for terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such subtenant, location, use and term.

*Long-Term Subleases (More than Five Years)* – All subleases for terms more than five (5) years in duration shall be presented to the Board for consent.

Subleases shall contain, as a minimum, provisions that: (i) meet current District lease requirements; (ii) provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises; and (iii) provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail.

---

<sup>1</sup>"Optimizing revenues" refers to the District's consideration of maintaining the highest revenue stream possibly while balancing the strategic goals and objectives of the Board in managing the District's operations. Certain goals and objectives may not maximize revenues compared to other land use options; however, they may be given a higher priority due to the District's desire to maintain "balanced" operations.

6. Lease Amendments

*Short-Term Leases (Five Years or Less)* – The Executive Director may, without prior Board approval, consent to amendments to leases with terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such tenant, location, use, area, rent and term.

*Long-Term Leases (More than Five Years)* – The Executive Director or his or her designee may, without prior Board approval, consent to amendments to leases with terms more than (5) years in duration that benefit the District, provided that terms shall not be amended to: reduce rent; increase term, reduce insurance requirements afforded to the District; or reduce indemnity granted to the District. All amendments which reduce rent, increase term, reduce insurance afforded to the District, or reduce indemnity granted to the District, must be presented to the Board for approval. The Executive Director or Port Auditor shall provide a report of all such transactions at the next available BPC meeting.

7. Transaction Processing Fees

With exceptions noted below, the District shall charge a transaction processing fee of not less than five hundred dollars (\$500.00). Exceptions include: (i) rent reviews, (ii) transactions that benefit the District (e.g., a new or renewal lease that will result in additional rent to the District), or (iii) transactions that benefit the District's properties (e.g., an easement for utilities that will serve District tenants).

Fees and costs for services and administrative activities shall be paid in accordance with any applicable District ordinance.

8. Option Term and Consideration

When entering into an option to lease agreement, the District shall charge monetary or other consideration and shall establish initial terms and extensions consistent with the processing requirements of each project, subject to adjustment as described in the Administrative Practices.

RESOLUTION NUMBER AND DATE: Resolution 2017-012, dated January 10, 2017 (Supersedes BPC Policy No. 355, Resolutions 2015-178, 2015-179 and 2015-180, dated December 8, 2015; Resolution 2013-85, dated May 7, 2013; Resolution 2011-16, dated February 8, 2011; Resolution 2010-150, dated October 5, 2010; Resolution 2008-176, dated September 2, 2008, Resolution 2004-43, dated March 30, 2004; Resolution 2002-311 dated November 5, 2002; Resolution 98-28, dated January 27, 1998; BPC Policy No. 350, Resolution 95-244, dated July 25, 1995; BPC Policy No. 351, Resolution 95-268, dated August 22, 1995; BPC Policy No. 352, Resolution No. 92-47, dated February 18, 1992; and BPC Policy No. 354, Resolution 81-328, dated October 6, 1981)

## **SAN DIEGO UNIFIED PORT DISTRICT**

**SUBJECT: ADMINISTRATIVE PRACTICES – REAL ESTATE LEASING**

**PURPOSE: To Establish Fair and Consistent Guidelines for Leasing the District's Real Estate Assets**

### **INTRODUCTION**

The *Administrative Practices* are practical guidelines that implement BPC Policy No. 355, *District Real Estate Leasing Policy*. The Policy consists of general statements that are intended to encourage private investment; to promote high standards of development, operation and maintenance; and to assure that public trust assets are managed responsibly. The Practices are intended to provide clear guidelines and procedures for implementation of the Policy.

In the event the District proposes to make changes to the Practices, the District shall notify the San Diego Port Tenants Association (SDPTA) in advance and will meet and confer in good faith with the SDPTA to discuss the proposed changes. The SDPTA may request a public workshop on the changes. However, in individual lease negotiations, the foregoing does not in any way preclude the District from negotiating terms that vary in some respects from the Practices as long as the District and the tenant are in agreement.

- I. The Practices are divided into nine categories as outlined below: I. Establishing Rent and Conducting Rent Reviews
- II. Lease Extensions
- III. Leasehold Financing
- IV. Assignment of Leasehold Interest
- V. Subleasing
- VI. Lease Amendments
- VII. Trust Obligations
- VIII. Transaction Processing Fees, Port Master Plan Amendment (PMPA) Fees, and Security Deposits
- IX. Option Term and Consideration

The Practices follow:

## I. ESTABLISHING RENT AND CONDUCTING RENT REVIEWS

### A. Market Rent

The District should receive market rent for the leasing of its property, and rent should be adjusted to market periodically during the term of the lease. Market rent should be based on a current appraisal that complies with the *Uniform Standards of Professional Appraisal Practice*, published by the Appraisal Institute. District staff may consider other relevant information in arriving at the appropriate rent for a property. However, rent reviews for operating leaseholds shall not consider public improvements constructed by tenant either on or off the leasehold, the cost of remediation or any other incentives or concessions granted at the inception of the lease. Other exceptions to the appraisal requirement are noted below.

### B. Calculation of Rent

Most District leases are either percentage leases or flat rent leases and may combine both percentage and flat rents. In a percentage lease, the District receives the greater of a minimum rent or percentages of gross income generated by the economic activities that are conducted on the premises. In a flat rent lease, the rent is a fixed amount which increases annually in accordance with the Consumer Price Index (CPI). Specific practices for percentage rent leases and flat rent leases follow.

### C. Percentage Rent Leases

Market percentage rental rates tend to be relatively constant over time, and market validation of percentage rates for all of the District's revenue categories by appraisal is a major undertaking. Therefore, for determining percentage rates for new leases and rent reviews for existing leases, the District should establish benchmark appraisals by general geographic location and property type. The benchmark appraisals should be conducted on an ongoing basis by comparing the District's percentage rental rates with the percentage rental rates of other agencies including cities, counties, ports, and special districts, and should be utilized in determining rent at the rent review date stipulated in the lease:

1. Minimum rents in new percentage leases and in rent reviews should be set at no less than 75 percent of market rent as determined by the average of the tenant's previous three accounting years' rental payments, appraisal or other relevant information. For substantial redevelopment and new construction, the District may abate a portion of the minimum rent during construction when it is deemed appropriate.
2. Percentage rent leases should provide for market rent reviews every ten (10) years with mid-term adjustments to the minimum rent for changes in the consumer price index.
3. Appraisals of properties that normally rent for percentages of gross revenues (e.g., hotels, restaurants, marinas and retail stores) should

consider rents and percentage rates paid on comparable ground leased properties, in addition to economic analysis and other appraisal techniques.

4. The Executive Director or his or her designee may, without prior Board approval, approve rent reviews for percentage rent tenants paying less than \$1,000,000 in annual rent, provided that the following conditions are met:
  - a) The proposed rent shall comport with all BPC policies including without limitation, those establishing levels of authority delegated to the Executive Director; and
  - b) The proposed leases for which rent will be adjusted that otherwise would have gone to the BPC for approval shall be provided to the BPC at least ten (10) days in advance of the Executive Director's or his or her designee's approval; and
  - c) The Executive Director or Port Auditor shall provide a report of all such tenant lease rental adjustments at the next available BPC meeting.

**D. Flat Rent Leases**

In lieu of the appraisal-based rent review process described above, flat rent tenants and the District may amend their leases to provide for adjustment to rent annually by applying the Los Angeles All-Urban Consumer Price Index (CPI) to current rent, the annual adjustments to be no less than 2% or more than 4%. Leases will be amended only in those cases where the District and the tenant agree on the amount of the starting rent as the last adjusted rent brought current by adjusting it for CPI increases from the last date of the last adjustment to the date of the lease amendment. In those cases where the District and the tenant cannot agree on the starting rent, the lease will not be amended and the current rent adjustment provisions will continue to be in force.

The Executive Director or his or her designee may, without prior Board approval, approve rent reviews for flat rent tenants paying less than \$1,000,000 in annual rent, provided that the following conditions are met:

1. The proposed rent shall comport with all BPC policies including without limitation, those establishing levels of authority delegated to the Executive Director; and
2. The proposed leases for which rent will be adjusted that otherwise would have gone to the BPC for approval shall be provided to the BPC at least ten (10) days in advance of the Executive Director's or his or her designee's approval; and
3. The Executive Director or Port Auditor shall provide a report of all such tenant lease rental adjustments at the next available BPC meeting.

**E. Appraisals**

1. Appraisal Exception – If the cost of an appraisal is not justified by the anticipated rents, other less expensive analysis methods may be employed to establish rent at the discretion of the Executive Director, as long as adequate market information is available to support a reasonable and fair conclusion.
2. Timely Completion of Rent Review Appraisals – The District should be prepared to submit its rent proposal to the tenant no less than sixty (60) calendar days in advance of the commencement date of the rental period under review.
3. Appraisal Assumptions Regarding Status of Property – The appraisal should reflect the value of the land as-if vacant and available for new development. The appraisal should assume that all regulatory approvals that allow the existing use have been obtained, and there should be no discount for costs and time delays associated with obtaining the regulatory approvals.

The appraisal should be consistent with the highest and best use of the property, as if vacant, on the date of value. Market conditions may support a highest and best use that differs from the existing use.

The appraisal shall not consider public improvements constructed by tenant either on or off the leasehold, the cost of remediation or any other incentives or concessions granted at the inception of the lease.

Notwithstanding the above, the appraisal must be consistent with the use restrictions and other contractual burdens placed on the land by the terms of the ground lease and Port Master Plan.

4. Appraisal of Maritime Properties – Properties that are managed by the Maritime Division, that are used for maritime purposes, should be appraised by comparison with other seaport and/or maritime industrial properties, and should consider total potential revenues including but not limited to wharfage and dockage.

**F. Rent Review Process**

District leases shall provide for binding “baseball appraisal” when the District and the tenant cannot agree on the new rent for a rental period under review. In baseball appraisal, a panel of three appraisers must select by majority vote either the District’s rent proposal or the tenant’s rent proposal, whichever is judged to be the closest to market rent, as the rent for the next rental period of the lease. The District and tenant each shall select one appraiser and the two appraisers will mutually select the third appraiser. All appraisers must be qualified real estate appraisers and licensed to practice in the state of California. If the District or tenant fails to initiate the baseball appraisal process within the timeframes provided in the lease or fails to meet any

of the other prescribed deadlines relating to the rent review in the lease, or fails to present an appraisal pursuant to the terms of the lease, the failing party's right to utilize the baseball appraisal process shall be deemed to be waived. Tenant shall be afforded the opportunity to meet and informally discuss with the District and three appraisers within the prescribed deadlines relating to rent review in the lease.

## II. LEASE EXTENSIONS

### A. Overview

The District should utilize the lease extension process to (a) promote investment in leasehold improvements, (b) encourage redevelopment, and (c) update out-of-date leases. This section provides a narrative explanation of the process the District should follow in determining whether a proposed development or redevelopment qualifies for an extended lease term, the length of the extended term, and whether there should be compensation to the District for extending the term. A decision tree flowchart outlining the general process to be followed when a tenant requests a lease extension is presented in this section.

### B. Lease Extension Practice and Decision Criteria

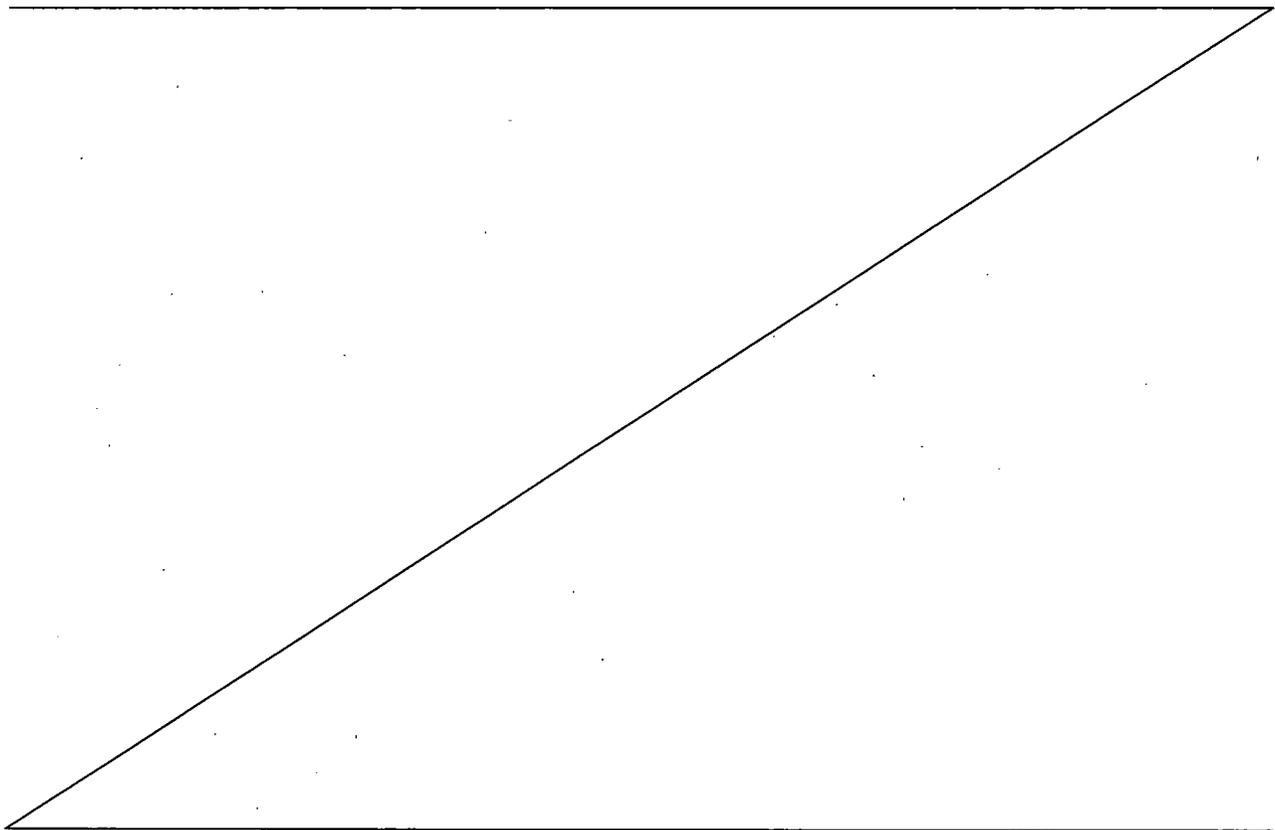
1. Tenant Requests a Lease Extension – The submission package should include the following information:
  - a) Description of the development concept and the proposed project sufficient for the District to understand precisely the scope of the entire development concept, which may include renderings and drawings showing a scaled site layout, interiors and exteriors of all significant buildings, parking lot layout, landscape development and layout, preliminary sign concept, pier and marina slip layout (if applicable) and any other prominent features.
  - b) Evidence that the tenant qualifies as a “tenant in good standing” (defined below).
  - c) Any proposed changes to ownership.
  - d) Description of the development team and its qualifications.
  - e) Proposed lease extension terms (including if applicable minimum rent, percentage rent by use, and compensation to the District for deferral of its reversionary improvement value as provided in this section), and justification for such terms.
  - f) Financial feasibility of the extension including pro forma cash flows (if applicable).
  - g) Anticipated development cost with qualifying Capital Investments (as defined in Section II(C)2), repair and maintenance, and

furniture, fixture and equipment items separately identified. To the extent that District does not believe that a submittal is a qualifying Capital Investment, at the request of the District, tenant shall be required to submit supporting documentation for items characterized as Capital Investment in the proposal.

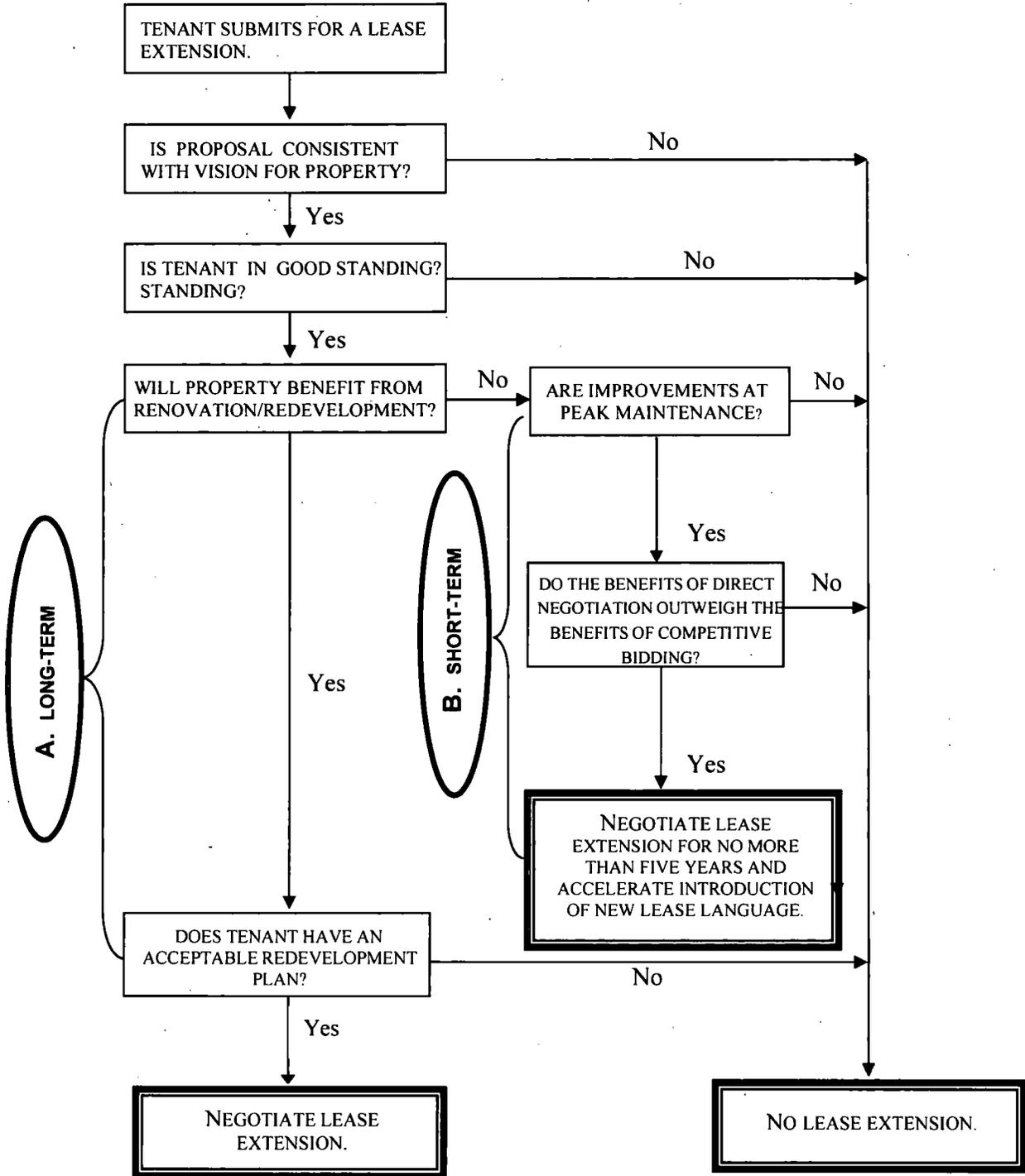
- h) Justification that the existing operator is capable of optimizing the use and return to the District, thereby negating the need for a Request for Proposal process.
  - i) Justification that the tenant has the expertise and financial capability to develop and operate the property, when the proposed development is different from the existing use.
2. Proposal Consistent with Master Plan – Initially, the District should determine if the proposal is consistent with the Port Master Plan. Inherent in this decision is the assumption that the planning process utilized in developing the Master Plan evaluated the potential for the highest and best use for the property, the goals of the District and the input of the local community. If the proposal is not consistent with the Master Plan, the District may reject the proposal at its sole discretion.
3. Proposal Consistent with the District's Vision for Future Use of the Property – If the proposal is not consistent with the District's vision for the future use of the property as determined by the Board in its sole and absolute discretion, the District should not negotiate a lease extension.
4. Qualification as a "tenant in good standing" – To qualify for a lease extension, the tenant should be considered a "tenant in good standing." The criteria should include a review of the tenant's history with respect to the following:
- a) Maintenance of the leasehold in good condition, free of deferred maintenance.
  - b) Prompt payment history.
  - c) Compliance with the provisions of the current lease, including use provisions, insurance requirements and regulatory permitting processes.
  - d) Maximization of the gross revenue of the tenant's business.
  - e) Maintenance of accurate financial records that are accessible to the District.
  - f) Compliance with District policies on public accommodation and non-discriminatory employment and contracting.

If the existing tenant does not meet the requirements for a “tenant in good standing,” then no lease extension should be negotiated.

5. Benefit from Renovation or Redevelopment – Renovation or redevelopment contemplates making capital investments in the property that would allow for business expansion, modernization of facilities, aesthetic enhancement; or that maintain or increase the existing revenue stream to the District by expansion of the existing improvements or repositioning the property to a higher standard of quality.
6. Acceptable Development Plan Presented by the Tenant – If the property would benefit from renovation or redevelopment, the District must decide if the existing tenant has presented an acceptable redevelopment plan. The District and the tenant would then enter into negotiations that would result either in a plan acceptable to the District, or a decision that the existing tenant is not capable of implementing an acceptable redevelopment plan.
7. Process for Extending Leases – If a proposed project is consistent with the District’s vision for the future use of the property, and the proposal meets the other criteria described above, the District should negotiate a new lease based on the following flow chart and requirements:



**LEASE EXTENSION PROCESS**



**C. Lease Extension Negotiation**

If the District and tenant agree to an acceptable redevelopment plan, lease extension negotiations should proceed, with the following considerations:

1. **Calculation of Extended Term** – The extended lease term should be based on the magnitude of Capital Investment in the property to be made by the tenant and the life expectancy of the development. The extended lease term may include past Capital Investment in the property submitted to the District for approval in accordance with District policy and the process outlined in the lease and approved by the District as long as it has not already been credited towards a previous lease extension. The District may wish to consider other relevant information in determining if a longer lease term is warranted, such as if the Capital Investment is expected to generate above average returns to the District, or will reposition the property to a higher standard of quality. Improvements completed without following submittal guidelines to the District, including notification to the District and a determination by the District whether the improvements qualify for a lease term extension, will not be considered for a lease term extension. A method of calculating the potential lease term extension is outlined below:
  - a) Determination of the estimated total replacement cost of the leasehold improvements as renovated/redeveloped. Cost figures can be determined utilizing resources such as tables provided by Marshall Valuation Service (or other industry standard cost estimating resources), or known development costs of comparable projects.
  - b) Determination of the life expectancy of the fully redeveloped project. The maximum lease term should be consistent with life expectancy of the improvements that qualify as Capital Investment in the property. Life expectancy guidelines are presented in a table at the end of this section. Lease term extensions granted after five years of the District's approval of the tenant's redevelopment plan will consider depreciation in improvements unless they were approved as part of a larger project. Depreciation shall be calculated utilizing the straight line depreciation method.
  - c) Computation of the ratio of Capital Investment in the property to total replacement cost.
  - d) Determination of the additional lease term by multiplying the ratio obtained in (c) by the life expectancy obtained in (b). The term in an extended lease shall not exceed the life expectancy of the development.

2. Qualifying Capital Investment

- a) "Capital Investment" for purposes of calculating the lease extension term should only include expenditures that usually increase the value (efficiency, productivity, or use utility) or the life expectancy of the improvements; cannot reasonably be amortized during the existing remaining term; are not recurring in nature; and are: (a) \$100,000 or more, or (b) 10% of the value of the improvements or more. It should specifically exclude deferred maintenance and expenditures for repairs to keep the existing improvements in good condition. Items that separately would not qualify for lease term extension may be considered collectively as part of an overall plan of renovation or redevelopment. In a renovation or redevelopment project, qualifying Capital Investment may include, at the sole discretion of the District, the value of superior improvement condition. The intent is to recognize the efforts of a tenant who maintains improvements in like-new condition in the latter stages of the lease term. The value of superior improvement condition may be measured by documented costs, or by replacement cost and depreciation tables such as those published by Marshall Valuation Service. Public art expenditures should be included as Capital Investment. Non-realty property may be given consideration depending on property type. An example of this would be the purchase by industrial tenants of specialized fixtures or equipment that are necessary for its operation. If lease term is granted for a Capital Investment in non-realty property, the new lease should include a provision requiring that the non-realty property (or an equivalent replacement as approved by the District) remain in place for the entire lease term. Purchase of District-owned improvements may be considered a qualifying Capital Investment. The cost of environmental cleanup is specifically excluded as a qualifying Capital Investment.
- b) If the Capital Investment will be undertaken in phases, then the tenant must identify the timeline for completion of all improvements in the tenant project application.
- c) The District may consider a lease term extension without Capital Investment in exchange for payment for deferral of the District's reversionary interest.

3. Payment for the Deferral of the District's Reversionary Interest – The standard District lease gives the District the right to assume ownership of the improvements at the end of the lease. During the lease, this reversionary interest in the improvements may have a value that can be estimated using accepted appraisal techniques. In exchange for granting a lease extension, the tenant should recognize that the District may be deferring the realization of a valuable

reversionary interest in the existing improvements. The tenant should compensate the District by an amount equal to the value of the interest being deferred. This amount can be paid in full at the commencement of the lease, incorporated as additional rent with interest over a specified period of time, or may be used to offset the tenant's cost of developing new public access infrastructure on or off the leasehold such as parks and promenades at the District's sole and absolute discretion.

If there is an economic benefit to the District, such as higher rent or the prevention of deteriorating rent, as a result of a Capital Investment by the tenant and the term extension, the economic benefit should be used to offset all or part of the compensation for deferral of the reversionary interest.

In estimating the reversionary improvement value, the market capitalization rate used should reflect value components that are related to superior management on the part of the tenant, including going-concern value, goodwill, and above-average maintenance; and for furniture, fixtures and equipment.

a) Percentage Rent Leases – A conceptual method of calculating the value of the deferral of the reversionary interest in percentage rent leases would be as follows:

(1) *Value of Deferred Reversionary Interest* – The value of the deferred reversionary interest can be estimated by projecting the operating income and expenses, based on the existing development, to the end of the existing lease term, using market-supported assumptions about operating income, expenses and inflation; and capitalizing the net income into an indication of leased fee value. The present value of the leased fee interest at the end of the existing lease term can then be calculated. Following the same procedures, the present value of the leased fee interest at the end of the extended lease term can be calculated. The value of the District's deferral of the reversionary interest is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the District, subject to any offsetting economic benefit described below.

(2) *Value of Economic Benefit to the District* – The difference between the present value of the rent to the District for the proposed development, projected over the remainder of the existing term, and the present value of the rent to the District for the existing development projected over the remainder of the existing term, is a measure of the economic benefit to the District

resulting from the investment by the tenant. The economic benefit should be used to offset all or part of the value of the compensation for deferral of the District's reversionary interest.

b) Flat Rent Leases – A conceptual method of calculating the value of the deferral of the reversionary interest in flat rent leases would be as follows:

(1) *Value of Deferred Reversionary Interest* – The projected replacement cost of the improvements at the end of the existing term can be estimated by trending the current replacement cost by the anticipated rate of inflation. The projected reversionary improvement value can be estimated by subtracting depreciation from the projected replacement cost. The present value of the reversionary improvement value at the end of the existing term can then be calculated. Following the same procedures, the present value of the reversionary improvement value at the end of the extended lease term can be calculated. The value of the District's deferral of the reversionary interest is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the District.

(2) *Value of Economic Benefit to District* – The present value of increased rent through the end of the current rental period, negotiated as part of a lease extension, shall be used to offset compensation for deferral of the reversionary interest in flat rent leases.

4. Timely Submission by Tenant and Response by District – District staff will respond to a request for a lease extension within thirty (30) calendar days following receipt of a request for a lease extension. The initial response shall either recommend the proposal for project review and California Environmental Quality Act (CEQA) review, or request additional information that the District believes was not included or was not adequately addressed in the initial submittal. The Tenant may re-submit within sixty (60) calendar days of the District's initial response. District staff will respond to the re-submittal within thirty (30) calendar days. Subsequent responses to project submittals will follow the same schedule.
5. Market Rent – The rent in an extended lease should be updated to the current market rent as negotiated between the tenant and the District.
6. New Lease Provisions – Upon negotiation of the extended lease term, the new rent and the amount of payment, if any, for deferral of the District's reversionary interest in the improvements, the existing lease shall be superseded by a new lease incorporating the District's

current standard lease terms. The tenant's liability for hazardous materials in the prior lease shall continue in the new lease. The tenant will indemnify the District against potential third party challenges to the CEQA review and/or determination process and agrees to reimburse the District for actual, reasonable and necessary third-party out-of-pocket expenses associated with processing a redevelopment project including but not limited to the preparation and certification of the CEQA document by the Board, the preparation and approval of the PMPA by the Board and the California Coastal Commission (CCC), the preparation and issuance of an appealable CDP by the Board or, if appealed, the CCC, and any other third-party expenses arising out of the entitlement process in the District's determination. District shall use commercially reasonable efforts to manage expenses.

7. "Basket of Issues" – While it is desirable to have a "standard" negotiation process, the lease extension process involves a "basket of issues" with each tenant. The District should be willing to negotiate each extension separately and take into account the unique circumstances of each request.
  
8. Short-Term Lease Negotiation – An existing tenant may qualify for an extended term under the criteria outlined above, but the property may not qualify as the highest and best use under the Port Master Plan, or may not be consistent with the District's vision for the future use of the site. In other cases, all the criteria for a long-term lease extension may have been met but the property may not benefit from renovation or redevelopment (i.e., the improvements are in excellent condition and represent highest and best use). In either event, upon lease expiration, the District may consider a new short-term lease with the existing tenant with the following four considerations:
  - a) *Lease Term* – The lease term should be no more than five years. This will create a term short enough to enable the District to periodically evaluate if the current use remains the highest and best use of the property consistent with the District's goals and objectives and the Port Master Plan.
  - b) *Payment for District-Owned Improvements* – The tenant should pay market rent for improvements it occupies that are owned by the District after expiration of the existing lease term.
  - c) *Rent* – The rent would be updated to the current market rent as negotiated between the tenant and the District.
  - d) *New Lease* – A new lease shall be executed including the District's current standard lease language.

9. Recommended Life Expectancy Guidelines – The length of a new or extended lease term should be based on the reasonable life expectancy of the improvements that qualify as Capital Investment. Life expectancies vary by use. Improvements that are subject to relatively high physical deterioration or functional obsolescence caused by market changes have *relatively* short life expectancies. Improvements that are physically more substantial and less affected by market changes have relatively long life expectancies.

The guidelines shown below were developed based on practical experience and observations, and by reference to the life expectancy tables published by *Marshall Valuation Service*.

**ECONOMIC LIFE EXPECTANCY GUIDELINES**

PROPERTY TYPE	TERM*
HOTEL	40 TO 66 YEARS
FULL SERVICE RESTAURANT	20 TO 40 YEARS
RETAIL SALES	30 TO 45 YEARS
COMMERCIAL OFFICE	30 YEARS
LAND SERVICE STATION	20 YEARS
MARINE SERVICE STATION	20 YEARS
MARINA	40 YEARS
SPORTFISHING LANDING	20 YEARS
BOAT EXCURSION LANDING	15 YEARS
BOATYARD	30 YEARS
SHIPYARD	50 YEARS
LUMBERYARD	25 YEARS
AIRPORT INDUSTRIAL	25 YEARS
OTHER INDUSTRIAL	50 YEARS
YACHT CLUB	35 - 45 YEARS

\* The Terms outlined above represent the recommended length of term a tenant may receive for each respective property type. Shorter terms, or a combination of shorter terms with options to extend, may be appropriate to ensure an appropriate level of quality and maintenance of the improvements.

### III. LEASEHOLD FINANCING

#### A. Consent to Financing Subject to Specific Criteria

The required minimum documentation to be submitted by the tenant in support of a request of the District to consent to new financing and standards for financing consent are as follows:

1. Initial documentation should include the term sheet, application or commitment, cash flow projections, appraisal submitted to the lender, and the most recent annual financial statements of the tenant (if it is a percentage lease) for at least the past two years.
2. When available, final loan documents should be provided.
3. Maximum loan proceeds should not be in excess of the greater of 75% loan-to-value as determined by the lender's appraisal, or the amount of repayment of existing financing (provided that such financing was initially consented to by the District).
4. A loan should have a maturity date that does not exceed the remaining ground lease term.
5. A tenant should acknowledge that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
6. The District shall either:
  - a) Receive a share of the proceeds of refinancing, except proceeds which are reinvested in District-owned land or water, replace existing financing, or reimburse the tenant for documented equity investment, or
  - b) Have the right to adjust the rent to market rent.
7. There should not be any restrictions on how the tenant utilizes the proceeds of financing (as long as the District is satisfied that proper underwriting guidelines are met).

If the District staff is satisfied that the above criteria have been met, its recommendation for consent to the new financing shall not be unreasonably withheld.

#### B. Timely Response to Request for Leasehold Financing

District Staff should have completed its recommendation on consent to the financing of a leasehold interest within forty-five (45) calendar days of

receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.

**C. Administrative Approval of Routine Financing**

The Executive Director or his or her designee may, without prior Board approval, approve tenant leasehold financing, provided that the following conditions are met:

1. The proposed tenant leasehold financing shall comport with all BPC policies including without limitation, those establishing levels of authority delegated to the Executive Director; and
2. The proposed tenant leasehold financing that otherwise would have gone to the BPC for approval shall be provided to the BPC at least ten (10) days in advance of the Executive Director's or his or her designee's approval; and
3. The Executive Director or Port Auditor shall provide a report of all such tenant leasehold financing approvals at the next available BPC meeting.

**IV. ASSIGNMENT OF LEASEHOLD INTEREST**

**A. Consent to Assignment Subject to Specific Criteria**

The required documentation to be submitted by the tenant in support of a request of the District to consent to an assignment of the leasehold and standards for assignment consent are as follows:

1. The tenant shall complete UPD Form No. 317, Lessee's and Sublessee's Questionnaire for All Leases (and Subleases of More than Five Years).
2. If new financing is involved in the sale, the proposed tenant shall provide the information required above under Leasehold Financing.
3. The District must be satisfied that the lessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the leased premises.
4. The District shall either receive a share of the proceeds of a sale or have the right to adjust the rent to market rent as a condition of its consent. This right does not apply to an assignment that changes the method of holding title but does not change the proportional ownership interests of the individuals, nor does it apply to transfers between spouses or immediate family members.

- B. Timely Response to Request for Assignment of Leasehold Interest**  
District staff should have completed its recommendation on consent to the assignment of a leasehold interest within forty-five (45) calendar days of receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.
- C. Administrative Approval of Routine Assignments of Leasehold Interest**  
The Executive Director may, without prior Board approval, approve an assignment of leasehold interest if the assignment results in no change of control, operations or management of the ownership entity of the tenant.

## **V. SUBLEASING**

A tenant may sublease all or part of its leased premises to a qualified subtenant, subject to consent by the District. The appropriate District-supplied Sublease Questionnaire form must be completed and submitted to the District. Consent by the District must be obtained prior to occupancy by the sublessee.

- A. Sublease Consent Criteria**  
Staff's recommendation for consent to a sublease shall be made in accordance with the following criteria:
1. The District must be satisfied that the sublessee will use the property in a manner that is consistent with uses allowed by the lease.
  2. The District must be satisfied that the sublessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the subleased premises.
  3. The District reserves the right to adjust the rent the District receives to market for the subleased portion of the property.
  4. The District must be satisfied that the sublease transaction will not have a significant negative impact on the District.
- B. Timely Response by the District**  
For a short-term sublease (five years or less), District staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term sublease (more than five years), District staff should respond within sixty (60) days.

## **VI. LEASE AMENDMENTS**

A tenant may request amendments to a lease that could range from minor changes to extensive revisions. The District's consent to a request for lease amendment may be contingent upon updating sections of the lease to incorporate current standard lease provisions, and may include an adjustment to market rent, depending upon the extent of the proposed tenant requested revisions.

**A. Lease Amendment Consent Criteria**

Staff's recommendation for consent to a lease amendment shall be made in accordance with the following minimum criteria:

1. The allowed uses of the property stated in the amended lease must be in compliance with the Port Master Plan and with the District's vision for the future use of the property.
2. Amended sections of the lease must conform with the District's standard lease language in effect when the request for a lease amendment is made.
3. For a change in the method of holding title that does not change the proportional ownership of the individuals, or that represents a transfer between spouses or immediate family members, a complete lease update and rent adjustment would not be made. Standard provisions regarding hazardous materials, underground storage tanks and above-ground storage tanks should be added (unless they are already in the lease).
4. In some cases (e.g., changing from a sole proprietorship to a limited liability company), it may be advisable to have the principals personally guarantee lease performance.
5. A proposed lease amendment for financing or for a transfer or a partial or full interest in the leasehold would be governed by Sections III and IV of these Practices.

**B. Timely Response by the District**

For a short-term lease (five years or less), District staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term lease (more than five years), District staff should respond within sixty (60) days.

**VII. TRUST OBLIGATIONS**

For tenants claiming special treatment under the Port District Act, the District should determine market rents consistent with the property's land use. Any discount to market rent or other concession should be supported by a tenant's written proposal that would outline why the discount is warranted, if there is a public benefit, the financial rationale for the request and the proposed economic terms. The proposal should be presented to the Board, which would determine if a concession is warranted.

**VIII. TRANSACTION PROCESSING FEES, PORT MASTER PLAN AMENDMENT (PMPA) FEES, AND SECURITY DEPOSITS**

**A. Transaction Processing Fees**

With exceptions noted below, the District shall charge a transaction processing fee of not less than five hundred dollars (\$500.00). Exceptions

include (i) rent reviews, (ii) transactions that benefit the District (e.g., a new or renewal lease that will result in additional rent to the District), or (iii) transactions that benefit the District's properties (e.g., an easement for utilities that will serve District tenants).

**B. Port Master Plan Amendment (PMPA) Fees**

If a tenant project requires a PMPA, then the tenant must pay for the cost of preparing the PMPA and any associated CEQA documentation. If a tenant project requires a PMPA, and the District is currently pursuing or will be pursuing a PMPA into which the tenant's project will be incorporated, then the tenant must pay for a pro-rata share of the cost of preparing the PMPA and any associated CEQA documentation. If a tenant project does not require a PMPA, but the District is currently pursuing or will be pursuing a PMPA into which the tenant's leasehold will be incorporated, then the tenant will not be charged a pro-rata share of the cost of preparing the PMPA and any associated CEQA documentation.

**C. Security Deposits**

The standard security deposit for a new rental agreement is three months' rent. A security deposit may be waived for a short-term rental of property that supports a tenant's long-term lease. The security deposit may be reduced for a tenant that has been in good standing for five or more years. For a tenant making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

**IX. OPTION TERM AND CONSIDERATION**

Generally, proposed projects including but not limited to a change in use, additional lease term, financing, and issuance of permits will be memorialized in an option agreement and lease. If District staff negotiates an option, then recommendations regarding option term and consideration, including extensions, must be based on this section of the Practices. Recommendations which include adjustments to option term and consideration, if any, must be based on the factors described in Section (3) below.

**A. Term**

Calculating Initial Option Term and Option Term Extensions. The District recognizes that there is uncertainty in every entitlement process. As a result, District staff's recommendation regarding initial option term and extensions must be based on a cooperative assessment of the approval process and timeline for a proposed project and its associated risks.

For existing tenants with options with no change in use or a change in use that does not require a Port Master Plan Amendment, the initial minimum option term will be 18-24 months. In all other cases, the term will be 24-36 months. Term extensions are subject to negotiation as needed.

**B. Consideration**

**Calculating Initial Option Consideration and Option Term Extension Consideration.**

1. **Consideration** – Consideration may take the form of a monetary payment or a quantifiable benefit to the District. Examples of quantifiable benefits include but are not limited to construction of or enhancements to a District-owned asset and assuming contingent legal liabilities for District actions. Consideration does not include transaction processing fees, which may be assessed independently according to a schedule established by the District.
2. **Initial Option Consideration** – Initial option consideration is determined by whether the option covers a tenant's existing premises, new premises, or a combination of new and existing premises.

c) *Existing Premises Only* - If the option covers the existing premises only, then consideration is not required unless a Port Master Plan Amendment is required for the option. If a Port Master Plan Amendment is required, consideration is based on the following table:

Lease Type	Consideration
Percentage Rent	25% of difference between projected first year's minimum annual rent and current minimum annual rent
Flat Rent	25% of annual rent difference if an appraisal is performed or 5% of annual rent

d) *New Premises Only* - Whether or not a Port Master Plan Amendment is required, if the option covers new premises only, then consideration is based on the following table:

Solicitation Type	Consideration
Sole Source	25% of projected first operating year's minimum annual rent
RFQ/RFP	25% of projected first operating year's minimum annual rent

e) *New Premises and Existing Premises* - Whether or not a Port Master Plan Amendment is required, if the option combines both new premises and existing premises, then consideration is 25% of the difference between the projected combined first year's

minimum annual rent and the existing premises minimum annual rent.

3. Option Term Extension Consideration – Option term extension consideration is subject to negotiation. The following establishes a baseline for calculating option term extension consideration which may be subject to adjustment.

For existing tenants with proposed projects that do not require a Port Master Plan Amendment, extension consideration is not required.

In all other cases, option term extension consideration will be prorated based on the initial option term and consideration. For example, if the initial option term is 24 months and the consideration is \$240,000, then each additional month of option term extension would require an additional \$10,000 in consideration.

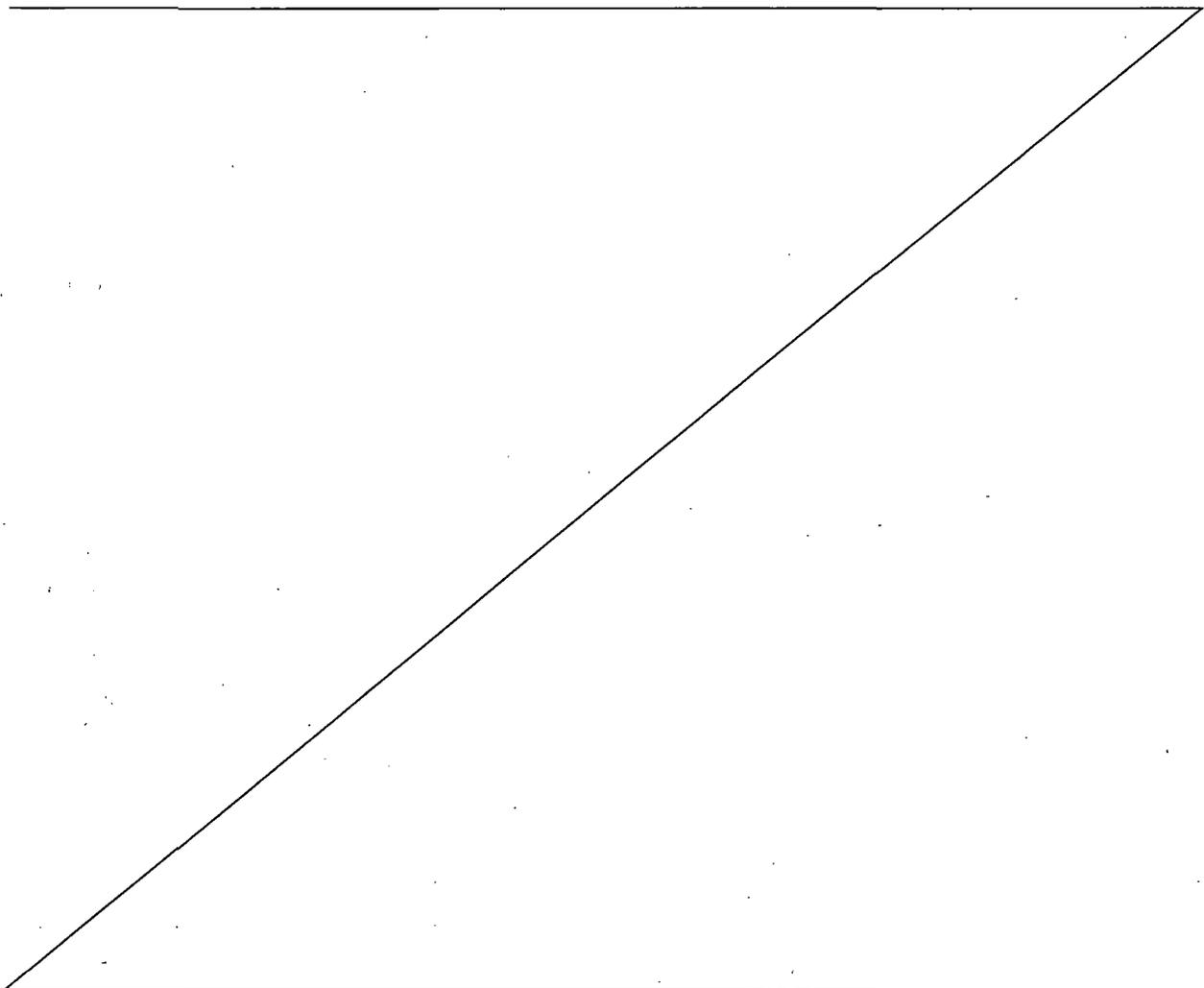
**C. Adjustments**

**Factors Justifying Adjustments to Option Term and Consideration.** District staff may recommend to the Board reducing or increasing the term and consideration for options and extensions described in Sections (1) and (2) above. Any recommended adjustment must be justified by one or more of the following factors:

1. Assumption of District Obligation – An optionee may assume the liability for the cost of a District obligation.
2. Improvements or Work Performed at Tenant's Risk – An optionee may construct improvements or perform work with no guarantee that the option may be exercised.
3. Accelerated Performance – An optionee may be incentivized to exercise its option prior to the scheduled expiration.
4. Social or Community Benefits – Non-profit tenants such as yacht clubs, museums, and performance of obligations that benefit the public - including development and maintenance of public parks or promenades - may justify a reduction in consideration.
5. Market Conditions – Market conditions may impact the District's bargaining position including, but not limited to, inferior site locations, difficult markets, economic conditions, and costly entitlement processes.
6. Inability to Obtain Financing – The District's option agreements do not allow the optionee's lack of ability to obtain financing to serve as a reason for not exercising an option. However the District has extended options because financing was not yet in place or ready to

close. In instances where a documented catastrophic market cycle (such as the market cycle impacting financing during 2009-2010) prohibits an optionee's ability to obtain financing the District should consider the status of financing in its justification for granting additional term and for reducing or eliminating consideration for an extension. The optionee's inability to obtain financing because of inadequate equity investment in a project should not be considered as a justification for force majeure extensions.

7. Force Majeure Delays – Listed are examples of Force Majeure delays that could result in the reduction or elimination of option consideration if an extension is issued (i) delays caused by litigation that prevents the optionee from performing under the option terms (CEQA or CCC challenges); (ii) documented delays in permitting outside the optionee's control and beyond the time frames agreed to for complete application submittals, including administrative appeals; (iii) documented delays to obtain entitlements from regulatory agencies outside the optionee's control.



**ADDENDUM TO BPC POLICY NO 355 ADMINISTRATIVE PRACTICES REAL  
ESTATE LEASING**

---

**REPORT OF YACHT CLUB LEASING POLICY AD HOC SUBCOMMITTEE**

**RECOMMENDATION TO THE BOARD OF PORT COMMISSIONERS OF THE  
SAN DIEGO UNIFIED PORT DISTRICT**

At its December 8, 2003 meeting, the Subcommittee voted to recommend that the Board adopt a resolution directing staff to supplement the BPC Policy 355 leasing practices as follows:

1. The present yacht club leases shall be amended to delete the rent review provision for 2006 and substitute a rent adjustment equal to the change in the Consumer Price Index for the Los Angeles area for the years 2001 - 2005.
2. Upon the grant of a new lease, whether after expiration of the current lease or by reason of the satisfaction of option requirements for redevelopment of the leasehold that result in a new lease earlier than expiration of the current lease, rent shall be paid at the greater of Fair Market Rent or Minimum Rent. Fair Market Rent shall be percentage rent calculated as follows:
  - (a) From the commencement of the new lease to December 31, 2011, 8.25% of gross revenues;
  - (b) From January 1, 2012 through December 31, 2012, 8.80% of gross revenues;
  - (c) From January 1, 2013 through December 31, 2013, 9.35% of gross revenues;
  - (d) From January 1, 2014 through December 31, 2014, 9.90% of gross revenues;
  - (e) From January 1, 2015 through December 31, 2015, 10.45% of gross revenues;
  - (f) From January 1, 2016 through December 31, 2016, 11.0% of gross revenues;

- (g) From January 1, 2017 through December 31, 2026, Fair Market Rent shall be calculated by multiplying gross revenues by a blended rate adjusted by an appraisal of the concession rates on each revenue category; the new blended rate shall be adjusted by applying an adjustment as follows:

(The sum of all current concession rates plus the sum of all changes to the concession rates divided by the sum of all concession rates) multiplied by the current blended rate will equal the new blended rate. The current concession rate is comprised of the following: dues @ 5.0%; slips, dry storage and lockers @ 22.0%; member food and beverage @ 3.0% and 5.0% respectively; catered food @ 7.0%; catered beverage @ 7.0%; and ships store @ 10.0%. The sum of all concession rates equals 59.0%

Example: Currently, the blended rate is 11.0% and the sum of the concession rates is 59.0%. If, for example, the slips, dry storage and locker concession rate increases by 2.0% (from 22.0% to 24.0%), the computation of the new blended rate would be expressed arithmetically:

$$[(59+2) \div 59] \times 11.0\% = 1.0338 \times 11.0\% = 11.37\%$$

- (h) On January 1, 2027 and each succeeding tenth anniversary thereafter, the concession rates shall be reappraised and adjusted as set forth in (g) above.
- (i) Minimum Rent starting on January 1, 2022 and every ten years thereafter shall be adjusted by the corresponding increase in the Consumer Price Index for the Los Angeles area for the prior ten years from the minimum rent in effect in 2012. For purposes of determining the CPI base for calculating the Minimum Rent in 2022, the Fair Market Rent in 2012 shall be adjusted by the appropriate CPI increase over the 10-year period. The increase shall not be less than 3.0% per annum or greater than 5.0% per annum. In any year immediately following a rent adjustment as the result of an appraisal of the concession rates, the rent for that year and each successive year shall be determined by the greater of 75.0% of the actual rent paid the prior year or the Minimum Rent or the Fair Market Rent; and

- (j) For purposes of calculating rent, gross revenues shall only include: dues, member food and beverage, catered food and beverage, slips, dry storage and lockers and ships store. Gross revenues shall not include revenues for junior sailing programs, outstation locations not on District property, initiation fees or interest income as well as any amounts set aside by the yacht clubs for Capital Investment or the debt on Capital Investment, whether such amounts are collected as special assessments, dues, percentage of slip rents, or otherwise.
3. New yacht club leases shall be for a maximum term of 40 years provided all the requirements for achieving maximum lease term are met.
  4. Financial statements detailing operating revenues and sources, cash flows, capital reserves and capital expenditures, as well as sources of capital amounts, shall be provided annually no later than 120 days following the end of each club's fiscal year.

(2)

**RESOLUTION 2017-012****RESOLUTION AMENDING BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:****II. ADMINISTRATIVE APPROVAL OF ALL FINANCING**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, BPC Policy No. 355 Real Estate Leasing Policy and Administrative Practices Real Estate Leasing (collectively, BPC Policy No. 355) is the District's current leasing policy for real estate and maritime assets; and

**WHEREAS**, currently, BPC Policy No. 355 allows staff to administratively approve all refinancing that is no more than 10% or \$250,000 greater than the existing loan amount, whichever amount is lesser, regardless of the total loan amount; and

**WHEREAS**, based on feedback from tenants and the amount of staff time necessary to prepare a routine item for Board approval, staff recommends that BPC Policy No. 355 be updated to allow all financing to be administratively approved as long as it is consistent with the criteria already contained in the BPC Policy No. 355; and

**WHEREAS**, this change to BPC Policy No. 355 would directly benefit tenants by shortening timelines for financing approvals; and

**WHEREAS**, financing approved administratively would be reported to the Board on a monthly basis. As always, staff reserves the right to bring an item to the Board for consent; and

**WHEREAS**, of the twelve requests for consent to financing that went to the Board in FY 2016, none were pulled for additional discussion prior to the Board approval.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

That the BPC consents to amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include administrative approval of all financing.

APPROVED AS TO FORM AND LEGALITY:



\_\_\_\_\_  
PORT ATTORNEY

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

AYES: Bonelli, Nelson, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: None.

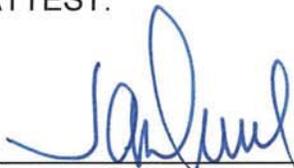
ABSENT: None.

ABSTAIN: None.



\_\_\_\_\_  
Robert Valderrama, Chair  
Board of Port Commissioners

ATTEST:



\_\_\_\_\_  
Timothy A. Deuel  
District Clerk

(seal)

**RESOLUTION 2017-013****RESOLUTION AMENDING BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:****I. ADMINISTRATIVE APPROVAL OF ALL RENT REVIEWS FOR TENANTS PAYING LESS THAN \$1,000,000 IN ANNUAL RENT**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, BPC Policy No. 355 Real Estate Leasing Policy and Administrative Practices Real Estate Leasing (collectively, BPC Policy No. 355) is the District's current leasing policy for real estate and maritime assets; and

**WHEREAS**, currently, BPC Policy No. 355 provides that rent reviews for fixed rent tenants paying less than \$250,000 in annual rent and may be administratively approved by the Executive Director, but tenants paying more than \$250,000 in annual rent must have Board approval for rent reviews; and

**WHEREAS**, based on staff's analysis, it takes approximately 46 days and at least 10 hours of staff time per transaction to prepare a routine rent review item for Board approval; and

**WHEREAS**, approximately 90% of the District's tenants pay less than \$1,000,000 in annual rent; and

**WHEREAS**, staff recommends that BPC Policy No. 355 be updated to allow all rent reviews for tenants paying less than \$1,000,000 in annual rent to be administratively approved; and

**WHEREAS**, rent reviews for tenants paying less than \$1,000,000 in annual rent are almost universally approved by the Board on consent; and

**WHEREAS**, if the Board delegated the authority to approve those transactions to staff, the number of consent items calendared for Board approval from Real Estate Development will be reduced by approximately 15% per year; and

**WHEREAS**, BPC Policy No. 355 contains guidelines for determining market rent and conducting rent reviews; and

**WHEREAS**, Staff considers rents and percentage rates paid on comparable properties in addition to economic analysis and appraisals when determining the appropriate rent for a property; and

**WHEREAS**, Staff has managed the District's commercial real estate portfolio to annual revenue increases averaging approximately 4.5% per year over the last five years; and

**WHEREAS**, Staff has access to up-to-date comparable data and utilizes on-call agreements with several professional appraisers when determining the appropriate rent for a leasehold.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

That the BPC consents to amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include administrative approval of all rent reviews for tenants paying less than \$1,000,000 in annual rent.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL



By: Deputy

2017-013

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

AYES: Bonelli, Nelson, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: None.

ABSENT: None.

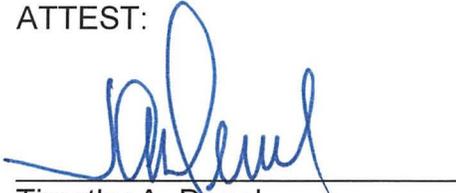
ABSTAIN: None.



---

Robert Valderrama, Chair  
Board of Port Commissioners

ATTEST:



---

Timothy A. Deuel  
District Clerk

(seal)

## SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2886

**ORDINANCE GRANTING THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AUTHORITY UNDER BOARD OF PORT COMMISSIONER'S POLICY NO. 355 TO APPROVE AMENDMENTS TO LEASES IN EXCESS OF FIVE (5) YEARS PROVIDED THAT THE AMENDED TERMS DO NOT REDUCE RENT, INSURANCE OR INDEMNITY OF THE DISTRICT, OR INCREASE THE TENANT'S LEASE TERM, IN ACCORDANCE WITH THE SAN DIEGO UNIFIED PORT DISTRICT ACT, SECTION 21 ORDINANCES AND RESOLUTIONS**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, Section 21 of the Port Act also requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance of the Board of Port Commissioners (BPC); and

**WHEREAS**, based on the requirements of the Section 21 of the Port Act, changes to leases which require amendments are made by ordinance adopted by the Board; and

**WHEREAS**, BPC Policy No. 355 is updated to allow administrative approval of rent reviews for tenants paying less than \$1,000,000 in annual rent and financing, the lease amendment triggered would still require Board approval, causing the resulting time savings to be minimal; and

**WHEREAS**, due to the amount of lease amendments processed by the Real Estate Development Department, staff requests the Board adopt an ordinance granting the Executive Director the authority to approve amendments to long-term leases as long as there is no reduction in rent, increase in lease term, or reduction in indemnity or insurance coverage; and

**WHEREAS**, granting the Executive Director this authority will eliminate the need for Board approval of routine lease amendments while preserving the District's ability to update the lease; and

**WHEREAS**, the proposed ordinance granting the Executive Director the ability to approve amendments to leases in excess of five years, enable the Real Estate department to realize the full benefit of the time savings afforded by streamlining rent reviews and approval of consents to encumbrances; and

**WHEREAS**, this proposed ordinance would reduce the number of consent items from the Real Estate Development department alone by 35% per year and save more than 160 full time equivalent (FTE) hours per year for staff; and

**WHEREAS**, staff would also provide a list of all amendments administratively approved on a monthly basis to the Board; and

**WHEREAS**, all amendments to rent, term, insurance, and indemnity not to the benefit of the District would still be presented to the Board for approval; and

**WHEREAS**, the Executive Director would reserve the right to bring any amendments to the Board for approval, even if they meet the criteria for an administrative approval.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. That the Executive Director and/or her designated representative is hereby authorized on behalf of the District to approve all amendments to leases in excess of five (5) years that benefit the District, provided that the following terms shall not be amended: reduction in rent, changes to term, reduction in insurance requirements, and reduction to indemnity. All amendments to rent, term, insurance, and indemnity not to the benefit of the District, must be presented to the Board for approval.
2. The Executive Director reserves the right to authorize the Board of Port Commissioners to review and approve amendments to leases at her discretion.
3. The Executive Director shall provide a list of all amendments administratively approved on a monthly basis to the Board of Port Commissioners.
4. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL



By: Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

AYES: Bonelli, Nelson, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: None.

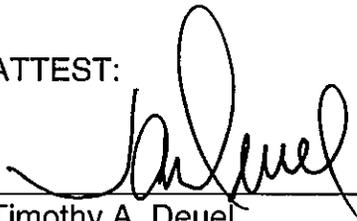
ABSENT: None.

ABSTAIN: None.

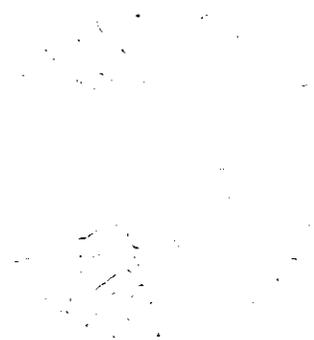


Robert Valderrama, Chair  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk



(Seal)

**ACTION AGENDA**

21. 2016-0668 INFORMATIONAL PRESENTATION FROM WORLD TRADE CENTER SAN DIEGO (WTCSD) ON THE WTCSD 2016 WORKPLAN OUTCOMES AND ANNUAL REPORT

*Bella Heule, Chief Marketing Officer / Vice President, addressed the Board regarding Action Agenda Item 21 - File No. 2016-0668 and turned the presentation over to Nikia Clarke, Ph.D., Executive Director, World Trade Center, San Diego. (A copy of the staff report, presentations and any agenda related materials are on file with the Office of the District Clerk.)*

*Commissioner Merrifield, offered varied comments regarding Action Agenda Item 21 - File No. 2016-0668.*

**Presentation Only.**

22. 2016-0704 BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING

A) RESOLUTION AMENDING BPC POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:

- I. ADMINISTRATIVE APPROVAL OF ALL RENT REVIEWS FOR TENANTS PAYING LESS THAN \$1,000,000 IN ANNUAL RENT
- II. ADMINISTRATIVE APPROVAL OF ALL FINANCING

B) ORDINANCE GRANTING THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AUTHORITY UNDER BPC POLICY NO. 355 TO APPROVE AMENDMENTS TO LEASES IN EXCESS OF FIVE (5) YEARS PROVIDED THAT THE AMENDED TERMS DO NOT REDUCE RENT, INSURANCE OR INDEMNITY OF THE DISTRICT, OR INCREASE THE TENANT'S LEASE TERM, IN ACCORDANCE WITH THE SAN DIEGO UNIFIED PORT DISTRICT ACT, SECTION 21 ORDINANCES AND RESOLUTIONS

*Tony Gordon, Principal, Portfolio Manager, addressed the Board regarding Action Agenda Item 22 - File No. 2016-0704 and turned the presentation over to Alexa Paulus, Asset Manager, Real Estate-Portfolio Management. (A copy of the staff report, presentations and any agenda related materials are on file with the Office of the District Clerk.)*

*The following member(s) of the public addressed the Board with agenda related comments: Uri Feldman, President, Sunroad; Sharon Cloward, President, San Diego Port Tenants Association.*

*Commissioner Merrifield, Commissioner Bonelli, Commissioner Malcolm, Commissioner Nelson and Chairman Valderrama offered varied comments regarding Action Agenda Item 22 - File No. 2016-0704.*

*The following members of staff responded and provided clarification to the Board regarding Action Agenda Item 22 – File No. 2016-0704: Randa Coniglio, Executive Director, Mr. Gordon and Ms. Paulus.*

**On a motion by Commissioner Malcolm, seconded by Commissioner Moore, the Board adopted Resolution 2017-012, Resolution 2017-013 and Ordinance 2886 as amended:**

**Part 1 – All financing and rent reviews must fully comport with all current District policies, as currently promulgated;**

**Part 2 - To provide advanced reporting for proposed financing and rent reviews, to the Board of Port Commissioners, in the weekly packet at least (10) days in advance of approval and in the next available Board of Port Commissioners meeting agenda, in addition, provide a report summarizing completed transactions ninety (90) days after the end of the fiscal year, to ensure public transparency.**

**The motion carried by the following vote:**

**Yeas:** 7 - Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama  
**Nays:** 0  
**Excused:** 0  
**Absent:** 0  
**Abstain:** 0  
**Recused:** 0

**23.     2016-0674     PRESENTATION REGARDING THE PORT MASTER PLAN UPDATE, INCLUDING A PROGRESS REPORT, A FORECAST OF THE 2017 WORK PLAN AND DIRECTION TO STAFF**

*Jason Giffen, Assistant Vice President, Planning & Green Port, addressed the Board with staff's report and turned the presentation over to Lesley Nishihira, Principal, Planning and Green Port, regarding Action Agenda Item 23 – File No. 2016-0674. (A copy of the staff report, presentations and any agenda related materials are on file with the Office of the District Clerk.).*

*Chairman Valderrama, Commissioner Castellanos, Commissioner Moore, Commissioner Nelson, and Commissioner Merrifield, offered varied comments regarding Action Agenda Item 23 – File No. 2016-0674.*

**Presentation only.**

**24.     2016-0686     REVIEW AND CONSIDERATION OF DRAFT PROPOSED BOARD AGENDA FOR THE FEBRUARY 7, 2017 MEETING**

**On a motion by Commissioner Malcolm, seconded by Commissioner Bonelli, the Board adopted the draft agenda for February 7, 2017 as presented. The motion carried by the following vote:**

**Yeas:** 7 - Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama



**File #:**2016-0704

**DATE:** January 10, 2017

**SUBJECT:**

**BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING**

**A) RESOLUTION AMENDING BPC POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:**

- I. ADMINISTRATIVE APPROVAL OF ALL RENT REVIEWS FOR TENANTS PAYING LESS THAN \$1,000,000 IN ANNUAL RENT
- II. ADMINISTRATIVE APPROVAL OF ALL FINANCING

**B) ORDINANCE GRANTING THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AUTHORITY UNDER BPC POLICY NO. 355 TO APPROVE AMENDMENTS TO LEASES IN EXCESS OF FIVE (5) YEARS PROVIDED THAT THE AMENDED TERMS DO NOT REDUCE RENT, INSURANCE OR INDEMNITY OF THE DISTRICT, OR INCREASE THE TENANT'S LEASE TERM, IN ACCORDANCE WITH THE SAN DIEGO UNIFIED PORT DISTRICT ACT, SECTION 21 ORDINANCES AND RESOLUTIONS**

**EXECUTIVE SUMMARY:**

Board of Port Commissioners (BPC) Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing (collectively, BPC Policy No. 355) is the District's leasing policy for real estate and maritime assets. Based on staff's research and analysis, two categories of transactions which require Board approval under the policy - leasehold financing and rent reviews for tenants paying less than \$1,000,000 in annual rent - are almost universally approved by the Board on consent. Approximately 90% of the District's tenants pay less than \$1,000,000 in annual rent. If the Board delegated the authority to approve those transactions to staff, the number of consent items calendared for Board approval from Real Estate Development could be reduced by approximately 15% per year and processing time could be improved which would directly benefit tenants by shortening timelines for financing approvals by allowing them to obtain consent up to 30 days sooner.

Whether approved by staff or the Board, under most existing leases, consent to financing presents the opportunity to update outdated lease language to standard, resulting in enhanced protections for the District. Because most District leases are in excess of five years (long-term), the San Diego Unified Port District Act (Port Act) Section 21 requires that these lease amendments be brought to the Board for approval by way of an ordinance. So, even if BPC Policy No. 355 is updated to allow administrative approval of financing, the lease amendment triggered by consent to financing would still require Board approval, and the resulting time savings would be minimal. An ordinance granting

the Executive Director or designee the authority to approve amendments to long-term leases as long as there is no reduction in rent, increase in lease term, or reduction in indemnity or insurance coverage would eliminate the need for Board approval of more routine lease amendments while preserving the District's ability to update the lease. This approach would allow staff to realize additional savings in staff time and processing time by reducing the number of consent items calendared for Board approval from Real Estate Development by up to 50%, or approximately 16 items per year, when coupled with the proposed changes to the Policy described above. All amendments to rent, term, indemnity or insurance that do not benefit the District would still require Board approval.

Staff met and conferred with the San Diego Port Tenant's Association (PTA) as required by BPC Policy No. 355. The PTA is supportive of the proposed updates to the Policy as well as the proposed ordinance. As more fully discussed below, the proposed changes to BPC Policy No. 355 govern transactions that the Board almost universally approves on consent and would result in a significant reduction in the staff resources and time it takes to process approvals. Any future changes to the Board's minimum financing requirements, such as the 75% loan to value requirement, would require a future amendment to or waiver of the policy. Staff recommends that BPC Policy No. 355 be updated to allow administrative approval of all rent reviews for tenants paying less than \$1,000,000 in annual rent and administrative approval of all financing and that the Board adopt an ordinance granting the Executive Director or designee the authority to approve amendments to long-term leases as long as there is no reduction in rent, increase in lease term, or reduction in indemnity or insurance coverage.

**RECOMMENDATION:**

- A) Adopt a Resolution amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include:
  - I. administrative approval of all rent reviews for tenants paying less than \$1,000,000 in annual rent; and
  - II. administrative approval of all financing.
  
- B) Adopt an Ordinance granting the Executive Director of the San Diego Unified Port District authority under BPC. Policy No. 355 to approve amendments to leases in excess of five (5) years provided that the amended terms do not reduce rent, insurance or indemnity of the District, or increase the tenant's lease term, in accordance with the San Diego Unified Port District Act, Section 21 Ordinances and Resolutions

**FISCAL IMPACT:**

The proposed Board actions are not expected to result in a direct fiscal impact to the District.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.

- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

BPC Policy No. 355 is the District's current leasing policy for real estate and maritime assets. Staff has conducted an internal review of several routine leasehold management transactions governed by BPC Policy No. 355 and identified two transactions that would benefit from streamlining: rent reviews and approval of tenant financing.

#### *Rent Reviews*

BPC Policy No. 355 contains guidelines for determining market rent and conducting rent reviews. Rent reviews are typically scheduled every 10 years. Staff considers rents and percentage rates paid on comparable properties in addition to economic analysis and appraisals when determining the appropriate rent for a property. Currently, all rent reviews are presented to the Board for approval with the exception of those for fixed rent tenants paying less than \$250,000 in annual rent.

Staff has managed the District's commercial real estate portfolio to annual revenue increases averaging approximately 4.5% per year over the last five years. Staff has access to up-to-date comparable data and utilizes on-call agreements with several professional appraisers when determining the appropriate rent for a leasehold.

Staff recommends that BPC Policy No. 355 be updated to allow all rent reviews for tenants paying less than \$1,000,000 in annual rent to be administratively approved. This includes approximately 90% of all District tenants. Rent reviews approved administratively would be reported to the Board on a monthly basis. In FY 2016, four rent reviews were brought to the Board for approval.

#### *Approval of Tenant Financing*

BPC Policy No. 355 contains specific criteria that must be met in order for tenant financing to qualify for consent. The criteria include the following:

- Tenant must provide a term sheet, cash flow projections, two years of financial statements and appraisal submitted to the lender;
- Final loan documents should be provided upon approval;
- Maximum loan to value ratio shall not exceed 75%;
- The loan maturity date must not exceed the remaining lease term;
- The tenant shall acknowledge that it will not seek rent relief; and
- The District shall update the rent to market or receive a share of the financing proceeds not reinvested in tidelands.

In addition, the Policy currently allows staff to administratively approve all refinancing that is no more than 10% or \$250,000 greater than the existing loan amount, whichever amount is lesser, regardless of the total loan amount. Based on feedback from tenants and the amount of staff time necessary to prepare a routine item for Board approval, staff recommends that BPC Policy No. 355 be updated to

allow all financing to be administratively approved as long as it is consistent with the criteria already contained in the Policy. It should be noted that of the 12 requests for consent to financing that went to the Board in FY 2016, none were pulled for additional discussion at the Board meeting. Financing approved administratively would be reported to the Board on a monthly basis. As always, staff reserves the right to bring an item to the Board for consent.

#### *Impact of BPC Policy No. 355 Updates*

Based on staff's analysis, it takes approximately 46 days and at least 10 hours of staff time per transaction to prepare a routine rent review item for Board approval. By administratively approving rent reviews and financing, the agenda preparation, routing, and approval process would be eliminated and time would be allocated towards an internal approval process, allowing staff to meet its objective of improved efficiency and less time to completion of administrative tasks. Furthermore, staff would continue to process and approve documents in accordance with BPC Policy No. 355 and report executed documents to the Board on a monthly basis. Administrative approvals of all rent reviews for tenants paying less than \$1,000,000 in annual rent for both percentage rent and flat rent leases and tenant financing would equate to a 15% reduction of consent items going to the Board and 40 hours of time savings per year.

However, since most District leases allow the District to update the lease as a condition of consent to financing, administrative approval of financing alone will not save a significant amount of time because lease amendments must still be brought to the Board for approval. However, the proposed ordinance described below would address the issue of routine amendments and result in additional time savings.

#### *Administrative Amendment Ordinance*

As a condition of consent to an encumbrance, District leases usually allow the District to amend lease terms in accordance with the current lease template. Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance.

Based on the requirements of the Port Act, changes to lease agreements require amendments, and amendments are made by ordinance adopted by the Board. A review of past 2016 Board meeting minutes, for example, shows that seven encumbrances that went to the Board on consent also had amendments to leases included in the agenda item. In those cases, encumbrances would still be required to go to the Board on consent because amendments to leases are made by ordinance and passed by the Board.

The proposed ordinance would grant the Executive Director the ability to approve amendments to leases in excess of five years, provided that the following terms would not be amended to reduce the District's position: rent, lease term, insurance, and indemnity. All amendments to rent, term, insurance, and indemnity not to the benefit of the District would be presented to the Board for approval. In addition, the Executive Director would reserve the right to bring any amendments to the Board for approval, even if they meet the criteria for an administrative approval. Staff would also provide a list of all amendments administratively approved on a monthly basis to the Board. Taken together, the two updates to BPC Policy No. 355 and the proposed ordinance would reduce the number of consent items from the Real Estate Development department alone by 50% per year and

---

**File #:**2016-0704

---

save more than 160 full time equivalent (FTE) hours per year for staff.

*Conclusion*

As discussed above, the proposed updates to BPC Policy No. 355 and proposed ordinance would optimize staff resources and improve processing time for District tenants, allowing staff to place a higher priority and focus on new development projects and other revenue generating opportunities.

Staff recommends the Board adopt a Resolution amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include: administrative approval of all rent reviews for tenants paying less than \$1,000,000 in annual rent and administrative approval of all financing.

Staff also recommends the Board adopt an Ordinance granting the Executive Director of the District authority to approve amendments to leases in excess of five years (with certain exceptions) in accordance with the San Diego Unified Port District Act, Section 21 Ordinances and Resolutions

**General Counsel's Comments:**

The Office of the General Counsel has reviewed the proposed changes to BPC Policy No. 355 and the requirements of Port Act Section 21, and approves the proposed changes to BPC Policy No. 355 as to form and legality.

**Environmental Review:**

The proposed Board actions do not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because the actions will not have a potential to result in a direct or indirect physical change in the environment and are, therefore, not subject to CEQA. No further action under CEQA is required at this time. All future administrative approvals by the executive director will be subject to environmental review pursuant to CEQA.

In addition, the proposed Board actions allow for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

Finally, the proposed Board actions do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required. All future administrative approvals by the executive director will be subject to review for compliance with the District's Coastal Development Permit Regulations.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

---

**File #:**2016-0704

---

Tony Gordon, Principal, Real Estate Development  
Alexa Paulus, Asset Manager, Real Estate Development

Attachment(s):  
Attachment A: BPC Policy No. 355 Redline Version

## Attachment A to Agenda Sheet No. 2016-0704



## BPC Policy No. 355

**SUBJECT:** REAL ESTATE LEASING POLICY

**PURPOSE:** To Establish General Policies for Leasing the San Diego Unified Port District (District) Real Estate Assets

**INTRODUCTION:** The Real Estate Leasing Policy establishes general real estate leasing policies that have been adopted by resolution of the Board of Port Commissioners (Board). The Real Estate Leasing Policy does not supersede the District's existing leases. The attached *Administrative Practices -- Real Estate Leasing*, describes the practices and procedures to be used in establishing rent; conducting rent reviews; extending existing leases and granting options; and states the conditions for the District's approval of subleases, leasehold financing, lease assignment and lease amendment, including processing fees associated with the above. The Practices also state the District's commitment to meet and confer in good faith with the San Diego Port Tenants Association (SDPTA) regarding changes to the Practices and to conduct a public workshop on the changes when requested by the SDPTA.

**POLICY STATEMENT:**

1. Leasing Authority

- a. *Short-Term Leases (Five Years or Less)* – The Executive Director may, without prior Board approval, enter into leases and use permits (including Tideland Use and Occupancy Permits; rental agreements; easements; licenses; and other similar types of real estate agreements) for terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such tenant; location; use; area; rent; and term.
- b. *Long-Term Leases (More than Five Years)* – All leases for terms more than five (5) years in duration shall be presented to the Board for approval at a public meeting.

2. Tenant Qualifications

To become a District tenant or subtenant, the prospective tenant or subtenant and its principals shall: (i) be reputable (the absence of a reputation for dishonesty,

criminal conduct, or association with criminal elements); (ii) possess sufficient experience to conduct the proposed business; and (iii) possess the financial means to perform the tenant's obligations under the lease.

### 3. Rents

The District shall seek market rent when leasing its real estate assets and the District's leases shall reflect market terms and conditions. The Board retains the right to grant rent discounts, waivers or other concessions, but only after the Board has been advised of the value of the discount, waiver or concession and the reasons supporting it.

In considering whether to grant a rent discount, waiver or other concession, the Board should consider its duty to balance the promotion of fishing, navigation, commerce and public access with the obligation to the citizens of California to be fiscally self-supporting, to optimize revenues<sup>(1)</sup> and to reinvest proceeds in the tidelands.

### 4. Leasehold Improvements

District leases shall provide for tenants to maintain all improvements on their leaseholds, except for multi-tenant buildings where the District's rent includes specific maintenance responsibilities.

District leases shall provide that when a lease terminates, the District shall have the option to: (i) require the tenant to remove the tenant-owned improvements at the tenant's expense; or (ii) take title to the improvements.

### 5. Subleases

*Short-Term Subleases (Five Years or Less)* – The Executive Director may, without prior Board approval, consent to subleases for terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such subtenant, location, use and term.

*Long-Term Subleases (More than Five Years)* – All subleases for terms more than five (5) years in duration shall be presented to the Board for consent.

Subleases shall contain, as a minimum, provisions that: (i) meet current District lease requirements; (ii) provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises; and (iii) provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail.

---

<sup>1</sup>"Optimizing revenues" refers to the District's consideration of maintaining the highest revenue stream possibly while balancing the strategic goals and objectives of the Board in managing the District's operations. Certain goals and objectives may not maximize revenues compared to other land use options; however, they may be given a higher priority due to the District's desire to maintain "balanced" operations.

## 6. Lease Amendments

*Short-Term Leases ~~Subleases~~ (Five Years or Less)* – The Executive Director may, without prior Board approval, consent to amendments to leases with terms five (5) years or less in duration. The Executive Director shall provide the Board with a report each month that identifies each such tenant, location, use, area, rent and term.

*Long-Term Leases ~~Subleases~~ (More than Five Years)* – ~~All proposed amendments to leases with terms more than five (5) years in duration shall be presented to the Board for consent.~~ The Executive Director may, without prior Board approval, consent to amendments to leases with terms more than (5) years in duration that benefit the District, provided that the following terms shall not be amended: reduction in rent, changes to term, reduction in insurance requirements, and reduction to indemnity. All amendments to rent, term, insurance, and indemnity not to the benefit of the District, must be presented to the Board for approval. The Executive Director shall provide the Board with a report each month that identifies each such tenant, location, use, area, rent, and term.

## 7. Transaction Processing Fees

With exceptions noted below, the District shall charge a transaction processing fee of not less than five hundred dollars (\$500.00). Exceptions include: (i) rent reviews, (ii) transactions that benefit the District (e.g., a new or renewal lease that will result in additional rent to the District), or (iii) transactions that benefit the District's properties (e.g., an easement for utilities that will serve District tenants).

Fees and costs for services and administrative activities shall be paid in accordance with any applicable District ordinance.

## 8. Option Term and Consideration

When entering into an option to lease agreement, the District shall charge monetary or other consideration and shall establish initial terms and extensions consistent with the processing requirements of each project, subject to adjustment as described in the Administrative Practices.

RESOLUTION NUMBER AND DATE: 2015-178, 2015-179 and 2015-180 dated December 8, 2015 (Supersedes BPC Policy No. 355, Resolution 2013-85 dated May 7, 2013; Resolution 2011-16, dated February 8, 2011; Resolution 2010-150, dated October 5, 2010; Resolution 2008-176, dated September 2, 2008, Resolution 2004-43, dated March 30, 2004; Resolution 2002-311 dated November 5, 2002; Resolution 98-28, dated January 27, 1998; BPC Policy No. 350, Resolution 95-244, dated July 25, 1995; BPC Policy No. 351, Resolution 95-268, dated August 22, 1995; BPC Policy No. 352, Resolution No. 92-47, dated February 18, 1992; and BPC Policy No. 354, Resolution 81-328, dated October 6, 1981)

## **SAN DIEGO UNIFIED PORT DISTRICT**

**SUBJECT: ADMINISTRATIVE PRACTICES – REAL ESTATE LEASING**

**PURPOSE: To Establish Fair and Consistent Guidelines for Leasing the District's Real Estate Assets**

### **INTRODUCTION**

The *Administrative Practices* are practical guidelines that implement BPC Policy No. 355, *District Real Estate Leasing Policy*. The Policy consists of general statements that are intended to encourage private investment; to promote high standards of development, operation and maintenance; and to assure that public trust assets are managed responsibly. The Practices are intended to provide clear guidelines and procedures for implementation of the Policy.

In the event the District proposes to make changes to the Practices, the District shall notify the San Diego Port Tenants Association (SDPTA) in advance and will meet and confer in good faith with the SDPTA to discuss the proposed changes. The SDPTA may request a public workshop on the changes. However, in individual lease negotiations, the foregoing does not in any way preclude the District from negotiating terms that vary in some respects from the Practices as long as the District and the tenant are in agreement.

- I. The Practices are divided into nine categories as outlined below: I. Establishing Rent and Conducting Rent Reviews
- II. Lease Extensions
- III. Leasehold Financing
- IV. Assignment of Leasehold Interest
- V. Subleasing
- VI. Lease Amendments
- VII. Trust Obligations
- VIII. Transaction Processing Fees, Port Master Plan Amendment (PMPA) Fees, and Security Deposits
- IX. Option Term and Consideration

The Practices follow:

## I. ESTABLISHING RENT AND CONDUCTING RENT REVIEWS

### A. Market Rent

The District should receive market rent for the leasing of its property, and rent should be adjusted to market periodically during the term of the lease. Market rent should be based on a current appraisal that complies with the *Uniform Standards of Professional Appraisal Practice*, published by the Appraisal Institute. District staff may consider other relevant information in arriving at the appropriate rent for a property. However, rent reviews for operating leaseholds shall not consider public improvements constructed by tenant either on or off the leasehold, the cost of remediation or any other incentives or concessions granted at the inception of the lease. Other exceptions to the appraisal requirement are noted below.

### B. Calculation of Rent

Most District leases are either percentage leases or flat rent leases and may combine both percentage and flat rents. In a percentage lease, the District receives the greater of a minimum rent or percentages of gross income generated by the economic activities that are conducted on the premises. In a flat rent lease, the rent is a fixed amount which increases annually in accordance with the Consumer Price Index (CPI). Specific practices for percentage rent leases and flat rent leases follow.

### C. Percentage Rent Leases

Market percentage rental rates tend to be relatively constant over time, and market validation of percentage rates for all of the District's revenue categories by appraisal is a major undertaking. Therefore, for determining percentage rates for new leases and rent reviews for existing leases, the District should establish benchmark appraisals by general geographic location and property type. The benchmark appraisals should be conducted on an ongoing basis by comparing the District's percentage rental rates with the percentage rental rates of other agencies including cities, counties, ports, and special districts, and should be utilized in determining rent at the rent review date stipulated in the lease.

1. Minimum rents in new percentage leases and in rent reviews should be set at no less than 75 percent of market rent as determined by the average of the tenant's previous three accounting years' rental payments, appraisal or other relevant information. For substantial redevelopment and new construction, the District may abate a portion of the minimum rent during construction when it is deemed appropriate.
2. Percentage rent leases should provide for market rent reviews every ten (10) years with mid-term adjustments to the minimum rent for changes in the consumer price index.

3. Appraisals of properties that normally rent for percentages of gross revenues (e.g., hotels, restaurants, marinas and retail stores) should consider rents and percentage rates paid on comparable ground leased properties, in addition to economic analysis and other appraisal techniques.

3.4. The Executive Director may, without prior Board approval, approve percentage rent reviews for tenants paying less than \$1,000,000 in annual rent.

**D. Flat Rent Leases**

In lieu of the appraisal-based rent review process described above, flat rent tenants and the District may amend their leases to provide for adjustment to rent annually by applying the Los Angeles All-Urban Consumer Price Index (CPI) to current rent, the annual adjustments to be no less than 2% or more than 4%. Leases will be amended only in those cases where the District and the tenant agree on the amount of the starting rent as the last adjusted rent brought current by adjusting it for CPI increases from the last date of the last adjustment to the date of the lease amendment. In those cases where the District and the tenant cannot agree on the starting rent, the lease will not be amended and the current rent adjustment provisions will continue to be in force.

The Executive Director may, without prior Board approval, approve flat rent reviews for tenants paying less than \$1,000,000 ~~\$250,000~~ in annual rent.

**E. Appraisals**

1. Appraisal Exception – If the cost of an appraisal is not justified by the anticipated rents, other less expensive analysis methods may be employed to establish rent at the discretion of the Executive Director, as long as adequate market information is available to support a reasonable and fair conclusion.

2. Timely Completion of Rent Review Appraisals – The District should be prepared to submit its rent proposal to the tenant no less than sixty (60) calendar days in advance of the commencement date of the rental period under review.

3. Appraisal Assumptions Regarding Status of Property – The appraisal should reflect the value of the land as-if vacant and available for new development. The appraisal should assume that all regulatory approvals that allow the existing use have been obtained, and there should be no discount for costs and time delays associated with obtaining the regulatory approvals.

The appraisal should be consistent with the highest and best use of the property, as if vacant, on the date of value. Market conditions may support a highest and best use that differs from the existing use.

The appraisal shall not consider public improvements constructed by tenant either on or off the leasehold, the cost of remediation or any other incentives or concessions granted at the inception of the lease.

Notwithstanding the above, the appraisal must be consistent with the use restrictions and other contractual burdens placed on the land by the terms of the ground lease and Port Master Plan.

4. Appraisal of Maritime Properties – Properties that are managed by the Maritime Division, that are used for maritime purposes, should be appraised by comparison with other seaport and/or maritime industrial properties, and should consider total potential revenues including but not limited to wharfage and dockage.

**F. Rent Review Process**

District leases shall provide for binding “baseball appraisal” when the District and the tenant cannot agree on the new rent for a rental period under review. In baseball appraisal, a panel of three appraisers must select by majority vote either the District’s rent proposal or the tenant’s rent proposal, whichever is judged to be the closest to market rent, as the rent for the next rental period of the lease. The District and tenant each shall select one appraiser and the two appraisers will mutually select the third appraiser. All appraisers must be qualified real estate appraisers and licensed to practice in the state of California. If the District or tenant fails to initiate the baseball appraisal process within the timeframes provided in the lease or fails to meet any of the other prescribed deadlines relating to the rent review in the lease, or fails to present an appraisal pursuant to the terms of the lease, the failing party’s right to utilize the baseball appraisal process shall be deemed to be waived. Tenant shall be afforded the opportunity to meet and informally discuss with the District and three appraisers within the prescribed deadlines relating to rent review in the lease.

**II. LEASE EXTENSIONS**

**A. Overview**

The District should utilize the lease extension process to (a) promote investment in leasehold improvements, (b) encourage redevelopment, and (c) update out-of- date leases. This section provides a narrative explanation of the process the District should follow in determining whether a proposed development or redevelopment qualifies for an extended lease term, the length of the extended term, and whether there should be compensation to the District for extending the term. A decision tree flowchart outlining the general process to be followed when a tenant requests a lease extension is presented in this section.

**B. Lease Extension Practice and Decision Criteria**

1. Tenant Requests a Lease Extension – The submission package should include the following information:
  - a) Description of the development concept and the proposed project sufficient for the District to understand precisely the scope of the entire development concept, which may include renderings and drawings showing a scaled site layout, interiors and exteriors of all significant buildings, parking lot layout, landscape development and layout, preliminary sign concept, pier and marina slip layout (if applicable) and any other prominent features.
  - b) Evidence that the tenant qualifies as a “tenant in good standing” (defined below).
  - c) Any proposed changes to ownership.
  - d) Description of the development team and its qualifications.
  - e) Proposed lease extension terms (including if applicable minimum rent, percentage rent by use, and compensation to the District for deferral of its reversionary improvement value as provided in this section), and justification for such terms.
  - f) Financial feasibility of the extension including pro forma cash flows (if applicable).
  - g) Anticipated development cost with qualifying Capital Investments (as defined in Section II(C)2), repair and maintenance, and furniture, fixture and equipment items separately identified. To the extent that District does not believe that a submittal is a qualifying Capital Investment, at the request of the District, tenant shall be required to submit supporting documentation for items characterized as Capital Investment in the proposal.
  - h) Justification that the existing operator is capable of optimizing the use and return to the District, thereby negating the need for a Request for Proposal process.
  - i) Justification that the tenant has the expertise and financial capability to develop and operate the property, when the proposed development is different from the existing use.
  
2. Proposal Consistent with Master Plan – Initially, the District should determine if the proposal is consistent with the Port Master Plan. Inherent in this decision is the assumption that the planning process utilized in developing the Master Plan evaluated the potential for the highest and best use for the property, the goals of the District and the input of the local community. If the proposal is not consistent with the Master Plan, the District may reject the proposal at its sole discretion.

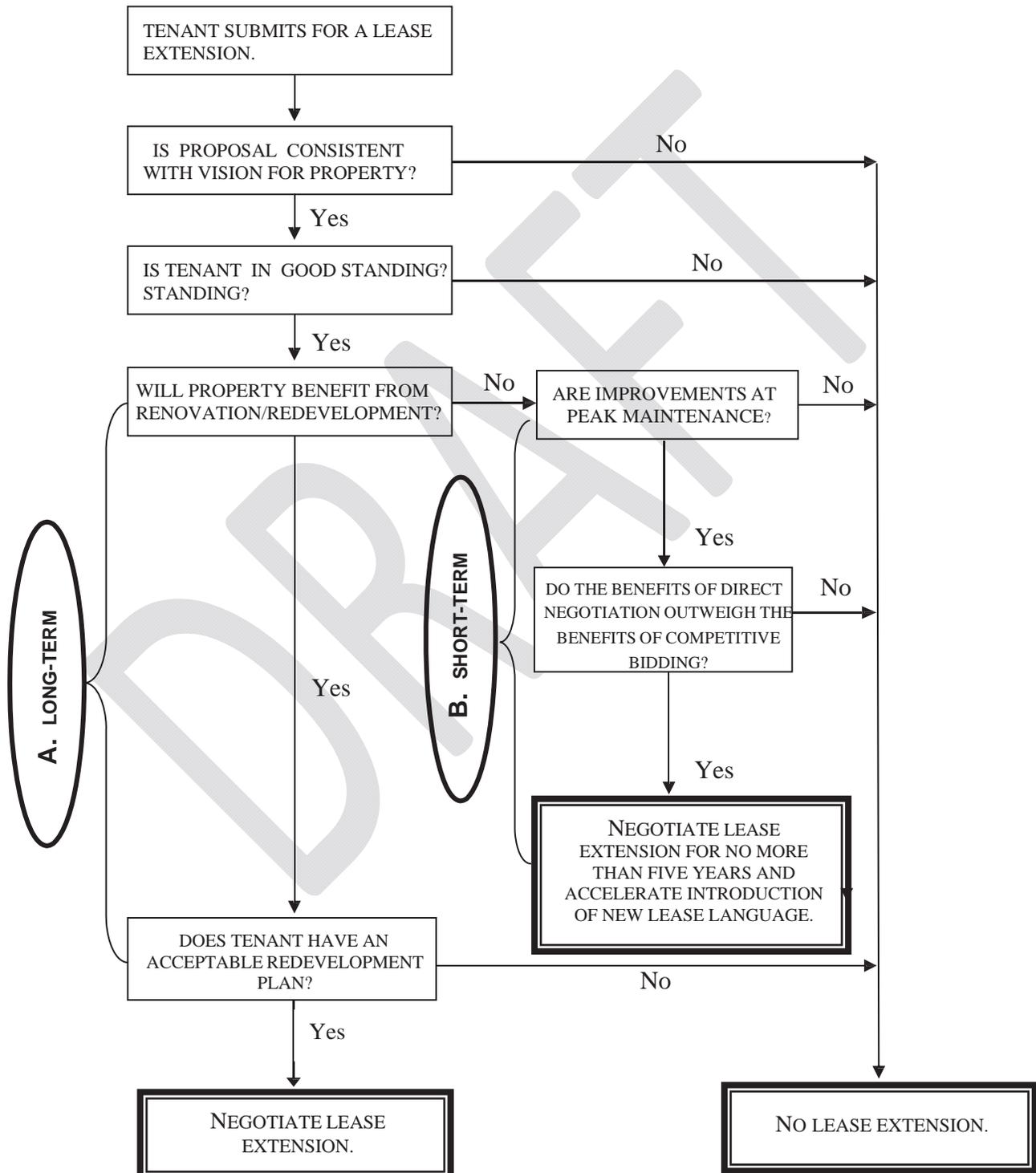
3. Proposal Consistent with the District's Vision for Future Use of the Property – If the proposal is not consistent with the District's vision for the future use of the property as determined by the Board in its sole and absolute discretion, the District should not negotiate a lease extension.
4. Qualification as a "tenant in good standing" – To qualify for a lease extension, the tenant should be considered a "tenant in good standing." The criteria should include a review of the tenant's history with respect to the following:
  - a) Maintenance of the leasehold in good condition, free of deferred maintenance.
  - b) Prompt payment history.
  - c) Compliance with the provisions of the current lease, including use provisions, insurance requirements and regulatory permitting processes.
  - d) Maximization of the gross revenue of the tenant's business.
  - e) Maintenance of accurate financial records that are accessible to the District.
  - f) Compliance with District policies on public accommodation and non-discriminatory employment and contracting.

If the existing tenant does not meet the requirements for a "tenant in good standing," then no lease extension should be negotiated.

5. Benefit from Renovation or Redevelopment – Renovation or redevelopment contemplates making capital investments in the property that would allow for business expansion, modernization of facilities, aesthetic enhancement; or that maintain or increase the existing revenue stream to the District by expansion of the existing improvements or repositioning the property to a higher standard of quality.
6. Acceptable Development Plan Presented by the Tenant – If the property would benefit from renovation or redevelopment, the District must decide if the existing tenant has presented an acceptable redevelopment plan. The District and the tenant would then enter into negotiations that would result either in a plan acceptable to the District, or a decision that the existing tenant is not capable of implementing an acceptable redevelopment plan.

7. Process for Extending Leases – If a proposed project is consistent with the District’s vision for the future use of the property, and the proposal meets the other criteria described above, the District should negotiate a new lease based on the following flow chart and requirements:

**LEASE EXTENSION PROCESS**



**C. Lease Extension Negotiation**

If the District and tenant agree to an acceptable redevelopment plan, lease extension negotiations should proceed, with the following considerations:

1. Calculation of Extended Term – The extended lease term should be based on the magnitude of Capital Investment in the property to be made by the tenant and the life expectancy of the development. The extended lease term may include past Capital Investment in the property submitted to the District for approval in accordance with District policy and the process outlined in the lease and approved by the District as long as it has not already been credited towards a previous lease extension. The District may wish to consider other relevant information in determining if a longer lease term is warranted, such as if the Capital Investment is expected to generate above average returns to the District, or will reposition the property to a higher standard of quality. Improvements completed without following submittal guidelines to the District, including notification to the District and a determination by the District whether the improvements qualify for a lease term extension, will not be considered for a lease term extension. A method of calculating the potential lease term extension is outlined below:
  - a) Determination of the estimated total replacement cost of the leasehold improvements as renovated/redeveloped. Cost figures can be determined utilizing resources such as tables provided by Marshall Valuation Service (or other industry standard cost estimating resources), or known development costs of comparable projects.
  - b) Determination of the life expectancy of the fully redeveloped project. The maximum lease term should be consistent with life expectancy of the improvements that qualify as Capital Investment in the property. Life expectancy guidelines are presented in a table at the end of this section. Lease term extensions granted after five years of the District's approval of the tenant's redevelopment plan will consider depreciation in improvements unless they were approved as part of a larger project. Depreciation shall be calculated utilizing the straight line depreciation method.
  - c) Computation of the ratio of Capital Investment in the property to total replacement cost.
  - d) Determination of the additional lease term by multiplying the ratio obtained in (c) by the life expectancy obtained in (b). The term in an extended lease shall not exceed the life expectancy of the development.

2. Qualifying Capital Investment

- a) "Capital Investment" for purposes of calculating the lease extension term should only include expenditures that usually increase the value (efficiency, productivity, or use utility) or the life expectancy of the improvements; cannot reasonably be amortized during the existing remaining term; are not recurring in nature; and are: (a) \$100,000 or more, or (b) 10% of the value of the improvements or more. It should specifically exclude deferred maintenance and expenditures for repairs to keep the existing improvements in good condition. Items that separately would not qualify for lease term extension may be considered collectively as part of an overall plan of renovation or redevelopment. In a renovation or redevelopment project, qualifying Capital Investment may include, at the sole discretion of the District, the value of superior improvement condition. The intent is to recognize the efforts of a tenant who maintains improvements in like-new condition in the latter stages of the lease term. The value of superior improvement condition may be measured by documented costs, or by replacement cost and depreciation tables such as those published by Marshall Valuation Service. Public art expenditures should be included as Capital Investment. Non-realty property may be given consideration depending on property type. An example of this would be the purchase by industrial tenants of specialized fixtures or equipment that are necessary for its operation. If lease term is granted for a Capital Investment in non-realty property, the new lease should include a provision requiring that the non-realty property (or an equivalent replacement as approved by the District) remain in place for the entire lease term. Purchase of District-owned improvements may be considered a qualifying Capital Investment. The cost of environmental cleanup is specifically excluded as a qualifying Capital Investment.
- b) If the Capital Investment will be undertaken in phases, then the tenant must identify the timeline for completion of all improvements in the tenant project application.
- c) The District may consider a lease term extension without Capital Investment in exchange for payment for deferral of the District's reversionary interest.

3. Payment for the Deferral of the District's Reversionary Interest – The standard District lease gives the District the right to assume ownership of the improvements at the end of the lease. During the lease, this reversionary interest in the improvements may have a value that can be estimated using accepted appraisal techniques. In exchange for granting a lease extension, the tenant should recognize that the District may be deferring the realization of a valuable

reversionary interest in the existing improvements. The tenant should compensate the District by an amount equal to the value of the interest being deferred. This amount can be paid in full at the commencement of the lease, incorporated as additional rent with interest over a specified period of time, or may be used to offset the tenant's cost of developing new public access infrastructure on or off the leasehold such as parks and promenades at the District's sole and absolute discretion.

If there is an economic benefit to the District, such as higher rent or the prevention of deteriorating rent, as a result of a Capital Investment by the tenant and the term extension, the economic benefit should be used to offset all or part of the compensation for deferral of the reversionary interest.

In estimating the reversionary improvement value, the market capitalization rate used should reflect value components that are related to superior management on the part of the tenant, including going-concern value, goodwill, and above-average maintenance; and for furniture, fixtures and equipment.

a) Percentage Rent Leases – A conceptual method of calculating the value of the deferral of the reversionary interest in percentage rent leases would be as follows:

(1) *Value of Deferred Reversionary Interest* – The value of the deferred reversionary interest can be estimated by projecting the operating income and expenses, based on the existing development, to the end of the existing lease term, using market-supported assumptions about operating income, expenses and inflation; and capitalizing the net income into an indication of leased fee value. The present value of the leased fee interest at the end of the existing lease term can then be calculated. Following the same procedures, the present value of the leased fee interest at the end of the extended lease term can be calculated. The value of the District's deferral of the reversionary interest is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the District, subject to any offsetting economic benefit described below.

(2) *Value of Economic Benefit to the District* – The difference between the present value of the rent to the District for the proposed development, projected over the remainder of the existing term, and the present value of the rent to the District for the existing development projected over the remainder of the existing term, is a measure of the economic benefit to the District

resulting from the investment by the tenant. The economic benefit should be used to offset all or part of the value of the compensation for deferral of the District's reversionary interest.

- b) Flat Rent Leases – A conceptual method of calculating the value of the deferral of the reversionary interest in flat rent leases would be as follows:

(1) *Value of Deferred Reversionary Interest* – The projected replacement cost of the improvements at the end of the existing term can be estimated by trending the current replacement cost by the anticipated rate of inflation. The projected reversionary improvement value can be estimated by subtracting depreciation from the projected replacement cost. The present value of the reversionary improvement value at the end of the existing term can then be calculated. Following the same procedures, the present value of the reversionary improvement value at the end of the extended lease term can be calculated. The value of the District's deferral of the reversionary interest is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the District.

(2) *Value of Economic Benefit to District* – The present value of increased rent through the end of the current rental period, negotiated as part of a lease extension, shall be used to offset compensation for deferral of the reversionary interest in flat rent leases.

4. Timely Submission by Tenant and Response by District – District staff will respond to a request for a lease extension within thirty (30) calendar days following receipt of a request for a lease extension. The initial response shall either recommend the proposal for project review and California Environmental Quality Act (CEQA) review, or request additional information that the District believes was not included or was not adequately addressed in the initial submittal. The Tenant may re-submit within sixty (60) calendar days of the District's initial response. District staff will respond to the re-submittal within thirty (30) calendar days. Subsequent responses to project submittals will follow the same schedule.
5. Market Rent – The rent in an extended lease should be updated to the current market rent as negotiated between the tenant and the District.
6. New Lease Provisions – Upon negotiation of the extended lease term, the new rent and the amount of payment, if any, for deferral of the District's reversionary interest in the improvements, the existing lease shall be superseded by a new lease incorporating the District's

current standard lease terms. The tenant's liability for hazardous materials in the prior lease shall continue in the new lease. The tenant will indemnify the District against potential third party challenges to the CEQA review and/or determination process and agrees to reimburse the District for actual, reasonable and necessary third-party out-of-pocket expenses associated with processing a redevelopment project including but not limited to the preparation and certification of the CEQA document by the Board, the preparation and approval of the PMPA by the Board and the California Coastal Commission (CCC), the preparation and issuance of an appealable CDP by the Board or, if appealed, the CCC, and any other third-party expenses arising out of the entitlement process in the District's determination. District shall use commercially reasonable efforts to manage expenses.

7. "Basket of Issues" – While it is desirable to have a "standard" negotiation process, the lease extension process involves a "basket of issues" with each tenant. The District should be willing to negotiate each extension separately and take into account the unique circumstances of each request.
8. Short-Term Lease Negotiation – An existing tenant may qualify for an extended term under the criteria outlined above, but the property may not qualify as the highest and best use under the Port Master Plan, or may not be consistent with the District's vision for the future use of the site. In other cases, all the criteria for a long-term lease extension may have been met but the property may not benefit from renovation or redevelopment (i.e., the improvements are in excellent condition and represent highest and best use). In either event, upon lease expiration, the District may consider a new short-term lease with the existing tenant with the following four considerations:
  - a) *Lease Term* – The lease term should be no more than five years. This will create a term short enough to enable the District to periodically evaluate if the current use remains the highest and best use of the property consistent with the District's goals and objectives and the Port Master Plan.
  - b) *Payment for District-Owned Improvements* – The tenant should pay market rent for improvements it occupies that are owned by the District after expiration of the existing lease term.
  - c) *Rent* – The rent would be updated to the current market rent as negotiated between the tenant and the District.
  - d) *New Lease* – A new lease shall be executed including the District's current standard lease language.

9. Recommended Life Expectancy Guidelines – The length of a new or extended lease term should be based on the reasonable life expectancy of the improvements that qualify as Capital Investment. Life expectancies vary by use. Improvements that are subject to relatively high physical deterioration or functional obsolescence caused by market changes have *relatively* short life expectancies. Improvements that are physically more substantial and less affected by market changes have relatively long life expectancies.

The guidelines shown below were developed based on practical experience and observations, and by reference to the life expectancy tables published by *Marshall Valuation Service*.

#### ECONOMIC LIFE EXPECTANCY GUIDELINES

PROPERTY TYPE	TERM*
HOTEL	40 TO 66 YEARS
FULL SERVICE RESTAURANT	20 TO 40 YEARS
RETAIL SALES	30 TO 45 YEARS
COMMERCIAL OFFICE	30 YEARS
LAND SERVICE STATION	20 YEARS
MARINE SERVICE STATION	20 YEARS
MARINA	40 YEARS
SPORTFISHING LANDING	20 YEARS
BOAT EXCURSION LANDING	15 YEARS
BOATYARD	30 YEARS
SHIPYARD	50 YEARS
LUMBERYARD	25 YEARS
AIRPORT INDUSTRIAL	25 YEARS
OTHER INDUSTRIAL	50 YEARS
YACHT CLUB	35 - 45 YEARS

\* The Terms outlined above represent the recommended length of term a tenant may receive for each respective property type. Shorter terms, or a combination of shorter terms with options to extend, may be appropriate to ensure an appropriate level of quality and maintenance of the improvements.

### III. LEASEHOLD FINANCING

#### A. Consent to Financing Subject to Specific Criteria

The required minimum documentation to be submitted by the tenant in support of a request of the District to consent to new financing and standards for financing consent are as follows:

1. Initial documentation should include the term sheet, application or commitment, cash flow projections, appraisal submitted to the lender, and the most recent annual financial statements of the tenant (if it is a percentage lease) for at least the past two years.
2. When available, final loan documents should be provided.
3. Maximum loan proceeds should not be in excess of the greater of 75% loan-to-value as determined by the lender's appraisal, or the amount of repayment of existing financing (provided that such financing was initially consented to by the District).
4. A loan should have a maturity date that does not exceed the remaining ground lease term.
5. A tenant should acknowledge that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
6. The District shall either:
  - a) Receive a share of the proceeds of refinancing, except proceeds which are reinvested in District-owned land or water, replace existing financing, or reimburse the tenant for documented equity investment, or
  - b) Have the right to adjust the rent to market rent.
7. There should not be any restrictions on how the tenant utilizes the proceeds of financing (as long as the District is satisfied that proper underwriting guidelines are met).

If the District staff is satisfied that the above criteria have been met, its recommendation for consent to the new financing shall not be unreasonably withheld.

#### B. Timely Response to Request for Leasehold Financing

District Staff should have completed its recommendation on consent to the financing of a leasehold interest within forty-five (45) calendar days of

receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.

**C. Administrative Approval of Routine Financing**

The Executive Director may, without prior Board approval, approve all financing. ~~new financing that replaces construction financing or refinancing of an existing loan, provided, however, the loan under consideration is no more than 10% or \$250,000 greater than the existing loan amount, whichever amount is lesser.~~

**IV. ASSIGNMENT OF LEASEHOLD INTEREST**

**A. Consent to Assignment Subject to Specific Criteria**

The required documentation to be submitted by the tenant in support of a request of the District to consent to an assignment of the leasehold and standards for assignment consent are as follows:

1. The tenant shall complete UPD Form No. 317, Lessee's and Sublessee's Questionnaire for All Leases (and Subleases of More than Five Years).
2. If new financing is involved in the sale, the proposed tenant shall provide the information required above under Leasehold Financing.
3. The District must be satisfied that the lessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the leased premises.
4. The District shall either receive a share of the proceeds of a sale or have the right to adjust the rent to market rent as a condition of its consent. This right does not apply to an assignment that changes the method of holding title but does not change the proportional ownership interests of the individuals, nor does it apply to transfers between spouses or immediate family members.

**B. Timely Response to Request for Assignment of Leasehold Interest**

District staff should have completed its recommendation on consent to the assignment of a leasehold interest within forty-five (45) calendar days of receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.

**C. Administrative Approval of Routine Assignments of Leasehold Interest**

The Executive Director may, without prior Board approval, approve an assignment of leasehold interest if the assignment results in no change of control, operations or management of the ownership entity of the tenant.

## V. SUBLEASING

A tenant may sublease all or part of its leased premises to a qualified subtenant, subject to consent by the District. The appropriate District-supplied Sublease Questionnaire form must be completed and submitted to the District. Consent by the District must be obtained prior to occupancy by the sublessee.

### A. Sublease Consent Criteria

Staff's recommendation for consent to a sublease shall be made in accordance with the following criteria:

1. The District must be satisfied that the sublessee will use the property in a manner that is consistent with uses allowed by the lease.
2. The District must be satisfied that the sublessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the subleased premises.
3. The District reserves the right to adjust the rent the District receives to market for the subleased portion of the property.
4. The District must be satisfied that the sublease transaction will not have a significant negative impact on the District.

### B. Timely Response by the District

For a short-term sublease (five years or less), District staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term sublease (more than five years), District staff should respond within sixty (60) days.

## VI. LEASE AMENDMENTS

A tenant may request amendments to a lease that could range from minor changes to extensive revisions. The District's consent to a request for lease amendment may be contingent upon updating sections of the lease to incorporate current standard lease provisions, and may include an adjustment to market rent, depending upon the extent of the proposed tenant requested revisions.

### A. Lease Amendment Consent Criteria

Staff's recommendation for consent to a lease amendment shall be made in accordance with the following minimum criteria:

1. The allowed uses of the property stated in the amended lease must be in compliance with the Port Master Plan and with the District's vision for the future use of the property.
2. Amended sections of the lease must conform with the District's standard lease language in effect when the request for a lease amendment is made.

3. For a change in the method of holding title that does not change the proportional ownership of the individuals, or that represents a transfer between spouses or immediate family members, a complete lease update and rent adjustment would not be made. Standard provisions regarding hazardous materials, underground storage tanks and above-ground storage tanks should be added (unless they are already in the lease).
4. In some cases (e.g., changing from a sole proprietorship to a limited liability company), it may be advisable to have the principals personally guarantee lease performance.
5. A proposed lease amendment for financing or for a transfer or a partial or full interest in the leasehold would be governed by Sections C and D of these Practices.

**B. Timely Response by the District**

For a short-term lease (five years or less), District staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term lease (more than five years), District staff should respond within sixty (60) days.

**VII. TRUST OBLIGATIONS**

For tenants claiming special treatment under the Port District Act, the District should determine market rents consistent with the property's land use. Any discount to market rent or other concession should be supported by a tenant's written proposal that would outline why the discount is warranted, if there is a public benefit, the financial rationale for the request and the proposed economic terms. The proposal should be presented to the Board, which would determine if a concession is warranted.

**VIII. TRANSACTION PROCESSING FEES, PORT MASTER PLAN AMENDMENT (PMPA) FEES, AND SECURITY DEPOSITS**

**A. Transaction Processing Fees**

With exceptions noted below, the District shall charge a transaction processing fee of not less than five hundred dollars (\$500.00). Exceptions include (i) rent reviews, (ii) transactions that benefit the District (e.g., a new or renewal lease that will result in additional rent to the District), or (iii) transactions that benefit the District's properties (e.g., an easement for utilities that will serve District tenants).

**B. Port Master Plan Amendment (PMPA) Fees**

If a tenant project requires a PMPA, then the tenant must pay for the cost of preparing the PMPA and any associated CEQA documentation. If a tenant project requires a PMPA, and the District is currently pursuing or will be pursuing a PMPA into which the tenant's project will be incorporated, then the tenant must pay for a pro-rata share of the cost of preparing the

PMPA and any associated CEQA documentation. If a tenant project does not require a PMPA, but the District is currently pursuing or will be pursuing a PMPA into which the tenant's leasehold will be incorporated, then the tenant will not be charged a pro-rata share of the cost of preparing the PMPA and any associated CEQA documentation.

**C. Security Deposits**

The standard security deposit for a new rental agreement is three months' rent. A security deposit may be waived for a short-term rental of property that supports a tenant's long-term lease. The security deposit may be reduced for a tenant that has been in good standing for five or more years. For a tenant making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

**IX. OPTION TERM AND CONSIDERATION**

Generally, proposed projects including but not limited to a change in use, additional lease term, financing, and issuance of permits will be memorialized in an option agreement and lease. If District staff negotiates an option, then recommendations regarding option term and consideration, including extensions, must be based on this section of the Practices. Recommendations which include adjustments to option term and consideration, if any, must be based on the factors described in Section (3) below.

**A. Term**

Calculating Initial Option Term and Option Term Extensions. The District recognizes that there is uncertainty in every entitlement process. As a result, District staff's recommendation regarding initial option term and extensions must be based on a cooperative assessment of the approval process and timeline for a proposed project and its associated risks.

For existing tenants with options with no change in use or a change in use that does not require a Port Master Plan Amendment, the initial minimum option term will be 18-24 months. In all other cases, the term will be 24-36 months. Term extensions are subject to negotiation as needed.

**B. Consideration**

Calculating Initial Option Consideration and Option Term Extension Consideration.

1. Consideration – Consideration may take the form of a monetary payment or a quantifiable benefit to the District. Examples of quantifiable benefits include but are not limited to construction of or enhancements to a District-owned asset and assuming contingent legal liabilities for District actions. Consideration does not include transaction processing fees, which may be assessed independently according to a schedule established by the District.

2. Initial Option Consideration – Initial option consideration is determined by whether the option covers a tenant’s existing premises, new premises, or a combination of new and existing premises.

- c) *Existing Premises Only* - If the option covers the existing premises only, then consideration is not required unless a Port Master Plan Amendment is required for the option. If a Port Master Plan Amendment is required, consideration is based on the following table:

Lease Type	Consideration
Percentage Rent	25% of difference between projected first year’s minimum annual rent and current minimum annual rent
Flat Rent	25% of annual rent difference if an appraisal is performed or 5% of annual rent

- d) *New Premises Only* - Whether or not a Port Master Plan Amendment is required, if the option covers new premises only, then consideration is based on the following table:

Solicitation Type	Consideration
Sole Source	25% of projected first operating year’s minimum annual rent
RFQ/RFP	25% of projected first operating year’s minimum annual rent

- e) *New Premises and Existing Premises* - Whether or not a Port Master Plan Amendment is required, if the option combines both new premises and existing premises, then consideration is 25% of the difference between the projected combined first year’s minimum annual rent and the existing premises minimum annual rent.

3. Option Term Extension Consideration – Option term extension consideration is subject to negotiation. The following establishes a baseline for calculating option term extension consideration which may be subject to adjustment.

For existing tenants with proposed projects that do not require a Port Master Plan Amendment, extension consideration is not required.

In all other cases, option term extension consideration will be prorated based on the initial option term and consideration. For example, if the initial option term is 24 months and the consideration is \$240,000, then each additional month of option term extension would require an additional \$10,000 in consideration.

### C. Adjustments

Factors Justifying Adjustments to Option Term and Consideration. District staff may recommend to the Board reducing or increasing the term and consideration for options and extensions described in Sections (1) and (2) above. Any recommended adjustment must be justified by one or more of the following factors:

1. Assumption of District Obligation – An optionee may assume the liability for the cost of a District obligation.
2. Improvements or Work Performed at Tenant's Risk – An optionee may construct improvements or perform work with no guarantee that the option may be exercised.
3. Accelerated Performance – An optionee may be incentivized to exercise its option prior to the scheduled expiration.
4. Social or Community Benefits – Non-profit tenants such as yacht clubs, museums, and performance of obligations that benefit the public - including development and maintenance of public parks or promenades - may justify a reduction in consideration.
5. Market Conditions – Market conditions may impact the District's bargaining position including, but not limited to, inferior site locations, difficult markets, economic conditions, and costly entitlement processes.
6. Inability to Obtain Financing – The District's option agreements do not allow the optionee's lack of ability to obtain financing to serve as a reason for not exercising an option. However the District has extended options because financing was not yet in place or ready to close. In instances where a documented catastrophic market cycle (such as the market cycle impacting financing during 2009-2010) prohibits an optionee's ability to obtain financing the District should consider the status of financing in its justification for granting additional term and for reducing or eliminating consideration for an extension. The optionee's inability to obtain financing because of inadequate equity investment in a project should not be considered as a justification for force majeure extensions.
7. Force Majeure Delays – Listed are examples of Force Majeure delays that could result in the reduction or elimination of option consideration

if an extension is issued (i) delays caused by litigation that prevents the optionee from performing under the option terms (CEQA or CCC challenges); (ii) documented delays in permitting outside the optionee's control and beyond the time frames agreed to for complete application submittals, including administrative appeals; (iii) documented delays to obtain entitlements from regulatory agencies outside the optionee's control.

DRAFT

**ADDENDUM TO BPC POLICY NO 355 ADMINISTRATIVE PRACTICES REAL ESTATE LEASING**

**REPORT OF YACHT CLUB LEASING POLICY AD HOC SUBCOMMITTEE**

**RECOMMENDATION TO THE BOARD OF PORT COMMISSIONERS OF THE SAN DIEGO UNIFIED PORT DISTRICT**

At its December 8, 2003 meeting, the Subcommittee voted to recommend that the Board adopt a resolution directing staff to supplement the BPC Policy 355 leasing practices as follows:

1. The present yacht club leases shall be amended to delete the rent review provision for 2006 and substitute a rent adjustment equal to the change in the Consumer Price Index for the Los Angeles area for the years 2001 - 2005.
2. Upon the grant of a new lease, whether after expiration of the current lease or by reason of the satisfaction of option requirements for redevelopment of the leasehold that result in a new lease earlier than expiration of the current lease, rent shall be paid at the greater of Fair Market Rent or Minimum Rent. Fair Market Rent shall be percentage rent calculated as follows:
  - (a) From the commencement of the new lease to December 31, 2011, 8.25% of gross revenues;
  - (b) From January 1, 2012 through December 31, 2012, 8.80% of gross revenues;
  - (c) From January 1, 2013 through December 31, 2013, 9.35% of gross revenues;
  - (d) From January 1, 2014 through December 31, 2014, 9.90% of gross revenues;
  - (e) From January 1, 2015 through December 31, 2015, 10.45% of gross revenues;
  - (f) From January 1, 2016 through December 31, 2016, 11.0% of gross revenues;

Report of Yacht Club Leasing Policy Ad Hoc Subcommittee  
 March 18, 2004  
 Page Two

- (g) From January 1, 2017 through December 31, 2026, Fair Market Rent shall be calculated by multiplying gross revenues by a blended rate adjusted by an appraisal of the concession rates on each revenue category; the new blended rate shall be adjusted by applying an adjustment as follows:

(The sum of all current concession rates plus the sum of all changes to the concession rates divided by the sum of all concession rates) multiplied by the current blended rate will equal the new blended rate. The current concession rate is comprised of the following: dues @ 5.0%; slips, dry storage and lockers @ 22.0%; member food and beverage @ 3.0% and 5.0% respectively; catered food @ 7.0%; catered beverage @ 7.0%; and ships store @ 10.0%. The sum of all concession rates equals 59.0%

Example: Currently, the blended rate is 11.0% and the sum of the concession rates is 59.0%. If, for example, the slips, dry storage and locker concession rate increases by 2.0% (from 22.0% to 24.0%), the computation of the new blended rate would be expressed arithmetically:

$$[(59+2) \div 59] \times 11.0\% = 1.0338 \times 11.0\% = 11.37\%$$

- (h) On January 1, 2027 and each succeeding tenth anniversary thereafter, the concession rates shall be reappraised and adjusted as set forth in (g) above.
- (i) Minimum Rent starting on January 1, 2022 and every ten years thereafter shall be adjusted by the corresponding increase in the Consumer Price Index for the Los Angeles area for the prior ten years from the minimum rent in effect in 2012. For purposes of determining the CPI base for calculating the Minimum Rent in 2022, the Fair Market Rent in 2012 shall be adjusted by the appropriate CPI increase over the 10-year period. The increase shall not be less than 3.0% per annum or greater than 5.0% per annum. In any year immediately following a rent adjustment as the result of an appraisal of the concession rates, the rent for that year and each successive year shall be determined by the greater of 75.0% of the actual rent paid the prior year or the Minimum Rent or the Fair Market Rent; and

Report of Yacht Club Leasing Policy Ad Hoc Subcommittee  
March 18, 2004  
Page Three

- (j) For purposes of calculating rent, gross revenues shall only include: dues, member food and beverage, catered food and beverage, slips, dry storage and lockers and ships store. Gross revenues shall not include revenues for junior sailing programs, outstation locations not on District property, initiation fees or interest income as well as any amounts set aside by the yacht clubs for Capital Investment or the debt on Capital Investment, whether such amounts are collected as special assessments, dues, percentage of slip rents, or otherwise.
3. New yacht club leases shall be for a maximum term of 40 years provided all the requirements for achieving maximum lease term are met.
4. Financial statements detailing operating revenues and sources, cash flows, capital reserves and capital expenditures, as well as sources of capital amounts, shall be provided annually no later than 120 days following the end of each club's fiscal year.

[SDUPD Docs D2 No. 1128084](#)

**RESOLUTION 20xx-xxx**

**RESOLUTION AMENDING BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:**

**I. ADMINISTRATIVE APPROVAL OF ALL RENT REVIEWS FOR TENANTS PAYING LESS THAN \$1,000,000 IN ANNUAL RENT**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, BPC Policy No. 355 Real Estate Leasing Policy and Administrative Practices Real Estate Leasing (collectively, BPC Policy No. 355) is the District's current leasing policy for real estate and maritime assets; and

**WHEREAS**, currently, BPC Policy No. 355 provides that rent reviews for fixed rent tenants paying less than \$250,000 in annual rent and may be administratively approved by the Executive Director, but tenants paying more than \$250,000 in annual rent must have Board approval for rent reviews; and

**WHEREAS**, based on staff's analysis, it takes approximately 46 days and at least 10 hours of staff time per transaction to prepare a routine rent review item for Board approval; and

**WHEREAS**, approximately 90% of the District's tenants pay less than \$1,000,000 in annual rent; and

**WHEREAS**, staff recommends that BPC Policy No. 355 be updated to allow all rent reviews for tenants paying less than \$1,000,000 in annual rent to be administratively approved; and

**WHEREAS**, rent reviews for tenants paying less than \$1,000,000 in annual rent are almost universally approved by the Board on consent; and

**WHEREAS**, if the Board delegated the authority to approve those transactions to staff, the number of consent items calendared for Board approval from Real Estate Development will be reduced by approximately 15% per year; and

**WHEREAS**, BPC Policy No. 355 contains guidelines for determining market rent and conducting rent reviews; and

**WHEREAS**, Staff considers rents and percentage rates paid on comparable properties in addition to economic analysis and appraisals when determining the appropriate rent for a property; and

**WHEREAS**, Staff has managed the District's commercial real estate portfolio to annual revenue increases averaging approximately 4.5% per year over the last five years; and

**WHEREAS**, Staff has access to up-to-date comparable data and utilizes on-call agreements with several professional appraisers when determining the appropriate rent for a leasehold.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

That the BPC consents to amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include administrative approval of all rent reviews for tenants paying less than \$1,000,000 in annual rent.

APPROVED AS TO FORM AND LEGALITY:

---

PORT ATTORNEY

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

**RESOLUTION 20xx-xxx**

**RESOLUTION AMENDING BOARD OF PORT COMMISSIONER'S (BPC) POLICY NO. 355 - REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES - REAL ESTATE LEASING TO INCLUDE:  
II. ADMINISTRATIVE APPROVAL OF ALL FINANCING**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, BPC Policy No. 355 Real Estate Leasing Policy and Administrative Practices Real Estate Leasing (collectively, BPC Policy No. 355) is the District's current leasing policy for real estate and maritime assets; and

**WHEREAS**, currently, BPC Policy No. 355 allows staff to administratively approve all refinancing that is no more than 10% or \$250,000 greater than the existing loan amount, whichever amount is lesser, regardless of the total loan amount; and

**WHEREAS**, based on feedback from tenants and the amount of staff time necessary to prepare a routine item for Board approval, staff recommends that BPC Policy No. 355 be updated to allow all financing to be administratively approved as long as it is consistent with the criteria already contained in the BPC Policy No. 355; and

**WHEREAS**, this change to BPC Policy No. 355 would directly benefit tenants by shortening timelines for financing approvals; and

**WHEREAS**, financing approved administratively would be reported to the Board on a monthly basis. As always, staff reserves the right to bring an item to the Board for consent; and

**WHEREAS**, of the twelve requests for consent to financing that went to the Board in FY 2016, none were pulled for additional discussion prior to the Board approval.

20xx-xxx

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

That the BPC consents to amending BPC Policy No. 355 - Real Estate Leasing Policy and Administrative Practices - Real Estate Leasing to include administrative approval of all financing.

APPROVED AS TO FORM AND LEGALITY:

---

PORT ATTORNEY

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE xxxx**

**ORDINANCE GRANTING THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AUTHORITY UNDER BOARD OF PORT COMMISSIONER'S POLICY NO. 355 TO APPROVE AMENDMENTS TO LEASES IN EXCESS OF FIVE (5) YEARS PROVIDED THAT THE AMENDED TERMS DO NOT REDUCE RENT, INSURANCE OR INDEMNITY OF THE DISTRICT, OR INCREASE THE TENANT'S LEASE TERM, IN ACCORDANCE WITH THE SAN DIEGO UNIFIED PORT DISTRICT ACT, SECTION 21 ORDINANCES AND RESOLUTIONS**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, Section 21 of the Port Act also requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance of the Board of Port Commissioners (BPC); and

**WHEREAS**, based on the requirements of the Section 21 of the Port Act, changes to leases which require amendments are made by ordinance adopted by the Board; and

**WHEREAS**, BPC Policy No. 355 is updated to allow administrative approval of rent reviews for tenants paying less than \$1,000,000 in annual rent and financing, the lease amendment triggered would still require Board approval, causing the resulting time savings to be minimal; and

**WHEREAS**, due to the amount of lease amendments processed by the Real Estate Development Department, staff requests the Board adopt an ordinance granting the Executive Director the authority to approve amendments to long-term leases as long as there is no reduction in rent, increase in lease term, or reduction in indemnity or insurance coverage; and

XXXX

**WHEREAS**, granting the Executive Director this authority will eliminate the need for Board approval of routine lease amendments while preserving the District's ability to update the lease; and

**WHEREAS**, the proposed ordinance granting the Executive Director the ability to approve amendments to leases in excess of five years, enable the Real Estate department to realize the full benefit of the time savings afforded by streamlining rent reviews and approval of consents to encumbrances; and

**WHEREAS**, this proposed ordinance would reduce the number of consent items from the Real Estate Development department alone by 35% per year and save more than 160 full time equivalent (FTE) hours per year for staff; and

**WHEREAS**, staff would also provide a list of all amendments administratively approved on a monthly basis to the Board; and

**WHEREAS**, all amendments to rent, term, insurance, and indemnity not to the benefit of the District would still be presented to the Board for approval; and

**WHEREAS**, the Executive Director would reserve the right to bring any amendments to the Board for approval, even if they meet the criteria for an administrative approval.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. That the Executive Director and/or her designated representative is hereby authorized on behalf of the District to approve all amendments to leases in excess of five (5) years that benefit the District, provided that the following terms shall not be amended: reduction in rent, changes to term, reduction in insurance requirements, and reduction to indemnity. All amendments to rent, term, insurance, and indemnity not to the benefit of the District, must be presented to the Board for approval.
2. The Executive Director reserves the right to authorize the Board of Port Commissioners to review and approve amendments to leases at her discretion.
3. The Executive Director shall provide a list of all amendments administratively approved on a monthly basis to the Board of Port Commissioners.
4. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

XXXX

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

---

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of January, 2017, by the following vote:

## Draft Recommendation

### Waterfront Development Issues

The following are discussions and recommended Chamber positions for consideration by the Governmental Affairs Committee. The summary of each issue is from the discussion on June 5<sup>th</sup>, background material provided, and the presentation by the Harbor Director.

#### **Measure D**

Measure D states that there are certain portions of the Waterfront, generally those tidelands areas west of the Embarcadero and north of Beach Street, that are to be reserved for uses that primarily serve or facilitate commercial and recreational fishing. Uses that are “clearly incidental” to commercial and recreational fishing are allowed. General Plan Land Use Policy 4 addresses some of these issues. Non fishing uses in existence at the time of passage of the Measure are grandfathered in. The Commercial/Recreational Fishing designation in the General Plan and the “CF” zone district shows the uses that are permitted in this zone. While existing uses are considered “non-conforming”, such uses may remain and be redeveloped provided that they are not expanded, or enlarged, or moved and parking is provided pursuant to Chapter 17.28, Parking and Loading.

Measure D is a form of land use regulation that is intended to reserve areas for employment, economic development, or other activities that could not otherwise compete economically with other uses. This is very much like other cities designating industrial parks or business parks to ensure adequate areas for commerce, or certain kinds of commerce. Measure D was put into place during a time of significantly greater commercial fishing activity (see historical charts for economic impact report prepared by MBCFA), and during a time when there was fear that the commercial fishing activity would be forced out, economically, by recreational boating, and uses typical of the southern portion of the Embarcadero.

Practical issues with Measure D include the treatment of non-conforming uses, some of which are essential (financially) in paying for the maintenance and improvement of the improvements that serve the Measure D area, debates over what “clearly incidental” means, or which uses are “primarily for the purpose of serving or facilitating recreational and commercial fishing.” Is a fish market that sells fish from local boats “serving” the commercial fishing fleet? Is a restaurant that buys fresh fish from local boats facilitating commercial fishing? How much non-local catch can they serve/sell before they no longer “facilitate” or “serve” the local fishing fleet?

The GAC had the following comments on the Measure D/CF land use and zoning provisions: 1) Inability to enlarge or expand existing operations (restaurant retail and commercial recreational fishing) on a Tidelands Lease diminishes incentive to maintain a structure or operation and grow a business (ED unfriendly); 2) Non-fishing (but compatible) uses directly support the commercial/recreational fishing infrastructure through their lease payments and direct revenues to commercial fisherman. If they are demolished there will be a significant loss in Harbor Department revenue; and 3) Commercial Fishing interests state, convincingly, that assessment of full fair market value for rent/leases, and the full burden of maintenance of the Measure D area by fishing activities alone is unrealistic and uneconomical.

**Recommendation:** **Overturning or modifying Measure D is probably unrealistic in the short term. Much could be gained by clarifying the vague terms of Measure D, providing more flexibility allowing for expansion of existing uses, or establishment of new compatible uses, and creating a more stable revenue base for improving the commercial fishing infrastructure. However, this effort would need to be led by the commercial/recreational fishing industry itself. Chamber should support that approach. Chamber should also support flexibility in the interpretation of uses that serve and facilitate the commercial fishing industry and recognize that any logical step between catch and consumption serves and facilitates the industry.**

### **Tidelands Lease Policy and Lease Administration**

The City has employed a “Tidelands Lease Policy” to serve as a template to standardize leases that are made in the State Tideland Grant areas. The policy is intended as an advisory tool to provide guidance for future lease site management, development, and redevelopment decisions considered by the City, with the ultimate dual goals of maintaining the vitality of the City’s waterfront and the fiscal health of the department charged with managing it. Erica Crawford of the MB Chamber of Commerce serves on that committee. Significant issues in the review of the Tidelands Lease Policy include: 1) Computational basis for determining lease payments such as minimum base rate (calculated as a percentage of estimated market value) and “percentage rents” that are calculated on the sales for each tenant; 2) Number of years of lease renewal per amount of investment (lower levels result in shorter renewals); 3) Benefits of

aggregating individual lease sites into “master leases” (such as Marina Square), the Harbor Department managing the Master Lease, and the Master Lease holder managing the subleases and responsible for all lease payments; and, 4) Administration and accounting in the administration of the leases.

According to the Lease Management Policy “Vision Statement”, the long-term vision of the City of Morro Bay is “...to manage and maintain the Embarcadero Tidelands lease sites as a vibrant working waterfront, incorporating tourism and various commercial and recreational uses. Positive cash flow to the Harbor Department is crucial to maintain the integrity of the Embarcadero and environmental health of the bay and its resources. In order to provide a quality experience for the public, tourism and other recreational uses of the Embarcadero are encouraged and considered in lease management decisions. The Embarcadero will be pedestrian-friendly with ample access and view corridors to coastal resources.”

Although an attempt is made for standardization, each lease or master lease is the subject of complex negotiations relating to lease term, lease conditions, condition of leased premises (sometimes it is deficient), and public policy or promotional goals for individual lease sites. There is also a practical internal conflict in the use of the Tidelands Lease revenue for daily operations as opposed to funding depreciation and maintaining an adequate capital reserve to fund needed repairs, and structural degradation and obsolescence that are the legal responsibility of the City as the “landlord”.

There is also a practical matter of lease administration. Many harbors and waterfront districts contract this function to outside real estate property managers, or at least to a staff specialist. The Tidelands Lease areas are in fact a large shopping and commercial district. The Harbor District previously had a Business Manager with experience in business administration and real estate contracts. That position was eliminated, and the Harbor Director spends most of his time fulfilling those duties and running the operations of the Harbor. There is a rightful hesitance to add more City staff that may exacerbate the City’s PERS pension shortfall.

Questions that come up include: 1) Is the City well equipped to be a landlord, a taxing authority, a regulatory agency and a political entity, and could the Lease Management function be more effectively handled by additional personnel in the department or by contracting with a property management company? 2) Is there proper accounting of and reserves for the maintenance and improvement of buildings and improvements in the Tidelands Lease area? 3) Should the City strategically time lease terminations to facilitate aggregation of lease sites into Master Leases?; 4) How do the effective lease rates (\$/square foot of building area or percentage of sales) compare to market rate leases of equal term and conditions?; and, 5) In order to fulfill

the Harbor District's mission of providing a quality experience for the public and to maintain the fiscal health of the Waterfront, how should the cost of operations and capital improvements be financed? The above issues are complicated by the fact that commercial uses outside of the Tidelands Lease sites do not pay directly into the Harbor Fund for the enhancement of the Waterfront; 100 percent of the revenue to maintain comes from a small subset of the commercial businesses on the Waterfront, and the preferential financial treatment for Measure D uses (to ensure their feasibility) places a higher burden on those uses.

- Recommendation:**      **The Harbor District is currently running on empty. There are insufficient scheduled revenues to pay for Harbor District operations (enforcement, administration and management of the waterway), to pay for services and amenities that are necessary for the visiting public (normal sanitation, public bathrooms, sidewalk maintenance, signage and roads), and to pay for the depreciation on the Tidelands Lease assets such as fixed piers and docks, buildings, lease site sea walls and revetments. The Chamber of Commerce recommends the following:**
- a. City should evaluate the cost allocation and fair market rents for the Tidelands Lease sites and ensure that, over time, they are comparable, and do not exceed market rates.**
  - b. The City should re-evaluate the decision to eliminate the Business Services position in the Harbor Department or outsource that function to a professional property management firm. It is believed that the increased efficiencies will lead to greater revenues and greater collections.**
  - c. The City should establish a paid parking program in and adjacent to the Waterfront on all City parking lots, and on-street parking. These revenues would pay for maintenance of the parking lots (currently paid for out of the Harbor Department or the Public Works budgets), street maintenance, sanitation, transit/trolley subsidy, and funding of capital improvements.**

- d. The City should evaluate the appropriate use and sources for Tidelands Lease revenues and determine which portion of the revenues should be reserved to maintain and improve the asset being leased, which portion is for “common area maintenance” such as Harbor operations and maintenance, and which portion is for base rent of the asset. The City should also establish a financing mechanism so that non-Tidelands Lease properties pay an equitable share of Waterfront area’s maintenance and operations through a Business Improvement District, Parcel Tax or other mechanism so that all properties contribute to such funding.**
  
- e. The City should consider whether or not it makes sense to create sub-funds for the lease facilities in the Measure D/CF zone district, and the remainder of the Waterfront. This would eliminate commingling reserve funds and treatment of each of these sub-areas as their own internal funds. Each geographic area is functionally and economically different.**
  
- f. The City should pro-actively time the lease sites so that they can be comprehensively redeveloped. Combining lease sites has economic, financial and administrative advantages. It also provides smaller tenants who may not be economically able to lease and redevelop a lease site with opportunities. It will also insulate the City and Harbor District from wide variations in lease revenues as individual properties sit vacant for months or years.**



**TO:** Eric Endersby, Harbor Director  
**CC:** Scott Collins, City Manager  
**FROM:** Chris F. Neumeyer, City Attorney  
**DATE:** May 5, 2020  
**RE:** Tidelands Lease Financing - City Policy and State Law

---

**I. Issue**

City of Morro Bay (“City”) policy limits the use of financing secured by Tidelands Trust Land (“TTL”) leasehold interests to reinvestment on the lease site (with some exceptions). What are options, consistent with State law, for broadening the current City policy on use by leaseholder of TTL leasehold interests as collateral for financing?

**II. Short Answer**

State law reasonably allows the use of leasehold interests as collateral for financing intended for investment within the TTL (i.e., not just at the leasehold, but also anywhere in the TTL).

To use leasehold interests as collateral for financing intended for investment *outside of the TTL* is contrary to State law as understood expressly by the State Lands Commission (“SLC”) and in principle by the State courts.

**III. General Background**

The City through a subcommittee of TTL stakeholders (“working group”) has reviewed and discussed possible revisions and updates to the Harbor Department Lease Management Policy.

One of the issues raised was relaxation of City restrictions on the uses of financing secured by TTL leasehold interests.

The current Harbor Department Lease Management Policy in Section V(T) (Lease Administration – Financial Criteria and Financing Consideration) states financing “related to or using the lease site, or leasehold interest as collateral” is limited to financing “for sole investment upon the lease site” and for “City-requested public improvements or benefits in the TTL.”

The working group sought legal counsel on what, if any, relaxation is lawfully permissible for the current City restrictions on financing using leasehold interests as collateral.

## **Tidelands Lease Financing - City Policy and**

### **State Law**

May 5, 2020

Page 2

#### **IV. Legal Background**

The California Constitution provides California's tidelands are held in trust by the State. (Cal. Const. art. X, § 3.) "Under the public trust doctrine, title to tidelands and lands under navigable waters are held in trust by the state for the benefit of the public." (*San Diego Cty. Archaeological Soc'y, Inc. v. Compadres* (1978), 81 Cal. App. 3d 923, 925.)

Those trust powers "may for a limited period be delegated to a municipality... but there always remains with the [s]tate the right to revoke those powers and exercise them in a more direct manner." (*Zack's, Inc. v. City of Sausalito* (2008), 165 Cal. App. 4th 1163, 1177.) State law allows for the lease (but not sale) of tidelands, subject to State grant limitations, the California Constitution, and State law. (Govt. Code §§ 37384-37387)

A tidelands grant by the State to a city is the sole source of that city's powers over the tidelands. (*Bd. of Port Comm'rs of City of Oakland v. Williams* (1937) 9 Cal. 2d 381, 387.)

The City holds the TTL under State trust grants from 1947, 1955, 1957 and 1960 ("TTL State Grants") to the County of San Luis Obispo ("County"), which were transferred from the County to the City in 1964.

As the trustee and successor-in-interest to the TTL, the City is bound by law to comply with the TTL State Grants from the State to the County.

Section 1(a) of the 1960 TTL State Grant (Chapter 70, California Statutes of 1960) provides the TTL shall be used "**only** for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and for recreational use, public park, parking, highway, playground, and business incidental thereto... and [City] may lease said lands ... for limited periods (but in no event exceeding 50 years), for purposes consistent with the trust upon which said lands are held by the State of California..." (Emphasis added.)

#### **V. Legal Analysis**

##### **A. TTL Lease Financing for TTL Investments**

The TTL Grant from 1960 limits the use of TTL leases to "purposes consistent with the trust," which include commerce, navigation and recreational use.

In 1967, the California Supreme Court held TTL uses are generally "within trust purposes when they are done for purposes of commerce, navigation, and fisheries for the benefit of all the people of the state." (*Colberg, Inc. v. State ex rel. Dep't of Pub. Works* (1967) 67 Cal. 2d 408, 417.)

## **Tidelands Lease Financing - City Policy and**

### **State Law**

May 5, 2020

Page 3

Encumbering a TTL lease with a loan to be used in *another area of the TTL*, would, by definition, reasonably continue to benefit the TTL (assuming the investment site in the TTL follows trust purposes), because the funding secured by the TTL lease would be used within the TTL.

### **B. TTL Lease Financing for Non-TTL Investments**

Whether TTL leases can be encumbered for use as collateral for loans to the leaseholder, for investment outside the TTL, has been addressed expressly by the States Land Commission, and in principle by the State courts.

Those opinions hold the City should not relax financing standards for TTL leases further than funding investments that remain in the TTL.

A good faith argument can be made there are some non-TTL uses of financing secured by TTL leases, which are consistent with TTL restrictions. However, until or unless the State Lands Commission or the courts expressly agree with such an argument, to incorporate such a stance into local policy would reasonably expose the City to claims the City is not acting as a proper trustee of the TTL.

#### **1. State Lands Commission**

The State Lands Commissions monitors sovereign land granted in trust by the California Legislature to local jurisdictions that generally consist of prime waterfront lands and coastal waters. Public Resources Code § 6301 provides in part “All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the [State Lands Commission].”

Recently, the SLC was expressly asked in writing, whether they endorse “tidelands leases to be encumbered and loan proceeds to improve property outside the tidelands grant.” On March 20, 2020, legal counsel for the SLC provided three reasons why the SLC does not endorse such a practice. (See Attachment No. 1, “SLC Letter”)

According to the SLC, disallowing such encumbrances “ensures that the lessee develops the Public Trust lands for trust uses, rather than leveraging value from trust lands to be applied to non-trust uses.” (SLC Letter, pg. 1.)

First, after analysis based on state law, the SLC concluded “it is difficult to find a benefit to the trust in allowing a leasehold to be encumbered and the proceeds used off-site for purposes unconnected to the trust.” (SLC Letter, pg. 2.)

Second, the SLC concludes “guidance given by the California courts” weighs against such a policy. “‘Proceeds’ of Public Trust lands are trust assets, subject to the use restrictions and purposes of the trust. (*City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 257—58.) Devoting proceeds to uses unconnected with the trust would result in an unconstitutional gift of public funds.

## Tidelands Lease Financing - City Policy and

### State Law

May 5, 2020

Page 4

*Morse* does not address the precise issue you raise, whether a lessee of trust lands may encumber its lease and use the loan proceeds for non-trust purposes. But **staff’s understanding is that because the loan proceeds would arise from a trust use on Public Trust lands, the loan proceeds are also restricted to trust uses.**” (SLC Letter, pg. 2.) (Emphasis added.)

Third, the SLC reminds the City to “also consider the granting statute under which the City holds its Public Trust lands...” (SLC Letter, pg. 2.)

### 2. Court Decisions

Review of relevant court decisions on whether state law permits the use of TTL leases as collateral for loans to be used for investment outside of the TTL did not yield a court decision specifically on point. However, the general principles enunciated in two seminal Supreme Court decisions on lawful use of the tidelands support the SLC position state law does not endorse a local policy of permitting encumbrances of TTL leases with loans to be used for non-TTL investments.

The Supreme Court in 1947 considered the issue of whether the City of Long Beach could lawfully use revenues from sale of oil and gas obtained from its tidelands trust lands for non-tidelands purposes. Long Beach argued the trust restriction applies only to the physical uses of the land. The Supreme Court held the trust grant not only restricts the physical uses of the trust lands, but also restricts the uses of revenues from the tidelands. (*City of Long Beach v. Morse* (1947) 31 Cal. 2d 254.)

The City of Long Beach in 1955 argued largely the same issue before the Supreme Court, but this time under a new state law and city charter amendment. The Supreme Court again held such a use of revenues from the tidelands was prohibited, including by the State Constitution, and that such use among other things was an unconstitutional gift of public funds. (*Mallon v. City of Long Beach* (1955) 44 Cal. 2d 199.)

The revenues at issue in the two Long Beach court cases are reasonably akin to financing secured by encumbrance of TTL leases. Both are the direct fruits of tideland’s use – one is mining, the other is the leveraging of a tidelands leasehold interest. As such, financing generated by the use of a TTL lease as collateral reasonably should be used only within the TTL, short of violating the purposes of the tidelands trust grant.

### 3. Contrary View

One could argue encumbering TTL leases for financing of investments outside of the tidelands – in circumstances shown (if possible) to expressly benefit the tidelands and consistent with the TTL State Grants – could be consistent with the purpose of the tideland’s trust. Even though the loaned funds would be used outside of the TTL, the underlying value of the lease site itself arguably would increase in value in some circumstances, if such a policy is adopted.

## Tidelands Lease Financing - City Policy and

### State Law

May 5, 2020

Page 5

In principle, more investment would be drawn to the lease site in the first place (thus benefiting the TTL), if the leaseholder knows investments in the lease site remain fungible through the potential for future encumbrances on the (now enhanced) lease site. Otherwise, an investor may not invest as much capital into a lease site, if that investment cannot be used as collateral for future non-TTL related loans. As the Supreme Court has observed, numerous modern demands and development “require that the state, in determining the means by which the general welfare is best to be served through the utilization of navigable waters held in trust for the public, should not be burdened with an outmoded classification favoring one mode of utilization over another.” (*Colberg, Inc. v. State ex rel. Dep't of Pub. Works* (1967), 67 Cal. 2d 408, 422, 432.)

Nevertheless, when “the propriety of a governmental reallocation of trust land from one public use to another is placed in question ... courts should ‘look with considerable skepticism upon any governmental conduct which is calculated ... to subject public uses to the self-interest of private parties.’” (*Zack's, Inc. v. City of Sausalito* (2008) 165 Cal. App. 4th 1163, 1176.) Furthermore, if proceeds from a loan secured by a TTL leasehold are allowed to be invested outside of the TTL for the benefit of the private party incurring the debt, then that would limit the future ability for that leasehold to be used to secure funding that would be invested in the TTL. In that case, such use of the TTL would not benefit the TTL or the public. And, it is vital to remember Section 1(a) of the 1960 TTL State Grant, cited above, requires TTL to be used **solely** for improvements to and maintenance and operation of the TTL or to enhance the public’s use of the TTL.

## VI. Conclusion

The TTL are governed by State law and are administered by the City, pursuant to grants from the State of California. The uses of the TTL are limited by State law and the grant language.

Consistent with those limitations, the City could reasonably relax existing TTL lease financing policies to allow for a loan, secured with a TTL lease, to be used outside of that lease site, but still within the TTL for another lease site or other benefits to the TTL or public’s use of the TTL.

However, to relax the policy even further to allow such loan proceeds to be used outside of the TTL, is inapposite to State law and is contrary to the opinion of the SLC. Such a relaxation would expose the City to claims the City is not adhering to the requirements of its tidelands grant trust.

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

**JENNIFER LUCCHESI, Executive Officer**  
**(916) 574-1800 Fax (916) 574-1810**  
*California Relay Service TDD Phone 1-800-735-2929*  
*from Voice Phone 1-800-735-2922*

**Contact Phone: (916) 574-2501**

March 20, 2020

File Ref: G 13-02

***delivered via email***

Chris F. Neumeyer  
*cneumeyer@awattorneys.com*  
Aleshire & Wynder, LLP

RE: City of Morro Bay, Encumbering Tidelands Leases

Dear Mr. Neumeyer,

This letter responds to your email inquiry about the legality and propriety of proposed amendments to the City of Morro Bay's tidelands leasing policy. As I understand it, a proposed amendment would allow tidelands leases to be encumbered and loan proceeds to be used to improve property outside the tidelands grant. Although I cannot give you or your client legal advice, I can describe the practice of California State Lands Commission (Commission) staff and its legal basis.

Commission staff do not endorse what you suggest. For many decades, staff objected to any encumbrance of the lands it leases. Recently, staff reexamined this practice in light of modern business financing. Some lessees were unable to secure financing to purchase or remodel a waterfront business if the lender was unable to ensure that it could also protect its interests. In these narrow circumstances, staff began recommending the Commission agree to encumber leases, but only where necessary, and only where the loans were used to purchase the business or were directly reinvested in the lease premises. This ensures that the lessee develops Public Trust lands for trust uses, rather than leveraging value from trust lands to be applied to non-trust uses. This practice arises from two interlocking legal concepts.

First are the fiduciary duties the Commission must keep foremost in mind when managing the state's Public Trust lands and administering residual oversight over legislatively-granted Public Trust lands. Public Resources Code Section 6009.1<sup>1</sup> lists

---

<sup>1</sup> Section 6009.1 prescribes fiduciary duties borne by local grantees of tidelands. But the Commission bears similar or identical duties, which arise from the physical and legal character of public trust lands and common trust principles. *Ward v. Mulford* (1867) 32 Cal. 365, 372 ["The land which the State holds by virtue of her sovereignty . . .

Neumeyer  
March 20, 2020  
Page 2

these duties, three of which apply most strongly here: the duty to administer the trust solely in the interest of the beneficiaries (i.e., the statewide public); the duty to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust; and the duty to keep the trust property separate from other property not subject to the trust. "[T]rustees normally hold title to the corpus of the trust in fee simple, but only for the purpose of carrying out the objects of the trust." (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 208.) To put it simply, the Commission must always ask and answer the question, what benefit does this action secure for the Public Trust? It is difficult to find a benefit to the trust in allowing a leasehold to be encumbered and the proceeds used off-site for purposes unconnected to the trust.

Second is the guidance given by California courts. "Proceeds" of Public Trust lands are trust assets, subject to the use restrictions and purposes of the trust. (*City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 257–58.) Devoting proceeds to uses unconnected with the trust would result in an unconstitutional gift of public funds. *Morse* does not address the precise issue you raise, whether a lessee of trust lands may encumber its lease and use the loan proceeds for non-trust purposes. But staff's understanding is that because the loan proceeds would arise from a trust use on Public Trust lands, the loan proceeds are also restricted to trust uses.

Finally, unlike the Commission, the City must also consider the granting statute under which the City holds its Public Trust lands,<sup>2</sup> which states that the granted lands shall be used for certain specified purposes or leased for "purposes consistent with the trust upon which said lands are held by the State of California, and with the requirements of commerce and navigation at said harbor." Using the lands as collateral unconnected to commerce or navigation is not among the specified uses. Because a lease is an interest in land and a lease encumbrance may also involve a conveyance of the property, the statutory grant itself could prohibit such a transaction.

I hope this guides you in your decision making. Please feel free to contact me or Reid Boggiano of our staff with further questions, and please keep us apprised of your decision in this matter.



Andrew Kershen  
Attorney, State Lands Commission

cc: Sheri Pemberton, Reid Boggiano (Commission)

---

. is held by the State in trust and for the benefit of the people."]; *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 208 [applying common trust principles to the public trust].

<sup>2</sup> Chapter 70, Statutes of 1960.

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

### **BACKGROUND**

Tracing back to English Common law the Public Trust Doctrine establishes that navigable water or lands subject to tidal influence are “sovereign”, held open to the public for commerce, fisheries or navigation. In 1942-44, the federal government constructed a revetment along the Morro Bay waterfront and filled most of the area now known as the commercial strip along the Embarcadero. The State of California claimed ownership of the newly created land as at least a portion of it had previously been below the high tide line. After many years of dispute with private property owners, who also claimed an interest in the land, most title issues were settled in the 1950s-1960s by designating those lands west of Embarcadero Road as public trust lands owned by the State, and those lands east of Embarcadero Road as privately owned. Attached is a map of the tidelands grant in Morro Bay.

In 1947, the State of California granted those public trust lands in Morro Bay to the County of San Luis Obispo. The City of Morro Bay assumed trusteeship of the granted lands upon incorporation in 1964-1965. The tidelands grant in Morro Bay is in perpetuity, provided the City conforms to the terms of the legislative grant. The granted lands must be used for commerce, fisheries, navigation, recreational purposes, parklands, public access, public parking and environmental protection or enhancement. Residential use of these public lands is specifically prohibited. The City may lease out these lands to private businesses for a period up to 50 years and all revenues from such leases must be expended within the area of the granted lands for the purposes of the public trust. Much of the granted lands were leased to established businesses in the 1960s on long-term leases that provided low rental rates in exchange for tenant investment in the business on the sites or settlement of previous land ownership or county lease disputes. Some of these old long-term leases have accrued significant “bonus” value to the benefit of the private party because waterfront property values have increased far in excess of the contractual rental return to the City.

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

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

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

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

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

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

## **GENERAL POLICY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SCHEDULE A**

**PERCENTAGE RENT FOR GROUND LEASES**

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

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

## SCHEDULE B

### PERCENTAGE RENT FOR BUILDING LEASES

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

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

This Page Intentionally Left Blank



AGENDA NO: C-2

MEETING DATE: May 12, 2020

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** May 6, 2020

**FROM:** Rob Livick, PE/PLS – City Engineer

**SUBJECT:** Adoption of Resolution No. 43-20 Approving the Engineer’s Report and Declaring the Intent to Levy the Annual Assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District

## **RECOMMENDATION**

Staff recommends City Council adopt Resolution No. 43-20 approving the Engineer’s Report and declaring the intent to levy the annual assessment for maintenance of the North Point Natural Area.

## **FISCAL IMPACT**

Based on the Engineer’s Report, which estimates the annual costs of maintaining the North Point Natural Area for the upcoming fiscal year, the fiscal impact is estimated at \$5,645. Those costs will be offset by the collection of an assessment for the same amount from the parcel owners in the North Point Subdivision.

The original formation of the assessment district in 1996 set the fixed assessment of \$564.50 per parcel or \$5,645 for the entire North Point Landscape Lighting Maintenance Assessment District. In 1997, the Consumer Price Index (CPI) was 160 and today (3/2020) the CPI is at 299. This has resulted in a drop in the purchasing power of the assessment district funds, but due to increased efficiency in the service delivery originally provided in district, the City has been able to maintain the facilities.

## **SUMMARY**

On April 14, 2020 City Council adopted Resolution No. 28-20, which initiated the proceedings to levy the annual assessment to fund the maintenance of the North Point Natural Area. Additionally, staff was directed to have an Engineer’s Report prepared, detailing the estimated annual assessment for the parcel owners for fiscal year 2020/21. Upon adoption of Resolution No. 43-20, the next and final step in the annual levy of assessment process is the public hearing after which the City Council orders the levy of assessment.

## **BACKGROUND/DISCUSSION**

As part of the annual assessment process, staff is required to provide an Engineer’s Report, which is an estimate of costs for maintenance of the North Point Natural Area. The cost estimates are based on the maintenance standards currently adhered to in existing parks within Morro Bay and included in the Flat Rate Manual for Parks Maintenance, as well as maintenance costs from the current fiscal year. The estimate for maintenance of the North Point Natural Area is \$5,645 or \$564.50 per parcel for fiscal year 2020/21.

Prepared By: <u>RL</u>	Dept. Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

Personnel costs, as well as supplies and services, have risen significantly in the last several years. However, due to the small acreage, natural landscaping, minimal street lighting, and little irrigation in the assessment district, the assessment amount collected is currently adequate to cover the costs of maintenance.

### **CONCLUSION**

The process for the annual levy of assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District requires the City Council to receive the Engineer's Report, approve and/or modify the report and adopt a Resolution of Intention. The Resolution of Intention gives notice of the time, date and place for a public hearing by the City Council on the issue of the levy of assessment. The public hearing has been set for the Regular City Council meeting on June 23, 2020 in the Veteran's Memorial Building, at which all interested parties will be afforded the opportunity to be heard either through written or oral communication. Upon completion of the public hearing on June 23, 2020, the City Council may adopt the resolution ordering the levy of the annual assessment.

### **ATTACHMENT**

1. Draft Resolution No. 43-20
2. North Point Landscaping and Lighting Maintenance Assessment District Engineer's Report

**RESOLUTION NO. 43-20**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
APPROVING THE ENGINEER'S REPORT AND DECLARING  
THE CITY'S INTENTION TO LEVY THE ANNUAL ASSESSMENT FOR THE  
MAINTENANCE OF THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE "LANDSCAPING AND  
LIGHTING ACT OF 1972" (STREETS AND HIGHWAYS SECTIONS 22500 ET SEQ.)**

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

**WHEREAS**, all property owners of the North Point subdivision requested the City of Morro Bay form a maintenance assessment district to fund the maintenance of the North Point Natural Area; and

**WHEREAS**, the Landscaping and Lighting Act of 1972, commencing with Streets and Highways Code section 22500 (the "Act") enables the City to form assessment districts for the purpose of maintaining public improvements; and

**WHEREAS**, pursuant to Section 22623 of the Act, the City Engineer has filed in the Office of the City Clerk, and submitted for review to the City Council, a report entitled "Engineers Report North Point Natural Area Landscaping and Lighting Maintenance Assessment," dated May 6, 2020, prepared in accordance with Article 4 of the Act, commencing with Section 22565 (the "Engineer's Report"); and

**WHEREAS**, pursuant to Section 22608.2 of the Act, the subdivider was required by City ordinance to install improvements for which an assessment district was required in order to assure continued and uninterrupted maintenance of the North Point Natural Area; and

**WHEREAS**, pursuant to the intent of Article XIII, Section 4, of the California Constitution, the property owners have elected to form the North Point Natural Area Landscaping and Lighting Maintenance Assessment District.

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

Section 1. The City Council approves the Engineer's Report.

Section 2. It is the intent of the Council to order the annual levy and collection of assessments for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District generally located as shown in Exhibit "A" attached hereto at a public hearing to be held at the Regular City Council meeting on June 23, 2020, in the Veteran's Memorial Building, 209 Surf Street, Morro Bay, CA.

Section 3. The improvements to be maintained at the North Point Natural Area are specified in the Engineer's Report dated May 6, 2020 which is hereby approved.

Section 4. The assessment upon assessable lots within the district is proposed to total \$5,645 or \$564.50 per assessable parcel for fiscal year 2020/21.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held this 12<sup>th</sup> of May 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

JOHN HEADDING, Mayor

ATTEST:

---

DANA SWANSON, City Clerk





**CITY OF MORRO BAY**

**NORTH POINT NATURAL AREA  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

**2020/21 ENGINEER'S ANNUAL LEVY REPORT**

**May 6, 2020**

*AFFIDAVIT FOR 2020/21 ENGINEER'S ANNUAL LEVY REPORT*

**CITY OF MORRO BAY**

**NORTH POINT NATURAL AREA  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

This report describes the proposed maintenance, improvements, budgets, zone of benefit and assessments to be levied on parcels of land within the North Point Natural Area Landscaping and Lighting Maintenance Assessment District for the fiscal year 2020/21, as the same existed at the time of the passage of the Resolution of Intention. Reference is hereby made to the San Luis Obispo County Assessor's maps for a detailed description of the lines and dimensions of parcels within the District. The undersigned respectfully submits the enclosed Report as directed by the City Council and, to the best of my knowledge, information, belief, the report, the assessments and diagrams have been prepared and computed in pursuant to the Landscaping and Lighting Act of 1972.

Dated this 6<sup>th</sup> of May, 2020



Rob Livick, PE/PLS – City Engineer



## Table of Contents

	<u>Page</u>
I. Overview	1
A. Introduction	
B. Assessment History and Current Legislation	
II. Description of the District	2
A. Improvements Authorized by the 1972 Act	
B. Maintenance Items	
III. Method of Apportionment	3
A. General	
B. Benefit Analysis	
C. Maintenance Tasks	
D. Maintenance Costs	
E. Apportionment of Assessment	
 Detailed Maintenance Task List	 Attachment A
 District Budget – Fiscal Year 2020/21	 Attachment B
 Parcel/Assessment Table	 Attachment C
 District Boundary Diagram	 Attachment D

## I. Overview

### A Introduction

The City Council of the City of Morro Bay (hereafter referred to as “City”), County of San Luis Obispo, State of California, previously formed and has levied and collected annual assessments for the district designated as:

#### NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

(hereafter referred to as “District”) pursuant to the provisions of the Landscaping and Lighting Act of 1972, being Part 2 of Division 15 of the California Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the “1972 Act”), and in compliance with the provisions of the California State Constitution Articles XIIC and XIID (hereafter referred to as the “Constitution” or “Proposition 218”).

This Report has been prepared in accordance with Chapter 1, Article 4 (commencing with Section 22565) of the 1972 Act and describes the District and changes to the District including: territories annexed; modifications to the improvements or organization; and the proposed budgets and assessments applicable for fiscal year 2020/21.

#### *History*

As a condition of approval for Tract No. 2110, the North Point subdivision, the developers were required to offer to the City for dedication Lot 11 of the subdivision for park purposes, and to construct improvements on Lot 11 including a paved parking area, a stairway providing access to the beach, benches, landscaping and irrigation, lighting, and other improvements. The subdivision was also conditioned to provide maintenance of the park by establishing an assessment district. Lot 11 of Tract No. 2110 is identified as the North Point Natural Area.

### B Assessment History and Current Legislation

In November 1996, California voters approved Proposition 218 that established specific requirements for the ongoing imposition of taxes, assessments and fees. The provisions of the Proposition are now contained in the California Constitutional Articles XIIC and XIID. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and in compliance with these provisions of the Constitution.

Pursuant to the Article XIID Section 5 of the Constitution, certain existing assessments were exempt from the substantive and procedural requirements of the Article XIID Section 4, and property owner balloting is not required until such time that a new or increased assessment is proposed. Specifically, the City determined that the annual assessments originally established for the North Point were imposed in accordance with a consent and waiver as part of the original development approval for the properties within these areas. As such, pursuant to Article XIID Section 5b, all the property owners approved the existing District assessments at the time the assessments were created (originally imposed pursuant to a 100% landowner petition). Therefore, the pre-existing assessments (the maximum assessment rates adopted prior to the passage of Proposition 218) for this district is exempt from the procedural requirements Article XIID Section 4. However, any new or increased assessment for the North Point Natural Area shall comply with

both the substantive and procedural requirements of Article XIID Section 4 before such assessments are imposed.

## **II. Description of the District**

### **A. Improvements Authorized by the 1972 Act**

As applicable or may be applicable to this proposed District, the 1972 Act defines improvements to mean one or any combination of the following:

- The installation or planting of landscaping.
- The installation or construction of statuary, fountains, and other ornamental structures and facilities
- The installation or construction of public lighting facilities.
- The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
- The maintenance or servicing, or both, of any of the foregoing.
- The acquisition of any existing improvement otherwise authorized pursuant to this section.

Incidental expenses associated with the improvements including, but not limited to:

- The cost of preparation of the report, including plans, specifications, estimates, diagram, and assessment;
- The costs of printing, advertising, and the publishing, posting and mailing of notices;
- Compensation payable to the County for collection of assessments;
- Compensation of any engineer or attorney employed to render services;
- Any other expenses incidental to the construction, installation, or maintenance and servicing of the improvements;
- Any expenses incidental to the issuance of bonds or notes pursuant to Section 22662.5.
- Costs associated with any elections held for the approval of a new or increased assessment.

The 1972 Act defines "Maintain" or "maintenance" to mean furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:

- Repair, removal, or replacement of all or any part of any improvement.
- Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
- The removal of trimmings, rubbish, debris, and other solid waste.
- The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

### **B. Maintenance Items**

A list of maintenance tasks required to maintain the North Point Natural Area in acceptable condition for public use was developed by the City Recreation and Parks Department based on maintenance standards established for existing parks within the City.

### **III. Method of Apportionment**

#### **A General**

This section of the Engineer's Report includes an explanation of the special benefits to be derived from the installation, maintenance and servicing of the improvements and the methodology used to apportion the total assessment to properties within the District.

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

“The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.”

The proceeds from the District are used to fund the maintenance and upkeep of public resources within the North Point development project for the special benefit of the properties located within the project. The continued maintenance and upkeep of these important items is a distinct and special benefit to properties within the District.

#### **B. Benefit Analysis**

Each of the proposed improvements, the associated costs and assessments have been carefully reviewed, identified and allocated based on special benefit pursuant to the provisions of the Constitution and 1972 Act. The improvements associated with the District have been identified as necessary, required and/or desired for the orderly development of the properties within the District to their full potential, consistent with the proposed development plans and applicable portions of the City General Plan and Local Coastal Plan as identified previously in this report. As such, these improvements would be necessary and required of individual property owners for the development of such properties, and the ongoing operation, servicing and maintenance of these improvements would be the financial obligation of those properties. Therefore, the improvements and the annual costs of ensuring the maintenance and operation of the improvements are of direct and special benefit to the properties. The method of apportionment (method of assessment) is based on the premise that each assessed parcel within the District receives special benefit from various improvements provided by the District. The desirability and security of properties is enhanced by the presence of local improvements in close proximity to those properties. The special benefits associated with landscaped improvements are specifically:

- Enhanced desirability of properties through association with the improvements.
- Improved aesthetic appeal of properties providing a positive representation of the area.
- Enhanced adaptation of the urban environment within the natural environment from adequate open space and landscaping.

#### **C. Maintenance Tasks**

A list of maintenance tasks required to maintain the North Point Natural Area in acceptable

condition for public use was developed by the Public Works Department based on maintenance standards established for existing parks within the City and is included in this report as Attachment A.

#### **D. Maintenance Costs**

The estimated annual cost of maintaining the North Point Natural Area was originally developed by the Recreation and Parks Department based on the tasks required and the City's Flat Rate Manual for Parks Maintenance. Annual maintenance is currently provided through contract services and is supplemented by City Public Works staff. Assessment district costs include labor, utilities, insurance, engineering services and depreciation/reserves. The annual cost of maintenance, including any reserves, for the 2020/21 fiscal year is estimated to be \$5,645, including reserve. The cost estimate is included in this report as Attachment B.

The original formation of the assessment district in 1996 set the fixed assessment of \$564.50 per parcel or \$5,645 for the entire North Point Landscape Lighting Maintenance Assessment District. In 1997, the Consumer Price Index (CPI) was 160 and today (3/2020) the CPI is at 299. This has resulted in a drop in the purchasing power of the assessment district funds, but due to increased efficiency in the service delivery originally provided in district, the City has been able to maintain the facilities at a minimal level.

#### **E. Apportionment of Assessment**

The total assessment for the District is apportioned to each of the ten residential lots equally. Lot 11, the North Point Natural Area; Lot 12, a private street; and Lot 13, an open space parcel granted to the State of California; are not assessed. Individual assessments are listed in Attachment C.

## Attachment A

### NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT MAINTENANCE TASKS

#### Routine Maintenance Tasks

- Review for vandalism/repair
- Pick-up – paper, trash, cigarette butts, etc
- Empty - trash receptacle(s)
- Clean - benches
- Inspect and maintain as necessary:
  - beach access stairway
  - bike rack
  - lights
  - natural area plantings

#### Weekly or as needed

- Blow paths, parking lot
- Monthly or as needed
- Check trees
- Check/repair sprinkler system
- Trim trees and bushes as needed
- Critical parts inspections

#### Annually or as needed

- Paint beach access stairway, public access signage
- New plantings (replacement)
- General safety inspection
- Annual tree pruning
- Remove graffiti
- Mow open space
- Pest/gopher control
- Trim and spray paths
- Repair public access signage

#### Operational Expenses

- Street Lighting
- Irrigation
- Refuse Service

## Attachment B

### NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

NAME: North Point Natural Area Landscaping and Lighting Maintenance Assessment District

DIAGRAM: Attached

PLANS AND SPECIFICATIONS: For a detailed description of the improvements, refer to the plans and specifications for Tract 2110 on file in the office of the City Engineer. No bonds or notes will be issued for this Maintenance Assessment District.

ESTIMATED COST OF MAINTENANCE: The following outlines the estimated budget for the maintenance of the North Point Natural Area for fiscal year 2020/21.

<b>TOTAL ASSESSMENT:</b>	<b>\$5,645.00</b>
<b>PER PARCEL YEARLY ASSESSMENT (10 parcels)</b>	<b>\$564.50</b>
<b>ACCUMULATION BALANCE (March 2020)</b>	<b>\$0</b>

# Budget Estimate

## FY 20-21 Budget Worksheet

City of Morro Bay		Account Description	2018 Actual Amount	2019 Actual Amount	2020 Actual Amount as of 3/31/20	2021 Level 1 Comments
<b>Fund: 565 - North Point Assessment</b>						
<b>REVENUE</b>						
300-Rev Taxes - Revenues From Taxes						
Property Tax Special Assess						
Account Classification Total: 300-Rev Taxes - Revenues From Taxes			5,645,000	5,645,000	3,672,250	5,645,000
Department Total: 6162 - North Point Park			5,645,000	5,645,000	3,672,250	5,645,000
<b>EXPENSES</b>						
Department: 6162 - North Point Park						
10-Personnel - Personnel Services						
565-6162 4110 Regular Pay			0.0000	4,835,0800	3,586,6400	1,300,0000
565-6162 4515 Standby Pay			0.0000	172,1400	119,2800	0.0000
565-6162 4910 Employer Paid Benefits			0.0000	1,686,4400	1,283,9800	900,0000
565-6162 4911 Pension Normal Cost			0.0000	483,5900	369,3600	440,0000
Account Classification Total: 10-Personnel - Personnel Services			0.0000	\$7,177.25	\$5,361.26	\$2,640.00
60-Supplies - Supplies						
500-6162 5199 Miscellaneous Operating Supplies			142,7700	0.0000	0.0000	0.0000
500-6162 5501 Grounds Maintenance Supplies			796,2300	97,1400	0.0000	0.0000
Account Classification Total: 60-Supplies - Supplies			\$939.00	\$97.14	\$0.00	\$0.00
70-Services - Services						
500-6162 6106 Contractual Services			0.0000	710,8400	0.0000	0.0000
500-6162 6300 Utilities - Water			2,920,9000	231,8500	0.0000	500,0000
500-6162 6301 Electricity			0.0000	0.0000	80,9100	300,0000
500-6162 6305 Disposal			0.0000	2,350,8800	1,717,1700	1,500,0000
Account Classification Total: 70-Services - Services			\$2,920.90	\$3,293.57	\$1,798.08	\$2,300.00
Department Total: 6162 - North Point Park			\$3,859.90	\$10,567.96	\$7,159.34	\$4,940.00
100-Interfund - Interfund Transactions						
500-7710 8501 Transfers Out- Cost Allocation Plan			0.0000	0.0000	322,5000	704,9100
Account Classification Total: 100-Interfund - Interfund Transfers			\$0.00	\$0.00	\$322.50	\$704.91
Department Total: 7710 - Interfund Transactions			\$0.00	\$0.00	\$322.50	\$704.91
Department Total: 6162 - North Point Park			\$3,859.90	\$10,567.96	\$7,481.84	\$5,644.91
EXPENSES Total			\$3,859.90	\$10,567.96	\$7,481.84	\$5,644.91
Fund REVENUE Total: 565 - North Point Assessment			\$3,859.90	\$10,567.96	\$7,481.84	\$5,644.91
Fund EXPENSE Total: 565 - North Point Assessment			(\$3,859.90)	(\$10,567.96)	(\$7,481.84)	(\$5,644.91)
Fund Total: 565 - North Point Assessment			\$5,645.00	\$5,645.00	\$3,672.25	\$5,645.00
REVENUE GRAND Totals:			(\$3,859.90)	(\$10,567.96)	(\$7,481.84)	(\$5,644.91)
EXPENSE GRAND Totals:			\$1,785.10	(\$4,922.96)	(\$3,809.59)	\$0.09
Grand Totals:						

**Attachment C**

**PARCEL/ASSESSMENT TABLE**

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
1	065-082-10	\$564.50
2	065-082-11	\$564.50
3	065-082-12	\$564.50
4	065-082-13	\$564.50
5	065-082-14	\$564.50
6	065-082-15	\$564.50
7	065-082-16	\$564.50
8	065-082-17	\$564.50
9	065-082-18	\$564.50
10	065-082-19	\$564.50
11	065-082-20	\$ 0.00
12	065-082-21	\$ 0.00
13	065-082-22	\$ 0.00



This Page Intentionally Left Blank



**AGENDA NO: C-3**

**MEETING DATE: May 12, 2020**

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: May 5, 2020**

**FROM: Rob Livick, PE/PLS – City Engineer**

**SUBJECT: Adoption of Resolution No. 44-20 Approving the Engineer’s Report and Declaring the Intent to Levy the Annual Assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District**

## **RECOMMENDATION**

Staff recommends City Council adopt Resolution No. 44-20 declaring the intent to levy the annual assessment for the maintenance of the Cloisters Park and Open Space for fiscal year 2020/21 and approving the Engineer’s Report.

## **FISCAL IMPACT**

Based on the Engineer’s Report, which estimates the annual costs of maintaining the Cloisters Park and Open Space for the upcoming year, the maximum fiscal impact is \$148,944. Those costs will be offset by the collection of an assessment for the same amount from the parcel owners in the Cloisters Subdivision. This includes the current proposed City budget action of assigning the equivalent of one FTE position specifically for Cloisters maintenance.

The original formation of the assessment district in 1996 set the fixed assessment of \$148,944 (or \$1,241.20 per assessed parcel) for the entire Cloisters Landscape Lighting Maintenance Assessment District. In 1996, the Consumer Price Index (CPI) was 157 and today (3/2020) the CPI is at 299. This has resulted in a drop in the purchasing power of the assessment district funds, but due to increased efficiency in the service delivery originally provided in district, the City has been able to maintain the facilities and accrue an accumulation.

## **BACKGROUND/DISCUSSION**

On April 14, 2020, City Council adopted Resolution No. 27-20, which initiated the proceedings to levy the annual assessment to fund the maintenance of the Cloisters Park and Open Space. As ordered by the Council and required by law, an Engineer’s Report has been prepared detailing the estimated annual assessment for the parcel owners for fiscal year 2018/19 and expenditures for the District. Staff intends to continue to outsource certain maintenance tasks within the Assessment District, which may redistribute the expenditure estimates. Upon adoption of Resolution No. 44-20, the next and final step in the annual levy of assessment process is the public hearing after which City Council orders the levy of assessment.

### **A. History of Cloisters Development**

Tract 1996, known as the Cloisters development, is a 124-lot subdivision bounded by State Highway One at the east, Atascadero State Beach at the west, Morro Bay High School at the south,

Prepared By: <u>rl</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

and Azure, Coral, and San Jacinto Streets at the north.

As understood since the inception of the Cloisters development, any development at the Cloisters was going to require a balance between continuation of lateral and vertical access within and through the property, while at the same time conserving the sensitive plant and wildlife resources present.

Zoning on most of the Cloisters site is Planned Development, Single-Family Residential with the sand dunes and wetlands zoned Environmentally Sensitive Habitat (ESH). The purpose of the Planned Development (PD) overlay zone is to provide for detailed and substantial analysis of development on parcels, which because of location, size or public ownership, warrant special review. That overlay zone was also intended to allow for the modification of, or exemption from, the development standards of the primary zone, which would otherwise apply if such action would result in better design or other public benefit.

On September 23, 1996, City Council passed Resolution No. 69-96, which accepted the final map for Tract 1996 known as the Cloisters Subdivision, consisting of 124 lots. Lots 1 through 120 were for single-family residential purposes, Lots 121, 122 (APN 065-386-005 & 016 on attached Assessor's Map) were for the 27.75-acre park and open space, Lot 124 was dedicated for a fire station and Lot 123 was offered to the state.

### **B. Unique Findings and Conditions of Approval for 1996 Cloisters Development**

The findings and conditions of approval for the project were numerous. For example, City Council made findings the Cloisters project could cause significant environmental impacts relating to land use, visual/aesthetics, affordable housing, traffic generation, air quality noise, geology, drainage and water quality, ecological resources, and public services; but those impacts were mitigated by the recommended conditions.

In addition, so long as the environmental impacts were mitigated, City Council made further findings the Cloisters project was in compliance with the specific policies of the General Plan/Land Use Plan (GP/LUP) and Zoning Ordinance with respect to protection of views, environmentally sensitive resources, public access, circulation, hazards and other requirements.

Finally, City Council made other findings the Cloisters project complies with the Morro Bay Municipal Code (MBMC) with respect to optional subdivision design and related improvements, and the optional design is justified in order to contribute to a better community environment through:

1. the dedication of extensive public areas,
2. restoration of the ESH area,
3. provision of scenic easements,
4. provision of larger than usual lots adjacent to such areas, and
5. maintenance of a consistent lot layout pattern adjacent to existing development on the north side of Azure Street.

### **C. A Requirement of 1996 Conditions of Approval was an Assessment District**

In order to mitigate the environmental impacts of the project, and to provide a greater than public benefit as required in a PD overlay zone, the conditions of approval for the project required the applicant to form an assessment district for the maintenance of:

1. the public park,
2. bicycle pathway,

3. right-of-way landscaping,
4. coastal access ways,
5. ESH restoration areas and
6. any other improved common areas to be privately held or dedicated to the City.

The public park area, as well as all open space improvements and the assessment district, were part of many detailed discussions during City and Coastal Commission hearings.

The assessment district formation proceedings began in August 1996, with all of the owners of the real property within the proposed district petitioning the City and consenting in writing to the formation of the district pursuant to the Landscape and Lighting Act of 1972. The assessment district formation proceedings concluded with the final public hearing for formation on September 23, 1996, which levied the annual assessment of \$148,944 for the maintenance of the 27.75 acres of park and open space.

#### **D. Notice of Assessment District and Special Benefits**

In preparing the various purchase and sale documents for each individual lot, including the Conditions, Covenants, and Restrictions, the developer was especially careful to call out the existence of the assessment district and to make certain the existence of the assessment district would not come as a surprise to anyone who purchased one of the lots. The Developer assured the City "There will be no surprises to prospective owners about the assessments or their amounts."

In drafting all the project documents, the City and the developer reinforced the special benefits for the residents of the Cloisters Project with the public amenities and easements.

Each Cloister's lot directly benefits from the public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration areas and coastal access ways.

There was also created and reserved in favor of each owner in the Cloisters Development, Conservation Space in parcels 065-386-005 & 0065-386-016, and a Scenic Conservation Easement in parcel 065-386-020 for view, open space, scenic, passive recreation and coastal access, none of which will be developed with any improvements or structures, unless necessary and proper for the restoration and maintenance of the Environmentally Sensitive Habitat Area.

#### **CONCLUSION**

The process for the annual levy of assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District requires the City Council receive the Engineer's Report, approve and/or modify the report and adopt a Resolution of Intention. The Resolution of Intention gives notice of the time, date and place for a public hearing by the City Council on the issue of the levy of assessment. The public hearing has been set for June 23, 2020, at the Veterans' Memorial Building. A summary of the Resolution of Intention shall be published in the newspaper as a legal notice of public hearing, to which all interested parties are afforded the opportunity to be heard either through written or oral communication. Upon completion of the public hearing on June 23, 2020, the City Council may adopt the resolution ordering the levy of the annual assessment.

#### **ATTACHMENTS**

1. Draft City Council Resolution No. 44-20
2. Engineer's Report

**RESOLUTION NO. 44-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
DECLARING THE CITY'S INTENTION TO LEVY THE ANNUAL ASSESSMENT FOR  
CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT  
PURSUANT TO THE "LANDSCAPING AND LIGHTING ACT OF 1972" (STREETS AND  
HIGHWAYS SECTIONS 22500 ET.SEQ.)**

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

**WHEREAS**, all property owners of the Cloisters subdivision requested the City of Morro Bay form a maintenance assessment district to fund the maintenance of the Cloisters Park and Open Space; and

**WHEREAS**, the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 et. seq.) (the "Act") enables the City to form assessment districts for the purpose of maintaining public improvements; and

**WHEREAS**, pursuant to Section 22623 of the Act, the City Engineer has filed in the Office of the City Clerk, and submitted for review to the City Council, a report entitled "Engineer's Report - Cloisters Landscaping and Lighting Maintenance Assessment District", dated May 5, 2020, prepared in accordance with Article 4 of the Act, commencing with Section 22565; and

**WHEREAS**, pursuant to Section 22608.2 of the Act, the subdivider was required by City Ordinance to install improvements for which an assessment district was required to assure continued and uninterrupted maintenance of the Cloisters Park and Open Space; and

**WHEREAS**, pursuant to the intent of Article XIII, Section 4, of the California Constitution, the property owners have elected to form the Cloisters Landscaping and Lighting Maintenance Assessment District.

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

Section 1. The City Council approves the Engineer's Report.

Section 2. It is the intent of the Council to order the annual levy and collection of assessments for the Cloisters Landscaping and Lighting Maintenance Assessment District at a public hearing to be held at the Regular City Council Meeting on June 23, 2020, at or about 1730, in the Veteran's Memorial Building, 209 Surf Street, Morro Bay, CA.

Section 3. The improvements to be maintained at the Cloisters Park and Open Space are specified in the Engineer's Report dated May 5, 2020, which is hereby approved.

Section 4. The assessment upon assessable lots within the district is proposed to total \$148,944 or \$1,241.20 per assessable parcel for Fiscal Year 2020/21.

Section 5. Staff is directed to continue the Major Maintenance/Capital Improvement Program that will address items requiring significant expenditures in FY 2020/21. Any, projects

identified with input from the community and shall be approved through the budget process by the City Council prior to implementation.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting held on this 12<sup>th</sup> day of May 2020 by the following roll call vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

JOHN HEADDING, Mayor

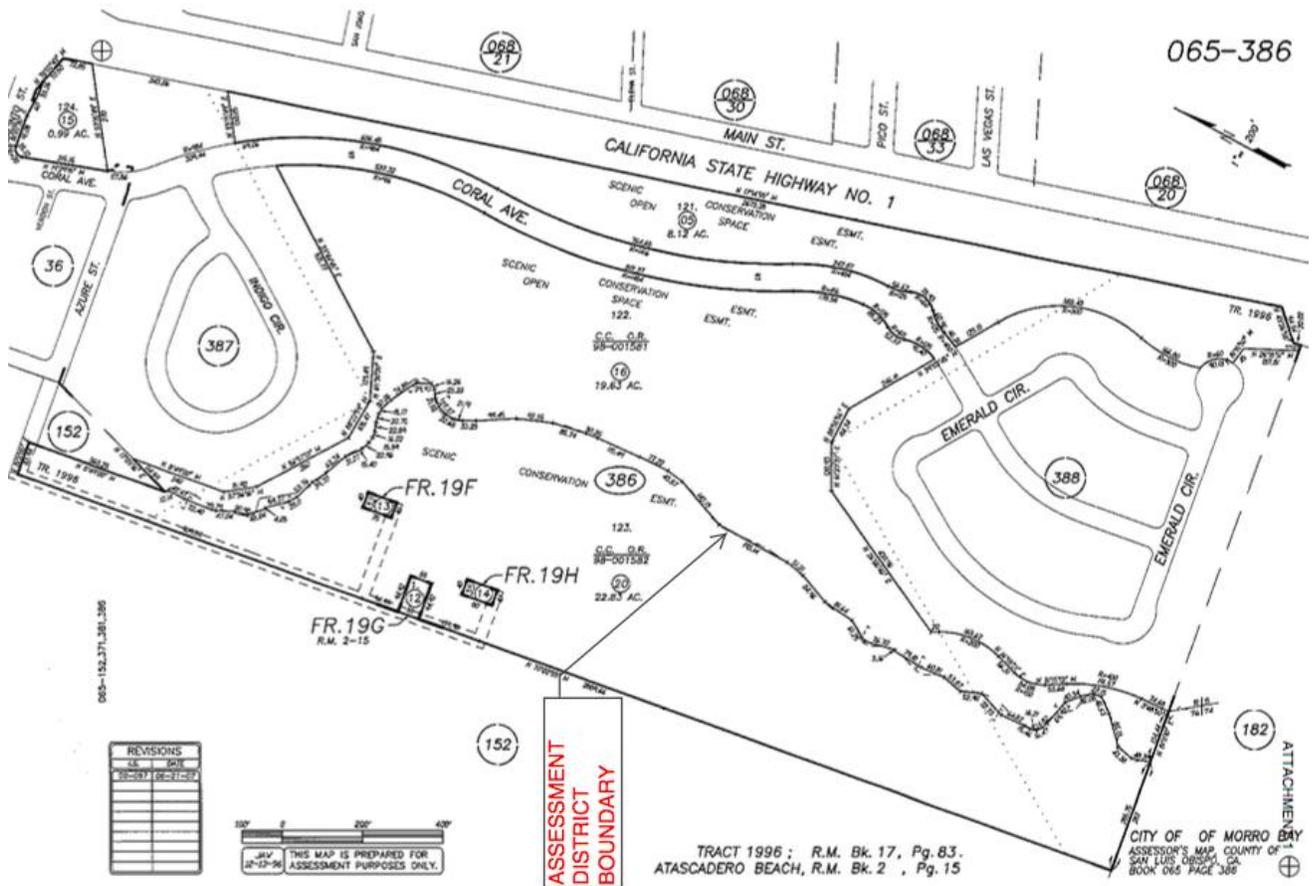
ATTEST:

---

DANA SWANSON, City Clerk

EXHIBIT A  
 CLOISTERS  
 LANDSCAPING AND LIGHTING  
 MAINTENANCE ASSESSMENT DISTRICT  
 DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the 1972 Act and, by reference, are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.





**CITY OF MORRO BAY**

**CLOISTERS  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

**2020/2021 ENGINEER'S ANNUAL LEVY REPORT**

**May 5, 2020**

*AFFIDAVIT FOR 2019/20 ENGINEER'S ANNUAL LEVY REPORT*

**CITY OF MORRO BAY**

**CLOISTERS  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

This report describes the proposed maintenance, improvements, budgets, zone of benefit and assessments to be levied on parcels of land within the Cloisters Landscaping and Lighting Maintenance Assessment District for the fiscal year 2020/2021, as the same existed at the time of the passage of the Resolution of Intention. Reference is hereby made to the San Luis Obispo County Assessor's maps for a detailed description of the lines and dimensions of parcels within the District. The undersigned respectfully submits the enclosed Report as directed by the City Council and, to the best of my knowledge, information, belief, the report, the assessments and diagrams have been prepared and computed in pursuant to the Landscaping and Lighting Act of 1972.

Dated this 5<sup>th</sup> day of May, 2020



Rob Livick, PE/PLS – City Engineer



**CITY OF MORRO BAY**

**CLOISTERS**

**LANDSCAPING AND LIGHTING**

**MAINTENANCE ASSESSMENT DISTRICT**

**ENGINEER’S REPORT**

**Table of Contents**

	<u>Page</u>
I. Overview .....	1
A. Introduction .....	1
B. Assessment History and Current Legislation .....	2
II. Description of the District .....	4
A. Improvements Authorized by the 1972 Act .....	4
B. Maintenance Items .....	4
III. Method of Apportionment .....	6
A. General .....	6
B. Benefit Analysis .....	6
C. Maintenance Tasks .....	7
D. Maintenance Costs .....	7
E. Apportionment of Assessment .....	7
Detailed Maintenance Tasks .....	Attachment A
District Budget - Fiscal Year 2020/2021 .....	Attachment B
Parcel/Assessment Table .....	Attachment C
District Boundary Diagram .....	Attachment D

## I. Overview

### A. Introduction

The City Council of the City of Morro Bay (hereafter referred to as “City”), County of San Luis Obispo, State of California, previously formed and has levied and collected annual assessments for the district designated as:

#### CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

(hereafter referred to as “District”) pursuant to the provisions of the Landscaping and Lighting Act of 1972, being Part 2 of Division 15 of the California Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the “1972 Act”), and in compliance with the provisions of the California State Constitution Articles XIIC and XIID (hereafter referred to as the “Constitution” or “Proposition 218”).

This Report has been prepared in accordance with Chapter 1, Article 4 (commencing with Section 22565) of the 1972 Act and describes the District and changes to the District including: territories annexed; modifications to the improvements or organization; and the proposed budgets and assessments applicable for fiscal year 2020/2021.

#### Project History

Tract 1996, known as the Cloisters development, is a 124 lot subdivision bounded by State Highway One at the east, Atascadero State Beach at the west, Morro Bay High School at the south, and Azure, Coral, and San Jacinto Streets at the north (the “Cloisters”).

The Cloisters, prior to development, was a privately owned 80-plus acre expanse of open land. The property was historically used for lateral and vertical access and contained a large area of sensitive sand dunes abutting the eastern edge of Atascadero State Beach. Over the years, it was the subject of various land development proposals including an RV park, a 390-unit condominium development, a 466-unit single family residential development, a 455-unit mixed residential development, and a 213-unit residential development. The City approved none of these development proposals.

It was well known that any development at the Cloisters was going to require a balance between continuation of lateral and vertical access within and through the property, while at the same time conserving the sensitive plant and wildlife resources present. In addition, the negative impacts of development on the site would have to be sufficiently offset by public resources and public amenities from the site.

Zoning on most of the Cloisters site is Planned Development, Single-Family Residential with the sand dunes and wetlands zoned Environmentally Sensitive Habitat (ESH). The purpose of the Planned Development (PD) overlay zone is to provide for detailed and substantial analysis of development on parcels, which because of location, size or public ownership, warrant special review. This overlay zone is also intended to allow for the modification of, or exemption from,

the development standards of the primary zone which would otherwise apply if such action would result in better design or other public benefit.

On September 23, 1996, the City Council passed Resolution No. 69-96, which accepted the final map for Tract 1996, known as the Cloisters Subdivision, consisting of 124 lots. Lots 1 through 120 were for single-family residential purposes; Lots 121,122 and 124<sup>1</sup> (dedicated for a fire station) were offered to the City subject to the completion of the public improvements; and Lot 123 was offered to the State.

The findings and conditions of approval for the project were numerous. For example, the City Council made findings that the Cloisters project could cause significant environmental impacts relating to land use, visual/aesthetics, affordable housing, traffic generation, air quality, noise, geology, drainage and water quality, ecological resources, and public services; but that these impacts could be mitigated by the recommended conditions. In addition, the City Council made further findings that the Cloisters project was in compliance with the specific policies of the General Plan/Local Coastal Plan (GP/LCP) and zoning ordinance with respect to protection of views, environmentally sensitive resources, public access, circulation, hazards and other requirements so long as the environmental impacts were mitigated. Finally, the City Council made further findings that the Cloisters project complied with MBMC with respect to optional subdivision design and related improvements, and that the optional design was justified in order to contribute to a better community environment through the dedication of extensive public areas, restoration of the ESH area, provision of scenic easements, and provision of larger than usual lots adjacent to such areas, and maintenance of a consistent lot layout pattern adjacent to existing development on the north side of Azure Street.

In order to mitigate the environmental impacts of the project and to provide a greater public benefit as required in a PD overlay zone, the conditions of approval for the project required the applicant to form an assessment district for the maintenance of the public park, bicycle pathway, right of way landscaping, coastal access ways, ESH restoration areas and any other improved common areas to be privately held or dedicated to the City. The public park area, as well as all open space improvements and the assessment district were part of many detailed discussions during each City and Coastal Commission hearing. Without this Condition of Approval and the creation of the assessment district, the project would not have been approved and there would not be a Cloisters Development.

## **B. Assessment History and Current Legislation**

In November 1996, California voters approved Proposition 218 that established specific requirements for the ongoing imposition of taxes, assessments and fees. The provisions of the Proposition are now contained in the California Constitutional Articles XIII C and XIII D. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and in compliance with these provisions of the Constitution.

---

<sup>1</sup> Lot 124 of the Cloisters Subdivision (Tract 1996) has been sold and is going through the entitlement process for development of several single-family homes, which will be annexed to the District. As a result, the assessment per lot will be adjusted.

Pursuant to the Article XIID Section 5 of the Constitution, certain existing assessments were exempt from the substantive and procedural requirements of the Article XIID Section 4, and property owner balloting is not required until such time that a new or increased assessment is proposed. Specifically, the City determined that the annual assessments originally established for the Cloisters were imposed in accordance with a consent and waiver as part of the original development approval for the properties within these areas. As such, pursuant to Article XIID Section 5b, all the property owners approved the existing District assessments at the time the assessments were created (originally imposed pursuant to a 100% landowner petition). Therefore, the pre-existing assessments (the maximum assessment rates adopted prior to the passage of Proposition 218) for this district is exempt from the procedural requirements Article XIID Section 4. However, any new or increased assessment for the Cloisters shall comply with both the substantive and procedural requirements of Article XIID Section 4 before such assessments are imposed.

The assessment district formation proceedings began in August 1996, and concluded with the final public hearing on September 23, 1996 for formation of the District pursuant to the 1972 Act. This formation led to the annual assessment levy of \$148,944 (the "Assessment") for the maintenance of the thirty-four (34) acres of public resource lands including open space and natural lands, wetland area and pond used for drainage mitigation for homes constructed in Cloisters, median landscaping, trees, a neighborhood park and recreation area, fencing and other public improvements. The maximum assessment rates that existed and were adopted in fiscal year 1996/1997 did not include the assessment range formulae (inflationary adjustment) for their maximum assessment rates and therefore will remain static unless those being assessed vote to increase the assessments. Refer to section III D – "Maintenance Costs" for an analysis of the decision to not include an inflationary adjustment in the formulae.

In preparing the various purchase and sale documents for each individual lot, including the Conditions, Covenants, and Restrictions, the owners and developer called out the existence of the assessment district and to make certain that the existence of assessment district was disclosed to anyone who purchased one of these lots. In drafting all the project documents, the City and the developer reinforced the special benefits for the residents of the Cloisters Project from the public amenities and easements maintained by the assessment.

## II. Description of the District

### A. Improvements Authorized by the 1972 Act

As applicable or may be applicable to this proposed District, the 1972 Act defines improvements to mean one or any combination of the following:

- the installation or planting of landscaping
- the installation or construction of statuary, fountains, and other ornamental structures and facilities
- the installation or construction of public lighting facilities
- the installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities
- the maintenance or servicing, or both, of any of the foregoing
- the acquisition of any existing improvement otherwise authorized pursuant to this section.

Incidental expenses associated with the improvements including, but not limited to:

- the cost of preparation of the report, including plans, specifications, estimates, diagram, and assessment
- the costs of printing, advertising, and the publishing, posting and mailing of notices
- compensation payable to the County for collection of assessments
- compensation of any engineer or attorney employed to render services
- any other expenses incidental to the construction, installation, or maintenance and servicing of the improvements
- any expenses incidental to the issuance of bonds or notes pursuant to Section 22662.5<sup>2</sup>
- costs associated with any elections held for the approval of a new or increased assessment.

The 1972 Act defines "Maintain" or "maintenance" to mean furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:

- repair, removal, or replacement of all or any part of any improvement
- providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury
- the removal of trimmings, rubbish, debris, and other solid waste
- the cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

### B. Maintenance Items

The ongoing maintenance for the District, and the costs thereof, paid from the levy of the annual assessments, are generally described below.

---

<sup>2</sup> There is no existing bond debt nor is any anticipated at this time.

Replacement, maintenance and servicing of improvements include, but are not limited to, turf, ground cover, shrubs, trees, other landscaping, irrigation systems, fencing, signage, trails, walkways, recreation facilities, lighting, restroom facilities, parking and all necessary appurtenances, and labor, materials, supplies, utilities and equipment. The public resources maintained by the assessments from the District are further summarized as follows:

- Parkland: 4 Acres
- Open space meadow and natural land: 18.15 Acres
- Wetland: 5.5 Acres
- Medians and parkways within the public rights-of-way: 1.6 Acres

Within those areas, the following items are maintained through the levy of assessments:

**1. Landscaping**

- a. Turf
- b. Planted medians
- c. Planter beds (formerly demonstration garden)
- d. Drainage systems, including gabion channels
- e. Irrigation system (spray and drip)
- f. Scrub/meadow plantings
- g. Trees & shrubs along the sound wall
- h. Willows
- i. Wetland area plantings and pond

**2. Hardscaping**

- a. Asphalt path system
- b. Concrete walkways
- c. Parking lot
- d. Decomposed granite paths
- e. Play area surfacing
- f. Bridge on City owned property

**3. Facilities and miscellaneous**

- a. Barbeques
- b. Bike rack
- c. Benches
- d. Directional signs
- e. Drinking fountains
- f. Fences:
  - i. 6' and 3' solid – Bike Path and Fire Access Fencing
  - ii. Habitat Area (ESHA) fencing and keep out signs
- g. Interpretive panels
- h. Light bollards
- i. Monuments with lights
- j. Observation pier at pond
- k. Picnic tables
- l. Play equipment and sand lot
- m. Restroom
- n. Sound wall
- o. Trash cans

### **III. Method of Apportionment**

#### **A. General**

This section of the Engineer's Report includes an explanation of the special benefits to be derived from the installation, maintenance and servicing of the improvements and the methodology used to apportion the total assessment to properties within the District.

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

“The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.”

The proceeds from the District are used to fund the maintenance and upkeep of public resources within the Cloisters development project for the special benefit of the properties located within the project. The continued maintenance and upkeep of these important items is a distinct and special benefit to properties within the District.

Easements were created and reserved in favor of each owner in the Cloisters Development for view, open space, scenic, passive recreation and coastal access across the entirety of Lots 121, 122 and 123; these lots shall not be developed with any improvements or structures unless necessary and proper for the restoration and maintenance of the ESHA. This is another distinct and special benefit conferred on property within the District.

#### **B. Benefit Analysis**

Each of the proposed improvements, the associated costs and assessments have been carefully reviewed, identified and allocated based on special benefit pursuant to the provisions of the Constitution and 1972 Act. The improvements associated with the District have been identified as necessary, required and/or desired for the orderly development of the properties within the District to their full potential, consistent with the proposed development plans and applicable portions of the City GP/LCP as identified previously in this report. As such, these improvements would be necessary and required of individual property owners for the development of such properties, and the ongoing operation, servicing and maintenance of these improvements would be the financial obligation of those properties. Therefore, the improvements and the annual costs of ensuring the maintenance and operation of the improvements are of direct and special benefit to the properties. The method of apportionment (method of assessment) is based on the premise that each assessed parcel within the District receives special benefit from various improvements provided by the District. The desirability and security of properties is enhanced by the presence of local improvements in close proximity to those properties. The special benefits associated

with landscaped improvements are specifically:

- enhanced desirability of properties through association with the improvements
- improved aesthetic appeal of properties providing a positive representation of the area
- enhanced adaptation of the urban environment within the natural environment from adequate green space and landscaping.

### **C. Maintenance Tasks**

A list of maintenance tasks required to maintain the District in acceptable condition for public use was originally developed based on maintenance standards established for existing parks within the City and is included in this report as Attachment A. The list has since been divided into Janitorial and Landscaping Maintenance Tasks, with an additional section for Deferred Maintenance Tasks/Capital Replacement Projects.

While the purchasing power of the assessments has severely eroded since formation of the district, the City has worked efficiently to provide the necessary maintenance and still accumulate a modest reserve to serve as a buffer should the County fail to collect the full assessment; and for the repair and replacement of the improvements maintained by the district

### **D. Maintenance Costs**

The estimated annual cost of maintaining the District was originally developed by the Recreation and Parks Department based on the tasks required and the City's Flat Rate Manual for Parks Maintenance and appeared to be a conservative estimate. District costs include labor, utilities, insurance, engineering services and depreciation/reserves. The annual cost of maintenance for the 2020/21 fiscal year is estimated to be \$148,839. The cost estimate is included in this report as Attachment B. This estimate reflects a transfer to the City's General Fund in the amount of 11,362.05<sup>3</sup> for allocation of costs not directly charged to the District. This Cost Allocation Plan (CAP) includes, but is not limited to, costs for: accounting, management oversight, and general City overhead. This allocation was approved when City Council adopted Master Fee Schedule of which the CAP was a

The original formation of the assessment district in 1996 set the fixed assessment of \$148,944 (or \$1,241.20 per assessed parcel) for the entire Cloisters Landscape Lighting Maintenance Assessment District. In 1996, the Consumer Price Index (CPI) was 157 and today (3/2020) the CPI is at 299. This has resulted in a drop in the purchasing power of the assessment district funds, but due to increased efficiency in the service delivery originally provided in district, the City has been able to maintain the facilities and accrue an accumulation.

### **E. Apportionment of Assessment**

The total assessment for the District is apportioned equally to each of the one hundred and twenty residential lots. Lots 121 and 122 (Parcel 1) Cloisters Park and Open Space, Lot 124 (dedicated for a fire station, declared as surplus by the City and sold - currently vacant, but new

---

<sup>3</sup> FY 2019/20 CAP costs were \$10,821

owner is going through the entitlement process to develop several single-family homes) and Lot 123 (now Parcel 2) offered to the State are not assessed. Individual assessments are listed in the table shown in Attachment C.

## Attachment A

### CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

#### TYPICAL MAINTENANCE TASKS

Task	Weekly	Twice Weekly	Monthly	Twice Annually	Annually	As Needed
<b>I <i>Turf Maintenance</i></b>						
Mow						XX
Edge/Trim						XX
Fertilize				XX		XX
Aerate/Seed				XX		XX
<b>II <i>Other Landscape Maint.</i></b>						
Prune plants/shrubbery				XX		XX
Maintain weed free						XX
Maintain bark mulch						XX
Rake/distribute gravel/sand			XX			XX
Fertilize				XX		
<b>III <i>Tree Maintenance</i></b>						
Prune trees					XX	
Maintain tree supports						XX
Remove dead trees						XX
<b>IV <i>Irrigation</i></b>						
Maintain/repair irrigation system						XX
Program/check controllers			XX			XX
Hand water as required						XX
Monitor water usage			XX			
<b>V <i>Weed control</i></b>						
Mow open areas				XX		XX
Remove noxious weeds				XX		
Weed identified areas				XX		XX
<b>VI <i>Wetlands</i></b>						
Coordinate maint. with city						XX
<b>VII <i>Paths, walkways, parking lot maintenance</i></b>						
Conduct general safety inspection					XX	XX
Remove foreign objects						XX
Trim/spray pathways						XX

**CLOISTERS  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

**TYPICAL MAINTENANCE TASKS (cont.)**

<b>Task</b>	<b>Weekly</b>	<b>Twice Weekly</b>	<b>Monthly</b>	<b>Twice Annually</b>	<b>Annually</b>	<b>As Needed</b>
<b>VII <i>Paths, walkways, parking lot maintenance (cont.)</i></b>						
Inspect hardscape for damage			XX			XX
Remove dog litter						XX
<b>VIII <i>Pest/Disease Control</i></b>						
Control pests/rodents and plant diseases						XX
<b>IX <i>Litter/trash control</i></b>						
Litter pick up throughout						XX
Remove trash from garbage cans		XX				
Empty ashes from bbq's		XX				
<b>X <i>Restroom</i></b>						
Clean/sanitize/service	Daily M-F					
Maintain roof						XX
Maintain plumbing						XX
Paint structure						XX

## **Attachment B**

### **CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT**

#### **DISTRICT BUDGET - FISCAL YEAR 2020/2021**

**NAME:** Cloisters Landscaping and Lighting Maintenance Assessment District

**DIAGRAM:** Attached, as Attachment D

**PLANS AND SPECIFICATIONS:** On file in the Office of the City Engineer.

**ESTIMATED COST OF MAINTENANCE:** The table on the following page outlines the estimated budget for the maintenance of the District for fiscal year 2020/2021. It also provides a look back at the previous fiscal year including the current year with expenses as of March 2020.

#### **CONTRACT SERVICES**

Includes non-routine maintenance and repair costs, as needed.

#### **PERSONNEL SERVICES**

Includes all daily and routine tasks as well as non-routine maintenance and repair costs.

#### **COST ALLOCATION**

Is the accounting practice that calculates and spreads the proportionate share of agency-wide indirect cost to departments and funds that receive a service from other departments (e.g., Payroll, Administration).

#### **SUPPLIES**

Includes all supplies used in daily tasks as well as non-routine repair and maintenance.

#### **SERVICES**

Includes utilities, outside engineering, insurance and contract services.

#### **CAPITAL/DEFERRED MAINTENANCE RESERVE (ACCUMULATION)**

Accumulated funds to be directed at capital projects, permits, and other one-time expenses and to maintain the required fund reserves.

<b>TOTAL ASSESSMENT:</b>	<b>\$148,944.00</b>
<b>PER PARCEL YEARLY ASSESSMENT (\$148,944/120 parcels)</b>	<b>\$1,241.20</b>
<b>FY 2019/20 ENDING ACCUMULATION FUND BALANCE</b>	<b>\$209,755</b>
<b>FY 2019/20 OPERATING AND CAPITAL EXPENSES (EST)</b>	<b>\$203,435</b>
<b>FY 2020/21 BEGINNING ACCUMULATION FUND BALANCE (EST)</b>	<b>\$155,264</b>

G/L Account Number		Account Description	2018 Actual Amount	2019 Actual Amount	2020 Actual Amount as of 3/3/20	2020 Amended Budget	2021 Level 1	Level 1 Comments
<b>Fund: 570 - Cloisters Park Maint AD</b>								
<b>REVENUES</b>								
<b>Department: 6167 - Cloisters Park</b>								
<i>300-Rev Taxes - Revenues From Taxes</i>								
570-6167 3018	Property Tax Special Assess	148,944.0000	148,944.0000	99,957.6000	148,944.0000	148,944.0000	148,944.0000	
<i>Account Classification Total: 300-Rev Taxes - Revenues From Taxes</i>		\$148,944.00	\$148,944.00	\$99,957.60	\$148,944.00	\$148,944.00	\$148,944.00	
Department Total: 6167 - Cloisters Park		\$148,944.00	\$148,944.00	\$99,957.60	\$148,944.00	\$148,944.00	\$148,944.00	
<b>EXPENSES</b>								
<b>Department: 6167 - Cloisters Park</b>								
<i>10-Personnel - Personnel Services</i>								
570-6167 4110	Regular Pay	0.0000	47,918.3900	37,901.5100	48,710.0000	51,145.5000	Per allocated salaries	
570-6167 4120	Overtime Pay	0.0000	8.5500	24.6800	0.0000	0.0000	Per allocated salaries	
570-6167 4515	Standby Pay	0.0000	1,729.2000	1,539.0000	0.0000	0.0000	Per allocated salaries	
570-6167 4599	Other Pay	0.0000	1,593.3800	690.0300	0.0000	0.0000	Per allocated salaries	
570-6167 4910	Employer Paid Benefits	15,515.9000	20,335.6700	15,945.8700	23,476.0000	24,649.8000	Per allocated salaries	
570-6167 4911	Pension Normal Cost	0.0000	5,935.9400	4,814.2300	3,614.0000	3,794.7000	Per allocated salaries	
570-6167 4912	PERS Unfunded Accrued Liability	0.0000	9,656.7800	10,904.5000	9,654.0000	10,136.7000	Per allocated salaries	
570-6167 4999	Labor Costs Applied	33,410.7700	3,255.9700	0.0000	3,000.0000	3,150.0000	Per allocated salaries	
<i>Account Classification Total: 10-Personnel - Personnel Services</i>		\$48,926.67	\$90,433.88	\$71,819.82	\$88,454.00	\$92,876.70		
<i>60-Supplies - Supplies</i>								
570-6167 5109	Uniforms/Safety Equipment	10.7600	0.0000	77.5500	500.0000	200.0000	200.0000	
570-6167 5199	Miscellaneous Operating Supplies	209.8500	13.0000	85.6200	500.0000	200.0000	200.0000	
570-6167 5501	Grounds Maintenance Supplies	7,249.7300	2,277.9500	2,505.9900	1,000.0000	3,500.0000	3,500.0000	
570-6167 5502	Building Maint. - Supplies	0.0000	58.4400	12.1200	0.0000	200.0000	200.0000	
<i>Account Classification Total: 60-Supplies - Supplies</i>		\$7,470.34	\$2,349.39	\$2,681.28	\$2,000.00	\$4,100.00		
<i>70-Services - Services</i>								
570-6167 6106	Contractual Services	22,953.5500	18,128.3600	17,462.4800	10,000.0000	5,000.0000	5,000.0000	
570-6167 6300	Utilities	38,522.6800	0.0000	0.0000	0.0000	0.0000	0.0000	
570-6167 6301	Electricity	0.0000	2,311.1700	1,191.5300	1,500.0000	1,500.0000	1,500.0000	
570-6167 6303	Water	0.0000	23,322.9900	25,452.8300	25,000.0000	30,000.0000	Need to reduce irrigation	
570-6167 6305	Disposal	0.0000	3,194.0600	1,792.5900	2,500.0000	3,000.0000	3,000.0000	
570-6167 6810	Equipment Rental	297.6600	0.0000	0.0000	1,000.0000	1,000.0000	1,000.0000	
<i>Account Classification Total: 70-Services - Services</i>		\$61,773.89	\$46,956.58	\$45,899.43	\$40,000.00	\$40,500.00	\$40,500.00	
Department Total: 6167 - Cloisters Park		\$118,170.90	\$139,739.85	\$120,400.53	\$130,454.00	\$137,476.70	\$137,476.70	
<b>Department: 7710 - Interfund Transactions</b>								
<i>100-Interfund - Interfund Transfers</i>								
570-7710 8510	Transfer To General Fund	0.0000	0.0000	5,410.5000	10,821.0000	11,362.0500	Cost Allocation Plan	
570-7710 8540	TRFR To Capital Imp Fund	0.0000	0.0000	125.4100	16,160.0000	0.0000	0.0000	
<i>Account Classification Total: 100-Interfund - Interfund Transfers</i>		\$0.00	\$0.00	\$5,535.91	\$26,981.00	\$11,362.05	\$11,362.05	
Department Total: 7710 - Interfund Transactions		\$0.00	\$0.00	\$5,535.91	\$26,981.00	\$11,362.05	\$11,362.05	
<b>EXPENSES Total</b>								
Fund REVENUE Total: 570 - Cloisters Park Maint AD		\$148,944.00	\$148,944.00	\$99,957.60	\$148,944.00	\$148,944.00	\$148,944.00	
Fund EXPENSE Total: 570 - Cloisters Park Maint AD		\$118,170.90	\$139,739.85	\$125,936.44	\$157,435.00	\$148,838.75	\$148,838.75	
Fund Total: 570 - Cloisters Park Maint AD		\$30,773.10	\$9,204.15	(\$25,978.84)	(\$8,491.00)	\$105.25	\$105.25	

**Attachment C**

**CLOISTERS  
LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT**

**PARCEL/ASSESSMENT TABLE**

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
1	065-387-001	\$1,241.20
2	065-387-002	\$1,241.20
3	065-387-003	\$1,241.20
4	065-387-004	\$1,241.20
5	065-387-005	\$1,241.20
6	065-387-006	\$1,241.20
7	065-387-007	\$1,241.20
8	065-387-008	\$1,241.20
9	065-387-009	\$1,241.20
10	065-387-010	\$1,241.20
11	065-387-011	\$1,241.20
12	065-387-012	\$1,241.20
13	065-387-013	\$1,241.20
14	065-387-014	\$1,241.20
15	065-387-015	\$1,241.20
16	065-387-016	\$1,241.20
17	065-387-017	\$1,241.20
18	065-387-018	\$1,241.20
19	065-387-019	\$1,241.20

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
20	065-387-053	\$1,241.20
21	065-387-054	\$1,241.20
22	065-387-055	\$1,241.20
23	065-387-023	\$1,241.20
24	065-387-024	\$1,241.20
25	065-387-025	\$1,241.20
26	065-387-026	\$1,241.20
27	065-387-027	\$1,241.20
28	065-387-028	\$1,241.20
29	065-387-029	\$1,241.20
30	065-387-030	\$1,241.20
31	065-387-031	\$1,241.20
32	065-387-032	\$1,241.20
33	065-387-033	\$1,241.20
34	065-387-034	\$1,241.20
35	065-387-035	\$1,241.20
36	065-387-036	\$1,241.20
37	065-387-037	\$1,241.20
38	065-387-038	\$1,241.20
39	065-387-039	\$1,241.20
40	065-387-040	\$1,241.20
41	065-387-041	\$1,241.20
42	065-387-042	\$1,241.20
43	065-387-043	\$1,241.20

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
44	065-387-044	\$1,241.20
45	065-387-045	\$1,241.20
46	065-388-001	\$1,241.20
47	065-388-002	\$1,241.20
48	065-388-003	\$1,241.20
49	065-388-004	\$1,241.20
50	065-388-005	\$1,241.20
51	065-388-006	\$1,241.20
52	065-388-007	\$1,241.20
53	065-388-008	\$1,241.20
54	065-388-009	\$1,241.20
55	065-388-010	\$1,241.20
56	065-388-011	\$1,241.20
57	065-388-012	\$1,241.20
58	065-388-013	\$1,241.20
59	065-388-014	\$1,241.20
60	065-388-015	\$1,241.20
61	065-388-016	\$1,241.20
62	065-388-017	\$1,241.20
63	065-388-018	\$1,241.20
64	065-388-019	\$1,241.20
65	065-388-020	\$1,241.20
66	065-388-021	\$1,241.20
67	065-388-022	\$1,241.20

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
68	065-388-023	\$1,241.20
69	065-388-024	\$1,241.20
70	065-388-025	\$1,241.20
71	065-388-026	\$1,241.20
72	065-388-027	\$1,241.20
73	065-388-028	\$1,241.20
74	065-388-029	\$1,241.20
75	065-388-030	\$1,241.20
76	065-388-031	\$1,241.20
77	065-388-032	\$1,241.20
78	065-388-033	\$1,241.20
79	065-388-034	\$1,241.20
80	065-388-035	\$1,241.20
81	065-388-036	\$1,241.20
82	065-388-037	\$1,241.20
83	065-388-038	\$1,241.20
84	065-388-039	\$1,241.20
85	065-388-040	\$1,241.20
86	065-388-041	\$1,241.20
87	065-388-042	\$1,241.20
88	065-388-043	\$1,241.20
89	065-388-044	\$1,241.20
90	065-388-045	\$1,241.20
91	065-388-046	\$1,241.20

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
92	065-388-047	\$1,241.20
93	065-388-048	\$1,241.20
94	065-388-049	\$1,241.20
95	065-388-050	\$1,241.20
96	065-388-051	\$1,241.20
97	065-388-052	\$1,241.20
98	065-388-053	\$1,241.20
99	065-388-054	\$1,241.20
100	065-388-055	\$1,241.20
101	065-388-056	\$1,241.20
102	065-388-057	\$1,241.20
103	065-388-058	\$1,241.20
104	065-388-059	\$1,241.20
105	065-388-060	\$1,241.20
106	065-388-061	\$1,241.20
107	065-388-062	\$1,241.20
108	065-388-063	\$1,241.20
109	065-388-064	\$1,241.20
110	065-388-065	\$1,241.20
111	065-388-066	\$1,241.20
112	065-388-067	\$1,241.20
113	065-388-068	\$1,241.20
114	065-388-069	\$1,241.20
115	065-388-070	\$1,241.20

<b>Lot Number</b>	<b>County Assessor's Parcel Number</b>	<b>Annual Assessment</b>
116	065-388-071	\$1,241.20
117	065-388-072	\$1,241.20
118	065-388-073	\$1,241.20
119	065-388-074	\$1,241.20
120	065-388-075	\$1,241.20
121	065-386-005	0
122 (Parcel 1)	065-386-016	0
123 (Parcel 2)	065-386-017 065-386-018 065-386-019 065-386-012 065-386-013 065-386-014 065-386-010	0
124	065-386-015	0

