



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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

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## **Regular Meeting Tuesday, July 14, 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

- Proclamation honoring Michael Manchak, President & CEO of EVC

### 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 Council at [council@morrobayca.gov](mailto:council@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: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (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 MAY 26, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE JUNE 3, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 APPROVAL OF MINUTES FOR THE JUNE 9, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-4 DESIGNATION OF REPRESENTATIVE(S) TO THE CALIFORNIA JOINT POWERS INSURANCE AUTHORITY; (CITY CLERK)

**RECOMMENDATION: Staff recommends the City Council designate the Mayor as the official representative of the City of Morro Bay on the California Joint Powers Insurance Authority (CJPIA) Board of Directors, designate the City Clerk/Human Resources Manager as first alternate, and designate the City Manager as second alternate.**

- A-5 ADOPT RESOLUTION NO. 65-20 ESTABLISHING THE ANNUAL PROPOSITION 4 APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2020/21; (FINANCE DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 65-20, which sets the FY 2020/21 appropriations limit at \$28,990,070.**

- A-6 AUTHORIZATION TO ACCEPT, IF AWARDED, STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT AND ASSISTANCE TO FIREFIGHTERS GRANT (AFG); (FIRE DEPARTMENT)

**RECOMMENDATION: Authorization for the Fire Department to accept the grant if awarded from the Department of Homeland Security and Federal Emergency Management Agency for consideration of funding under the Assistance to Firefighters Grants (AFG) for Personal Protective equipment and the Staffing for Adequate Fire and Emergency Response (SAFER) Grant for the hiring of a limited term firefighter.**

- A-7 RESOLUTION NO. 66-20 APPROVING A SECOND AMENDMENT TO THE MORRO BAY TRANSIT AND TROLLEY OPERATIONS AND MANAGEMENT AGREEMENT WITH MV TRANSPORTATION, INC.; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 66-20 approving a Second Amendment to the Morro Bay Transit and Trolley Operations and Management Agreement with MV Transportation, Inc.**

- A-8 APPROVE RESOLUTION NO. 67-20 AUTHORIZING SUBMISSION OF RURAL TRANSIT FUND GRANT CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) 5311 PHASE 1 CYCLE APPLICATION AND EXECUTION OF RELATED DOCUMENTS UPON AWARD; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 67-20 authorizing Submission of Rural Transit Fund Grant Coronavirus Aid, Relief, and Economic Security (CARES) 5311 Phase 1 Cycle Application and Execution of Related Documents Upon Award.**

- A-9 APPROVAL OF RESOLUTION NO. 73-20, APPROVING A SUPPLEMENTAL LEASE AGREEMENT TO THE UNITED STATES COAST GUARD STATION MORRO BAY BUILDING LEASE FOR CONSTRUCTION OF A NEW COAST GUARD STATION EMERGENCY BACKUP POWER GENERATOR TO BE BUILT ADJACENT TO THE COAST GUARD BUILDING, LOCATED ON LEASE SITES 141, AT 1279 EMBARCADERO; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council approve Resolution No. 73-20, approving a Supplemental Lease Agreement to the Coast Guard's Station Morro Bay building lease to enable the Coast Guard to build an emergency backup power generator.**

- A-10 PROCLAMATION HONORING MICHAEL MANCHAK PRESIDENT & CEO OF ECONOMIC VITALITY CORPORATION (EVC) ON HIS UPCOMING RETIREMENT; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

B. PUBLIC HEARINGS

- B-1 APPEAL OF PLANNING COMMISSION APPROVAL ON JUNE 2, 2020 OF THE CONDITIONAL USE PERMIT (CUP19-12), COASTAL DEVELOPMENT PERMIT (CDP20-001), PARKING EXCEPTION (PKG19-05) AND A MITIGATED NEGATIVE DECLARATION (MAY 2020) TOGETHER WITH THE MITIGATION MONITORING AND REPORTING PROGRAM FOR A PROPOSED 35-UNIT AFFORDABLE HOUSING PROJECT ON .94 ACRES. THE PROJECT IS ZONED MCR/R-4/PD/SP AND IS NOT WITHIN THE COASTAL COMMISSION APPEALS JURISDICTION; (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Council adopt Resolution No. 68-20, making the necessary findings to deny the appeal and uphold the Planning Commission approval of Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) for the site at 405 Atascadero Road to allow a 35-unit deed restricted affordable housing project on a .94 acre site.**

C. BUSINESS ITEMS

- C-1 CONSIDERATION OF APPROVING THREE ELECTION RESOLUTIONS TO PLACE BEFORE CITY VOTERS, AT THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION, A LOCAL RECOVERY AND EMERGENCY PREPAREDNESS SALES TAX BALLOT MEASURE TO REPEAL CHAPTER 3.22 (TRANSACTIONS AND USE TAX) AND ADD CHAPTER 3.26 (TRANSACTIONS AND USE TAX) TO TITLE 3 OF THE MORRO BAY MUNICIPAL CODE TO RAISE THE CITY'S TRANSACTIONS AND USE TAX RATE BY 1 CENT; CONDUCT FIRST READING, BY TITLE ONLY, OF THE PROPOSED ORDINANCE INCREASING THE CITY'S TRANSACTIONS AND USE TAX RATE BY 1 CENT (CITY MANAGER/CITY ATTORNEY)

**RECOMMENDATION: Staff recommends Council:**

1. Consider approval of two election Resolutions Nos. 69-20 and 70-20 (Attachments 1 and 2) to place a proposed ordinance, for a locally controlled recovery and emergency preparedness measure increasing the City's Transaction and Use Tax Rate by 1 cent , on the ballot for City voter consideration at the November 3, 2020 general municipal election; and,
2. Consider approval of a third election Resolution No. 71-20 (Attachment 3) if Council desires rebuttal arguments for the ballot measure; and,
3. ***If*** Council adopts election resolutions, conduct a first reading, by title only, with further reading waived, of the proposed Ordinance No. 635 "An Ordinance of the People of the City of Morro Bay, California, Repealing Chapter 3.22 and Adopting Chapter 3.26 of the Morro Bay Municipal Code to increase the City's Transactions and Use Tax Rate from .5% to 1.5%" (Exhibit A to Resolution No. 69-20 submitting Ordinance to Voters), with the ordinance being subject to voter approval for enactment.

- C-2 APPROVAL OF PURCHASE AND SALE AGREEMENT FOR PERMANENT AND TEMPORARY EASEMENTS RELATED TO THE WATER RECLAMATION FACILITY OVER PORTIONS OF THE REAL PROPERTY LOCATED NEAR THE INTERSECTION OF SOUTH BAY BOULEVARD AND TERESA ROAD, ASSESSOR'S PARCEL NO. 068-411-07; (CITY ATTORNEY)

**RECOMMENDATION: Approve as submitted and authorize City Manager to sign the Purchase and Sale Agreement and all necessary documents to implement the agreement.**

- C-3 ADOPTION OF RESOLUTION NO. 72-20 APPROVING A NEW HARBOR DEPARTMENT LEASE MANAGEMENT POLICY THAT INCLUDES A NEW MASTER LEASE FORMAT, RESCINDING RESOLUTIONS NO. 66-01 THAT APPROVED THE CURRENT LEASE MANAGEMENT POLICY AND NO. 31-02 THAT APPROVED A NEW MASTER LEASE FORMAT, AND PROVIDE DIRECTION ON NEW POLICY IMPLEMENTATION NEXT STEPS; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 72-20 approving a new Harbor Department Lease Management Policy (LMP) and Master Lease format, rescind Resolution Nos. 66-01 and 31-02, and provide input and direction on policy next steps as outlined in this staff report.**

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The Regular Meeting for **Tuesday, July 28, 2020** has been canceled per adopted Resolution No. 01-20.

The next Regular Meeting will be held on **Tuesday, August 11, 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.**

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*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  
                         Jennifer Callaway      Finance Director / Acting Public Works Director  
                         Scot Graham             Community Development Director  
                         Steve Knuckles         Fire Chief  
                         Jody Cox                 Police Chief  
                         Eric Endersby            Harbor Director  
                         Rob Livick                City Engineer  
                         Eric Casares             WRF Program Manager

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 5:30 p.m. with all but Council Member Addis present. Council Member Addis joined the meeting at 5:32 p.m.

**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/YEHDJozCSyc?t=160>

**CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS**

<https://youtu.be/YEHDJozCSyc?t=862>

**PRESENTATIONS - NONE**

**PUBLIC COMMENT**

<https://youtu.be/YEHDJozCSyc?t=1174>

John Weiss, Morro Bay, spoke in support of a mask initiative and encouraged the community to work together and provide constructive comments.

Carole Truesdale, Morro Bay, spoke in support of a mask initiative and requested further review of the potential change orders for the WRF project presented in Item C-1.

Kris Roudebush announced the We Are the Care Initiative, a local effort by First 5 SLO County to address the growing childcare crisis. She requested the City demonstrate its support by appointing a council member or staff person as the City's childcare liaison. For more information visit [www.first5slo.org](http://www.first5slo.org).

Melanie Williams Mahan, Morro Bay, expressed concern about the influx of tourists and spoke in opposition to the WRF project.

Dan Sedley, Morro Bay, expressed his appreciation to Council Member Heller for picking up trash and directing traffic over the weekend and to Assemblyman Jordan Cunningham for his efforts to reopen businesses in SLO County.

Mayor Headding closed public comment.

A. CONSENT AGENDA  
<https://youtu.be/YEHDJozCSyc?t=2092>

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 APRIL 14, 2020, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE APRIL 28, 2020, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MAY 12, 2020, CITY COUNCIL SPECIAL CLOSED  
SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 ADOPTION OF RESOLUTION NO. 45-20 APPROVING COOPERATION  
AGREEMENT WITH THE URBAN COUNTY (CDBG PROGRAM) FOR FISCAL  
YEARS 2021-2023; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Council review and approve Resolution No. 45-20 for  
Cooperation Agreement with the Urban County for Fiscal Years 2021-2023.**

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

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

B. PUBLIC HEARINGS

- B-1 INITIATION OF A SPHERE OF INFLUENCE (SOI) AMENDMENT TO ADD 5 LOTS ABOVE PANORAMA DRIVE TO THE CITY'S SOI. APN: 073-075-002 AND PORTIONS OF APN 073-076-016 (LOTS 2, 8, 7 & 6); AND INITIATION OF DETACHMENT PROCEEDINGS FOR APN: 065-022-008. PROPERTY WOULD BE DETACHED FROM WITHIN THE CITY BOUNDARY RESULTING IN THE LOT BEING LOCATED WITHIN THE UNINCORPORATED COUNTY OF SAN LUIS OBISPO; (COMMUNITY DEVELOPMENT DEPARTMENT)  
<https://youtu.be/YEHDJozCSyc?t=2169>

MOTION: Mayor Headding moved to table Item B-1 to a future date uncertain. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

- C-1 REVIEW AND APPROVE POTENTIAL CHANGE ORDERS FOR THE WATER RECLAMATION FACILITY (WRF); REVIEW AND RECEIVE THE WRF CAPITAL PROJECT QUARTERLY UPDATE REPORT; AND REVIEW AND APPROVE PROPOSED GOOD FAITH LOCAL HIRE PROVISIONS FOR BID DOCUMENTS FOR THE REMAINING WRF PROJECT COMPONENTS INCLUDING AN AMOUNT FOR LIQUIDATED DAMAGES RELATED THERETO; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/YEHDJozCSyc?t=2222>

WRF Program Manager Casares provided the report and responded to Council inquires.

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

John Weiss, Morro Bay, expressed concern the project contingency appeared to be largely exhausted and urged the Council to hold to the \$126 Million baseline.

Betty Winholtz, Morro Bay, raised questions submitted as agenda correspondence and suggested the Council to take separate votes on the action being requested.

Dan Sedley, Morro Bay, urged the Council to not approve the potential change orders.

Melanie Williams-Mahan, Morro Bay, raised additional questions and expressed concern about the impact these change orders would have on utility bills.

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

The Mayor and Council provided individual comments and a majority agreed on the following:

- Approve the 26 Potential Change Orders as presented; and
- Maintain the current WRF Quarterly Report format and decline CFAC's recommendation to provide an integrated Microsoft project management schedule with key milestones; and
- Support local labor provision as presented with liquidated damages set at \$5,000 - \$10,000 to be determined by staff.

Council Member Heller supported the local labor provision but opposed the potential change orders presented for several reasons, including concern they were incorporated into construction documents without the owner's approval.

MOTION: Council Member Heller moved to approve the five credit change orders where we actually get money back (No. 19, 42, 62, 64 and 66). The motion failed for lack of a second.

MOTION: Council Member McPherson moved to approve the 26 Potential Change Orders for the WRF; keep the quarterly report format in the current one that is approved by the Council; and approve proposed local labor provision language for the bid packages and contract amendments / agreements for the remaining components of the WRF project and set liquidated damages between \$5,000-10,000 at the staff's discretion. The motion was seconded by Mayor Heading and carried 4-1 with Council Member Heller opposed.

The Council took a brief recess at 8:43 p.m. The meeting reconvened at 8:49 p.m. with all members present.

C-2 REVIEW AND APPROVE CONSTRUCTION WORK RESTRICTIONS DEVELOPED FOR THE CONVEYANCE FACILITIES COMPONENT OF THE WATER RECLAMATION FACILITY PROJECT; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/wrYhTxfRqCY?t=35>

Water Reclamation Facility Program Manager Casares, Paul Amico from Carollo Engineers and Sarah Rosetto from Katz & Associates provided the report and responded to Council inquires.

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

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

Betty Winholtz, Morro Bay, requested clarification regarding the budget for outreach, expressed concern about impacts on businesses and mobile home parks, and stressed the importance of outreach to Los Osos, the CSD and State Parks.

John Weiss, Morro Bay, appreciated the business outreach conducted thus far, expressed concern about impacts on businesses, and asked for clarification regarding timing for construction.

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

MOTION: Council Member McPherson moved to approve the construction work restrictions that have been developed for construction of the Conveyance Facilities component of the Water Reclamation Facility (WRF) Project. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

C-3 INTRODUCTION OF ORDINANCE NO. 633 TO AMEND CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN ADULT-USE COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR) AND

AUTHORIZE COMMUNITY DEVELOPMENT DIRECTOR TO ISSUE ADMINISTRATIVE REGULATIONS; AND, GENERAL DISCUSSION AND POTENTIAL DIRECTION TO STAFF ON AUTHORIZED COMMERCIAL CANNABIS OPERATIONS; (CITY ATTORNEY)

<https://youtu.be/wrYhTxfRqCY?t=4733>

City Attorney Neumeyer provided the report and responded to Council inquires.

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

Caity Maple, Perfect Union, expressed strong support for the proposed ordinance.

Nick Andre, Natural Healing Center, spoke in support of the ordinance and stated his belief it was a great opportunity to provide additional revenue.

Melanie Williams Mahan, Morro Bay, stated the proposed ordinance and City's recent ban on vaping seemed to send mixed messages.

John Weiss, Morro Bay, spoke in support of the proposed ordinance.

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

**MOTION:** Council Member Davis moved to introduce for first reading by title only and with further reading waived, Ordinance No. 633: An Ordinance of the City Council of the City of Morro Bay, California, Amending Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 of the Morro Bay Municipal Code to Permit Certain Adult-Use Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor) and to Authorize Community Development Director to Issues Administrative Regulations. The motion was seconded by Council Member McPherson for discussion.

Following discussion, the motion carried 3-1-1 with Council Member Heller opposed and Council Member Addis having abstained.

There was Council support to consider allowing cannabis testing, cultivation and manufacturing in the City. As subcommittee members, Council Members Davis and McPherson agreed to research these opportunities and bring information and recommendations back to Council.

**D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS**

<https://youtu.be/wrYhTxfRqCY?t=6871>

Council Member Heller suggested the Council discuss options on how we can get some of the WRF money back into the hands of the Morro Bay residents by increasing the number of residents providing professional services on the project. There was no support for this item.

Council Member Davis requested staff bring forward recommendations for temporary use of the City right-of-way to facilitate social distancing and support COVID-19 economic recovery. A majority of the members supported the request.

Council Member Davis requested full Council discussion of a potential ordinance requiring face coverings. There was unanimous support for discussion at a future meeting.

Council Member Davis asked if Council Member Addis would be willing to be the point person for We are the Care early childhood initiative and suggested agendaizing for future approval by Council as a Consent item. Council Member Addis agreed and there was full support for the item.

E. ADJOURNMENT

The meeting adjourned at 11:02 p.m.

Recorded by:

Dana Swanson  
City Clerk

*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
	Dana Swanson	City Clerk
	Jennifer Callaway	Finance Director
	Scot Graham	Community Development Director
	Matt Vierra	Fire Marshal
	Eric Endersby	Harbor Director
	Jody Cox	Police Chief
	Rob Livick	City Engineer
	Sandra Martin	Budget / Accounting Manager
	Kirk Carmichael	Recreation Services Manager
	Joe Mueller	Utilities Division Manager

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 3:00 p.m. with all members present.

#### PUBLIC COMMENT FOR ITEMS ON THE AGENDA

<https://youtu.be/yLd7N56f8Vk?t=146>

Betty Winholtz, Morro Bay, urged caution with regard to the potential sale of City-owned properties and paid parking. She hoped the Council would give consideration to the structural changes she suggested in written correspondence for this item.

Dan Sedley, Morro Bay, supported RV camping as potential source of income and suggested the community would not look favorably on a sales tax measure due to the financial impacts of COVID-19. He agreed with Ms. Winholtz's comments to bring down utility rates before raising sales tax.

The public comment period was closed.

#### SPECIAL MEETING AGENDA ITEM:

- I. CONSIDERATION OF THE CITY OF MORRO BAY'S PROPOSED OPERATING AND CAPITAL BUDGET FOR FISCAL YEAR (FY) 2020/21  
<https://youtu.be/yLd7N56f8Vk?t=642>

City Manager Collins introduced the item and turned it over to Finance Director Callaway to present the report and responded to Council questions.

Following individual comments, there was Council consensus on the following:

- Placing a one-cent sales tax measure on the November ballot,
- Moving forward with RV Camping as recommended,
- Continue investigating opportunities and alternatives for paid parking
- Research and bring forward recommendations regarding the potential sale or lease of City properties including 570 Dunes Street, vacant lot on Bolton/Downing Streets, and Chorro well sites.
- Moving forward quickly to expand opportunities for outdoor dining.

Council Member Addis left the meeting at 5:15 p.m.

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

#### ADJOURNMENT

The meeting adjourned at 5:32 p.m.

Recorded by:

Dana Swanson  
City Clerk

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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/Acting Public Works Director  
Scot Graham Community Development Director  
Steve Knuckles Fire Chief  
Amy Watkins Police Commander  
Eric Endersby Harbor Director  
Rob Livick City Engineer

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all but Council Member Addis present. Council Member Addis joined the meeting at 5:31 p.m.

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/Ye1HjSBNPqA?t=160>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS - None

PRESENTATIONS – None

#### PUBLIC COMMENT

<https://youtu.be/Ye1HjSBNPqA?t=838>

Betty Winholtz, Morro Bay, announced an upcoming Monterey Bay Community Power meeting to discuss its acceptance of nuclear power. She also asked if a concrete slab on South Bay Blvd/Quintana was related to the WRF Project.

John Weiss, Morro Bay, expressed concern about increased blight due to recent business closures and complimented Betty Winholtz for her article suggesting the City pause the WRF

project, thereby reducing rates for citizens and businesses and allowing him to support sales tax measure.

Carole Truesdale, Morro Bay, appreciated reconsideration of mask requirements, suggested the City consider implementing paid parking, allow parklets for the summer season, and close the Embarcadero from Beach to Market on weekends to provide space for outdoor dining.

Dan Sedley, Morro Bay, spoke on behalf of his neighbor regarding secondhand smoke concerns.

Mayor Heading closed public comment.

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

A. CONSENT AGENDA  
<https://youtu.be/Ye1HjSBNPqA?t=1794>

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 APRIL 28, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE MAY 12, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MAY 26, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 ADOPTION OF ORDINANCE NO. 633 TO AMEND CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN ADULT-USE COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR) AND AUTHORIZE COMMUNITY DEVELOPMENT DIRECTOR TO ISSUE ADMINISTRATIVE REGULATIONS; (CITY ATTORNEY)

**RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 633, entitled "An Ordinance of the City Council of the City of Morro Bay, California, amending Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 of the Morro Bay Municipal Code to permit certain adult-use commercial cannabis uses (retail sales, deliveries and (wholesale) distributor) and to authorize community development director to issue administrative regulations."**

A-5 AUTHORIZATION TO PROVIDE A TOTAL OF \$500,000 OF FINANCIAL ASSISTANCE TO THE HASLO AFFORDABLE HOUSING PROJECT TO BE LOCATED AT 405 ATASCADERO ROAD. THE PROPOSED FINANCIAL ASSISTANCE WILL BE IN THE FORM OF \$150,000 LOAN FROM THE AFFORDABLE HOUSING IN-LIEU FUND AND \$350,000 DEFERRED PERMIT FEE LOAN.; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 46-20 authorizing a loan in the amount of \$150,000 from the Affordable Housing In-Lieu Funds and a deferred permit fee loan in the amount of \$350,000 to assist with the funding required for the Housing Authority of the City of San Luis Obispo (HASLO) affordable rental housing development located at 405 Atascadero Road.**

A-6 2019 AND 2020 CITY GOALS AND ACTION ITEMS STATUS UPDATE; (CITY MANAGER)

**RECOMMENDATION: Receive status update from the City Manager regarding the 2019 and 2020 City Council Goals and action items.**

A-7 ADOPTION OF RESOLUTION NO. 50-20 CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A NEW LOAN AND ACCEPTING A DEED OF TRUST RELATED THERETO FOR LEASE SITE 89/89W (BOATYARD, LLC, 845 EMBARCADERO); (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 50-20 authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust related thereto regarding the leasehold interest at Lease Site 89/89W, with documents subject to approval of the City Attorney.**

Mayor Headding opened public comment for the Consent Agenda.

Betty Winholtz, Morro Bay, requested the Council postpone action on Item A-5 as the time period for filing an appeal had not yet expired.

Dan Sedley, Morro Bay, stated of Item A-5 would be financially irresponsible.

The public comment period was closed.

Mayor Headding pulled Item A-5. Council Member Heller pulled Item A-4.

MOTION: Council Member McPherson moved approval of all items on Consent except Items A-4 and A-5. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

A-4 ADOPTION OF ORDINANCE NO. 633 TO AMEND CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN ADULT-USE COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR) AND AUTHORIZE COMMUNITY DEVELOPMENT DIRECTOR TO ISSUE ADMINISTRATIVE REGULATIONS; (CITY ATTORNEY)  
<https://youtu.be/Ye1HjSBNPqA?t=2049>

City Attorney Neumeyer responded to Council Member Heller's questions.

MOTION: Council Member Heller moved approval of Item A-4. The motion was seconded by Mayor Headding and carried 4-0-1 with Council Member Addis having abstained.

A-5 AUTHORIZATION TO PROVIDE A TOTAL OF \$500,000 OF FINANCIAL ASSISTANCE TO THE HASLO AFFORDABLE HOUSING PROJECT TO BE LOCATED AT 405

ATASCADERO ROAD. THE PROPOSED FINANCIAL ASSISTANCE WILL BE IN THE FORM OF \$150,000 LOAN FROM THE AFFORDABLE HOUSING IN-LIEU FUND AND \$350,000 DEFERRED PERMIT FEE LOAN.; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/Ye1HjSBNPqA?t=2321>

Mayor Headding explained the appeal period with regard to Planning Commission action on the project is still running and therefore, from a transparency standpoint, it would be better to move this item to the June 23 meeting. Staff responded to questions from Council.

MOTION: Mayor Headding moved to table this item to the June 23 Council Meeting. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

## B. PUBLIC HEARINGS

### B-1 INTRODUCTION AND FIRST READING OF ORDINANCE 634; AMENDMENTS TO MORRO BAY MUNICIPAL CODE FOR SIDEWALK VENDING PERMIT REQUIREMENTS; (COMMUNITY DEVELOPMENT DEPARTMENT) <https://youtu.be/Ye1HjSBNPqA?t=2504>

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

Mayor Headding opened Public Comment for Item B-1.

Erica Crawford, Morro Bay Chamber of Commerce, requested the Council consider waiving permit fees for brick and mortar establishments in Morro Bay or consider a local preference program that would allow businesses to expand through this opportunity.

John Weiss, Morro Bay, spoke in support of the item and appreciated trash requirements had been addressed.

Dan Sedley, Morro Bay, opposed sidewalk vending on the Embarcadero due to space constraints.

Carole Truesdale, Morro Bay, suggested sidewalk vending only be allowed for expansion of existing businesses.

The Public Comment period for Item B-1 was closed.

MOTION: Council Member Addis moved to introduce for first reading by number and title only, with further reading waived, Ordinance No. 634, Amending Title 5 of the Morro Bay Municipal code, adding Chapter 5.60 - Sidewalk Vendors, and amending Chapters 5.08.150(A)(1), 5.40.020 and 10.40.120 to regulate sidewalk vendors within the City of Morro Bay. The motion was seconded by Council Member Heller for discussion.

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

## C. BUSINESS ITEMS

### C-1 CONSIDERATION OF THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) ANNUAL REPORT AND CONTINUATION OF THE TBID ASSESSMENT FOR FISCAL YEAR (FY) 2020/21; AND ADOPTION OF RESOLUTION

NO. 47-20 DECLARING THE INTENT TO CONTINUE THE PROGRAM AND LEVY ASSESSMENTS FOR THE FISCAL YEAR 2020/21 AND SCHEDULING A PUBLIC HEARING TO LEVY THE ASSESSMENTS; (CITY MANAGER)  
<https://youtu.be/Ye1HjSBNPqA?t=4357>

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

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

Dan Sedley, Morro Bay, asked why the City was discouraging visitors given the County Health Director's decision to allow full occupancy in hotels and short-term rentals.

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

Mayor Heading responded to questions raised during public comment.

MOTION: Council Member Addis moved to approve the Fiscal Year 2020/21 TBID Annual Report for expenditure of funds to be derived from the annual assessment and adopt Resolution No. 47-20 declaring the intent to continue the program and levy the 3% TBID assessments for FY2020/21 and schedule a public hearing on June 23rd to levy the assessments. The motion was seconded by Council Member Heller for discussion.

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

C-2 ADOPTION OF RESOLUTION NO. 48-20 APPROVING TEMPORARY OUTDOOR DINING/SALES PROGRAM AND EXPANSION OF THE CITY'S BLANKET ENCROACHMENT PERMIT PROGRAM. USE OF CITY RIGHT OF WAY AND OTHER PRIVATE OUTDOOR SPACE TO FACILITATE SOCIAL DISTANCING AND SUPPORT COVID-19 ECONOMIC RECOVERY; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/Ye1HjSBNPqA?t=5972>

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

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

John Weiss, Morro Bay, spoke in favor of outdoor dining opportunities and encouraged the City to conduct outreach before moving forward with parklets.

Betty Winholtz, Morro Bay, suggested tables be allowed on one side only to accommodate physical distancing and raised questions regarding parking and noise impacts.

Dan Sedley, Morro Bay, stressed the importance of maintaining a 6' barrier between outdoor seating arrangements and appreciated the sunset provision to review and make changes as needed.

Carole Truesdale, Morro Bay, spoke in favor of the item and suggested one-way traffic and closing the Embarcadero during summer months to give local businesses further opportunity to expand.

Erica Crawford, Morro Bay Chamber of Commerce, appreciated the City moving this forward quickly to support the business community. She thanked RRM Design for preparing site plans provided in the staff report and noted, if approved, the Chamber would assist businesses with preparing layouts.

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

MOTION: Mayor Headding moved to adopt Resolution No. 48-20 authorizing expansion of the Blanket Encroachment Permit Program and approving the Temporary Use Permit program for outdoor dining/sales on private property, and review the encroachment requirements in one year, and include some kind of trash containers for consideration on the external environment. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

C-3 DISCUSS AND CONSIDER LOCAL GOVERNMENT ACTION IN REGARDS TO THE USE OF FACE COVERINGS DURING THE COVID-19 PANDEMIC, INCLUDING ADOPTION OF RESOLUTION NO. 49-20 RECOMMENDING THE USE OF FACE COVERINGS IN CERTAIN CIRCUMSTANCES; (CITY ATTORNEY)  
<https://youtu.be/Ye1HjSBNPqA?t=8829>

City Attorney Neumeyer provided the report and responded to Council inquires.

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

Dan Sedley, Morro Bay, stressed the importance of social distancing as the primary defense against COVID-19.

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

Following discussion there was consensus to adopt the resolution presented and not move forward with an ordinance at this time as it would be difficult to enforce. If conditions change and there is a sudden increase in the number of cases, there was majority support to consider an urgency ordinance at that time.

MOTION: Council Member McPherson moved to adopt Resolution No. 49-20 recommending the use of face coverings in circumstances with the addition of 'public transportation' in Section 2.b. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<https://youtu.be/Ye1HjSBNPqA?t=10696>

Council Member Heller suggested Council consideration of parklets to provide sidewalk dining opportunities. There was Council support for outreach to determine the level of interest by the business community.

E. ADJOURNMENT

The meeting adjourned at 8:33 p.m.

Recorded by:

Dana Swanson  
City Clerk



**CITY COUNCIL RESOLUTION NO. 38-03**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY,  
COUNTY OF SAN LUIS OBISPO, CALIFORNIA, APPROVING EXECUTION OF THE  
JOINT POWERS AGREEMENT CREATING CALIFORNIA JOINT POWERS INSURANCE  
AUTHORITY, AND FURTHER APPROVING PARTICIPATION IN ITS JOINT  
PROTECTION PROGRAM PROVIDING LIABILITY COVERAGE THROUGH SELF-  
INSURANCE, LOSS POOLING AND EXCESS INSURANCE**

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

**THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY FIND AND  
RESOLVE AS FOLLOWS:**

**WHEREAS**, pursuant to the provisions of Sections 990, 990.4, 990.8 and 6500 of the Government Code, CALIFORNIA JOINT POWERS INSURANCE AUTHORITY ("CALIFORNIA JPIA") has been created by a Joint Powers Agreement; and

**WHEREAS**, Article 21 of said Agreement provides for additional members to become parties to the Joint Powers Agreement creating the CALIFORNIA JPIA, after the first year of its operation, and thereupon enter the Joint Protection Program providing General and Automobile Liability Coverage through self-insurance and loss pooling; and

**WHEREAS**, the self-insurance and loss pooling programs of the CALIFORNIA JPIA, as well as its group insurance coverage programs, offer significant advantages to the City in terms of cost, protection, risk management and loss control advice and assistance, and entering such programs would be and is in the best interest of this City.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES  
HEREBY RESOLVE, ORDER AND DETERMINE THE FOLLOWING:**

**Section 1.** That the Mayor of the City of Morro Bay is hereby authorized and directed to execute the Joint Powers Agreement on behalf of the City of Morro Bay binding the Member to the terms and conditions of said Agreement.

**Section 2.** That the City of Morro Bay hereby joins the Joint Protection Program of CALIFORNIA JPIA, providing self-insurance and loss pooling for General and Automobile Liability for a period of not less than three (3) years.

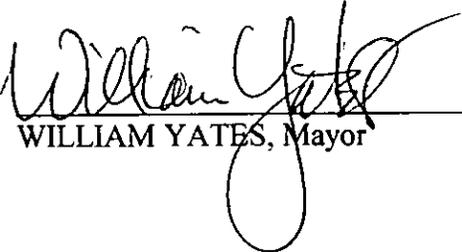
Resolution No. 38-03  
Page Two

**PASSED AND APPROVED** by the City Council of the City of Morro Bay this  
23<sup>rd</sup> day of June 2003 by the following vote:

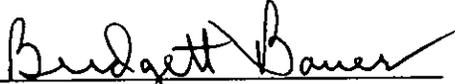
AYES: Elliott, Peirce, Peters, Winholtz, Yates

NOES: None

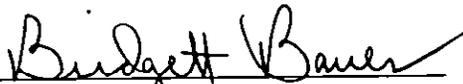
ABSENT: None

  
WILLIAM YATES, Mayor

ATTEST:

  
BRIDGETT BAUER, City Clerk

I hereby certify, under the penalty of perjury, that the above and foregoing is a true and correct copy of Resolution No.38-03 as adopted by the City Council of the City of Morro Bay, on the 23<sup>rd</sup> day of June 2003.

  
BRIDGETT BAUER, City Clerk

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Government Code Section 7910(a) states: “Each year, the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year, pursuant to Article XIII B of the California Constitution, at a regularly scheduled meeting or noticed special meeting. Fifteen days prior to the meeting, documentation used in the determination of the appropriations limit and other necessary determinations shall be available to the public. The determinations made pursuant to this section are legislative acts.” Due to the COVID-19 pandemic and closure of city facilities, the Gann Limit Appropriation Limit report was not provided for public viewing at City Hall in advance, however, it was posted on the City Website prior to publication in the agenda packet.

**DISCUSSION:**

According to the estimates received from the California Department of Finance office, the population of Morro Bay decreased by -0.79 percent between January 1, 2019 and January 1, 2020, while the San Luis Obispo County population decreased by -0.42 percent for that same time period. The City is provided greater local control by using the larger of the two percentages, which is the County population growth factor this year. The CPCPI increased by 3.73 percent. Applying these factors results in:

Prior year limit		\$28,065,449
Multiply by CPCPI change	x	1.0375
Multiply by SLO County in population	x	<u>(1.0042)</u>
Equals	=	<u>\$28,990,070</u>

The FY 2019/20 budget estimate of revenues from the proceeds of taxes is \$10,954,158, which is well below the appropriations limit, by \$17,111,341, or 59%.

The calculation of estimated proceeds of taxes for FY 2020/21 is shown in detail in Attachment 2.

The calculation of FY 2020/21 Appropriations Limit is shown in Attachment 3, along with a historical listing of prior year limits.

Attachment 4 is a copy of the California Department of Finance's change in population estimates between January 1, 2019, and January 1, 2020 and the California Department of Finance's cover letter and published CPCPI price factor.

**ATTACHMENTS**

1. Resolution No. 65-20 Establishing the Annual Proposition 4 Appropriations Limit for FY 2020/21
2. Calculation of the Estimated Proceeds of Taxes for FY 2020/21
3. Calculation of FY 2020/21 Appropriations Limit
4. California Department of Finance Published CPCPI and Population Estimates

**RESOLUTION NO. 65-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
ESTABLISHING THE ANNUAL PROPOSITION 4  
APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2020/21**

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

**WHEREAS**, Article XIII B of the California Constitution restricts the appropriation of tax proceeds that the City receives in any given fiscal year; and

**WHEREAS**, the City has calculated the FY 2020/21 appropriations limit, in accordance with the provisions of Article XIII B of the California Constitution; and

**WHEREAS**, Proposition 111 of June 1990 requires an annual election of the methodology used in the calculation of the current year appropriations limit.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, to adopt Resolution No. 65-20, which accepts the calculation of the FY 2020/21 appropriations limit, as prepared by the Morro Bay Finance Department, and establishes the FY 2020/21 appropriations limit at \$28,990,070.

**PASSED AND ADOPTED**, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020, by the following vote:

AYES:  
NOES:  
ABSENT:

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JOHN HEADDING, Mayor

ATTEST:

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DANA SWANSON, City Clerk

**CITY OF MORRO BAY  
APPROPRIATION LIMIT DOCUMENTATION  
FISCAL YEAR 2020/21**

**PROCEEDS OF TAXES CALCULATION**

**APPROPRIATION LIMIT CALCULATION**

	[1] <u>PROCEEDS OF TAXES</u>	PROCEEDS OTHER THAN <u>TAXES</u>	TOTAL ESTIMATED <u>REVENUES</u>	<u>YEAR</u>	[2] <u>CALIFORNIA PCPI CHANGE</u>	[3] <u>POPULATION CHANGE</u>	<u>LIMIT</u>
PROPERTY TAXES	\$ 4,223,756		\$ 4,223,756	1978-79	BASE YEAR		\$ 3,046,393
OTHER TAXES	5,783,703	536,136	6,319,839	1979-80	10.17%	1.38%	3,402,527
PERMITS		95,500	95,500	1980-81	10.53%	0.26%	3,770,591
REVENUE FROM AGENCIES				1981-82	9.12%	1.39%	4,171,660
STATE	946,699		946,699	1982-83	6.79%	2.04%	4,545,796
STATE/COUNTY GRANTS	-	-	-	1983-84	2.35%	1.81%	4,736,835
FEDERAL GRANTS	-	28,000	28,000	1984-85	4.74%	1.75%	5,048,185
USE OF MONEY & PROPERTY				1985-86	3.74%	1.62%	5,321,826
INTEREST	-	-	-	1986-87	2.30%	4.12%	5,668,530
RENT		360,802	360,802	1987-88	3.04%	2.93%	6,011,990
FINES & FORFEITURES		109,000	109,000	1988-89	3.93%	3.83%	6,487,570
CHARGES FOR SERVICES		20,075,491	20,075,491	1989-90	4.98%	3.92%	7,077,629
OTHER REVENUES		4,075,260	4,075,260	1990-91	4.21%	4.59%	7,714,137
	<u>\$ 10,954,158</u>	<u>\$ 25,280,189</u>	<u>\$ 36,234,347</u>	1991-92	4.14%	3.04%	8,277,721
				1992-93	-0.64%	1.00%	8,306,991
				1993-94	2.72%	1.86%	8,691,654
				1994-95	0.71%	1.40%	8,875,912
				1995-96	4.72%	1.60%	9,443,573
				1996-97	4.67%	2.31%	10,112,922
				1997-98	4.67%	2.06%	10,803,250
				1998-99	4.15%	2.70%	11,555,378
				1999-2000	4.53%	2.28%	12,354,234
				2000-01	4.91%	2.46%	13,279,663
				2001-02	7.82%	1.60%	14,547,223
				2002-03	-1.27%	1.80%	14,620,998
				2003-04	2.31%	1.32%	15,156,198
				2004-05	3.28%	1.15%	15,833,334
				2005-06	5.26%	1.19%	16,864,495
				2006-07	3.96%	0.73%	17,660,315
				2007-08	4.42%	0.96%	18,617,934
				2008-09	4.29%	1.12%	19,634,110
				2009-10	0.62%	1.01%	19,955,375
				2010-11	-2.54%	0.87%	19,617,710
				2011-12	2.51%	1.09%	20,329,315
				2012-13	3.77%	0.47%	21,194,880
				2013-14	5.12%	0.52%	22,395,914
				2014-15	-0.23%	0.09%	22,364,513
				2015-16	3.82%	0.78%	23,399,944
				2016-17	5.37%	0.77%	24,846,376
				2017-18	3.69%	0.59%	25,915,210
				2018-19	3.67%	0.35%	26,960,330
				2019-20	3.85%	0.24%	28,065,499
				2020-21	3.73%	-0.42%	28,990,070
				PROCEEDS OF TAXES			<u>10,954,158</u>
				PROCEEDS OF TAXES			
				UNDER APPROPRIATION LIMIT			<u>\$ 17,111,341</u>

[1] Per City of Morro Bay FY 20/21 Adopted Annual Budget, total *All Funds Revenues* less transfers.

[2] Per State Department of Finance (per capita personal income); FY 20/21 = 3.73%

[3] Per State Department of Finance (population growth of City or County, whichever is greater); FY 20/21 MB = -0.79%; SLO County = -0.42%

**CITY OF MORRO BAY  
APPROPRIATION LIMIT DOCUMENTATION  
FISCAL YEAR 2020/21**

	General	District Trans Tax	MBTBID	CTMD	GFER	GF Fac Maint	Special Gas Tax	CDBG	Traffic Safety	SLESF COPS	Transit	LTF Roads	LTF Bikepaths	Water Ops
Property taxes	4,223,756	-	-	-	-	-	-	-	-	-	-	-	-	-
Other taxes:														
Sales tax	1,728,822	845,000	-	-	-	-	-	-	-	-	-	-	-	-
Franchises fees	536,136	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	2,156,691	-	550,000	345,627	-	-	-	-	-	-	-	-	-	-
Licenses/permits	95,500	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue from other agencies:														
Intergovernmental	55,114	-	-	-	-	-	526,455	-	-	100,000	256,225	-	8,905	-
State/County grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Federal grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Use of money and property:														
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rent	360,802	-	-	-	-	-	-	-	-	-	-	-	-	-
Fines/Forfeitures	6,000	-	-	-	-	-	-	-	10,000	-	-	-	-	55,000
Charges for services	1,036,787	-	-	-	-	-	-	-	-	-	24,000	-	-	5,831,200
Other revenues	44,954	-	-	-	-	-	-	-	-	-	-	-	-	1,654,000
	<b>10,244,562</b>	<b>845,000</b>	<b>550,000</b>	<b>345,627</b>	<b>-</b>	<b>-</b>	<b>526,455</b>	<b>-</b>	<b>10,000</b>	<b>100,000</b>	<b>280,225</b>	<b>-</b>	<b>8,905</b>	<b>7,540,200</b>

	Sewer Ops	Harbor Ops	Risk Management	Special Assessmt LMD	Special Assessmt LMD Cloisters	MB/CSD WWTF	Gov Impact	Unfunded Leaves	State Park Marina	Housing In-Lieu	Water Accum	Sewer Accum	Harbor Accum	TOTAL ESTIMATED REVENUES
Property taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	4,223,756
Other taxes:														
Sales tax	-	-	-	-	-	-	-	-	-	-	-	-	-	2,573,822
Franchises fees	-	-	-	-	-	-	-	-	-	-	-	-	-	536,136
Other	-	-	-	8,619	148,944	-	-	-	-	-	-	-	-	3,209,881
Licenses/permits	-	-	-	-	-	-	-	-	-	-	-	-	-	95,500
Revenue from other agencies:														
State	-	-	-	-	-	-	-	-	-	-	-	-	-	946,699
State/County grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Federal grants	-	28,000	-	-	-	-	-	-	-	-	-	-	-	28,000
Use of money and property:	20,000													
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rent	-	-	-	-	-	-	-	-	-	-	-	-	-	360,802
Fines/Forfeitures	38,000	-	-	-	-	-	-	-	-	-	-	-	-	109,000
Charges for services	6,946,000	1,819,300	1,574,636	-	-	2,715,918	32,650	-	85,000	10,000	-	-	-	20,075,491
Other revenues	2,173,000	-	25,000	-	-	-	15,500	45,000	-	117,806	-	-	-	4,075,260
	<b>9,177,000</b>	<b>1,847,300</b>	<b>1,599,636</b>	<b>8,619</b>	<b>148,944</b>	<b>2,715,918</b>	<b>48,150</b>	<b>45,000</b>	<b>85,000</b>	<b>127,806</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>36,234,347</b>



May 2020

Dear Fiscal Officer:

**Subject: Price Factor and Population Information**

### **Appropriations Limit**

California Revenue and Taxation Code section 2227 requires the Department of Finance to transmit an estimate of the percentage change in population to local governments. Each local jurisdiction must use their percentage change in population factor for January 1, 2020, in conjunction with a change in the cost of living, or price factor, to calculate their appropriations limit for fiscal year 2020-21. Attachment A provides the change in California's per capita personal income and an example for utilizing the price factor and population percentage change factor to calculate the 2020-21 appropriations limit. Attachment B provides the city and unincorporated county population percentage change. Attachment C provides the population percentage change for counties and their summed incorporated areas. The population percentage change data excludes federal and state institutionalized populations and military populations.

### **Population Percent Change for Special Districts**

Some special districts must establish an annual appropriations limit. California Revenue and Taxation Code section 2228 provides additional information regarding the appropriations limit. Article XIII B, section 9(C) of the California Constitution exempts certain special districts from the appropriations limit calculation mandate. The code section and the California Constitution can be accessed at the following website: <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

Special districts required by law to calculate their appropriations limit must present the calculation as part of their annual audit. Any questions special districts have on this requirement should be directed to their county, district legal counsel, or the law itself. No state agency reviews the local appropriations limits.

### **Population Certification**

The population certification program applies only to cities and counties. California Revenue and Taxation Code section 11005.6 mandates Finance to automatically certify any population estimate that exceeds the current certified population with the State Controller's Office. **Finance will certify the higher estimate to the State Controller by June 1, 2020.**

**Please Note:** The prior year's city population estimates may be revised. The per capita personal income change is based on historical data. Given the stay-at-home orders due to COVID-19, growth in the coming years may be substantially lower than recent trends.

If you have any questions regarding this data, please contact the Demographic Research Unit at (916) 323-4086.

/s/ Keely Martin Bosler

KEELY MARTIN BOSLER  
Director

Attachment

- A. **Price Factor:** Article XIII B specifies that local jurisdictions select their cost of living factor to compute their appropriation limit by a vote of their governing body. The cost of living factor provided here is per capita personal income. If the percentage change in per capita personal income is selected, the percentage change to be used in setting the fiscal year 2020-21 appropriation limit is:

Per Capita Personal Income

Fiscal Year (FY)	Percentage change over prior year
2020-21	3.73

- B. Following is an example using sample population change and the change in California per capita personal income as growth factors in computing a 2020-21 appropriation limit.

**2020-21:**

Per Capita Cost of Living Change = 3.73 percent  
 Population Change = 0.22 percent

Per Capita Cost of Living converted to a ratio:  $\frac{3.73 + 100}{100} = 1.0373$

Population converted to a ratio:  $\frac{0.22 + 100}{100} = 1.0022$

Calculation of factor for FY 2020-21:  $1.0373 \times 1.0022 = 1.0396$

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Alameda				
Alameda	-0.38	80,211	79,905	81,312
Albany	-0.13	18,961	18,937	18,937
Berkeley	0.18	122,358	122,580	122,580
Dublin	2.82	62,409	64,172	65,716
Emeryville	2.13	12,041	12,298	12,298
Fremont	0.35	233,404	234,220	234,220
Hayward	0.07	160,197	160,311	160,311
Livermore	0.46	91,436	91,861	91,861
Newark	1.67	48,164	48,966	48,966
Oakland	0.68	430,753	433,697	433,697
Piedmont	-0.13	11,468	11,453	11,453
Pleasanton	0.09	79,392	79,464	79,464
San Leandro	-0.41	88,296	87,930	87,930
Union City	-0.03	73,661	73,637	73,637
Unincorporated	-0.31	148,826	148,369	148,452
County Total	0.37	1,661,577	1,667,800	1,670,834

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Alpine				
Unincorporated	-0.61	1,149	1,142	1,142
County Total	-0.61	1,149	1,142	1,142

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Amador				
Amador	-1.19	168	166	166
lone	1.95	3,942	4,019	8,008
Jackson	0.33	4,844	4,860	4,860
Plymouth	-0.80	1,006	998	998
Sutter Creek	-0.88	2,492	2,470	2,470
Unincorporated	-1.08	21,333	21,103	21,174
County Total	-0.50	33,785	33,616	37,676

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Butte				
Biggs	-9.79	2,053	1,852	1,852
Chico	0.58	109,688	110,326	110,326
Gridley	-9.29	7,058	6,402	6,402
Oroville	-8.78	21,311	19,440	19,440
Paradise	3.26	4,485	4,631	4,631
Unincorporated	-12.07	76,926	67,640	67,640
County Total	-5.07	221,521	210,291	210,291

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Calaveras				
Angels City	0.68	4,095	4,123	4,123
Unincorporated	-0.15	40,889	40,828	40,900
County Total	-0.07	44,984	44,951	45,023

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Colusa				
Colusa	-0.84	6,227	6,175	6,175
Williams	0.63	5,392	5,426	5,426
Unincorporated	-0.67	10,371	10,301	10,301
County Total	-0.40	21,990	21,902	21,902

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Contra Costa				
Antioch	0.09	112,423	112,520	112,520
Brentwood	1.17	64,365	65,118	65,118
Clayton	-0.09	11,347	11,337	11,337
Concord	-0.22	130,435	130,143	130,143
Danville	-0.11	43,923	43,876	43,876
El Cerrito	0.41	24,852	24,953	24,953
Hercules	0.16	25,488	25,530	25,530
Lafayette	-0.16	25,644	25,604	25,604
Martinez	-0.85	37,424	37,106	37,106
Moraga	0.04	16,939	16,946	16,946
Oakley	1.15	41,979	42,461	42,461
Orinda	0.52	18,911	19,009	19,009
Pinole	-0.30	19,563	19,505	19,505
Pittsburg	1.03	73,565	74,321	74,321
Pleasant Hill	-0.06	34,286	34,267	34,267
Richmond	0.38	110,793	111,217	111,217
San Pablo	-0.22	31,481	31,413	31,413
San Ramon	1.24	82,100	83,118	83,118
Walnut Creek	-0.14	70,958	70,860	70,860
Unincorporated	0.06	174,061	174,173	174,257
County Total	0.26	1,150,537	1,153,477	1,153,561

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Del Norte				
Crescent City	0.62	4,050	4,075	6,673
Unincorporated	0.57	20,441	20,558	20,625
County Total	0.58	24,491	24,633	27,298

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
El Dorado				
Placerville	1.33	10,836	10,980	10,980
South Lake Tahoe	0.99	22,304	22,525	22,525
Unincorporated	1.83	156,775	159,638	159,722
County Total	1.70	189,915	193,143	193,227

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Fresno				
Clovis	2.20	116,609	119,175	119,175
Coalinga	1.53	12,459	12,649	17,199
Firebaugh	0.01	7,980	7,981	7,981
Fowler	3.76	6,220	6,454	6,454
Fresno	0.69	541,645	545,397	545,769
Huron	-0.04	7,302	7,299	7,299
Kerman	1.16	15,767	15,950	15,950
Kingsburg	2.65	12,551	12,883	12,883
Mendota	1.92	12,278	12,514	12,514
Orange Cove	-0.04	9,460	9,456	9,456
Parlier	1.48	15,658	15,890	15,890
Reedley	0.17	25,873	25,917	25,917
Sanger	0.67	27,005	27,185	27,185
San Joaquin	-0.05	4,144	4,142	4,142
Selma	0.14	24,402	24,436	24,436
Unincorporated	0.10	170,025	170,188	171,108
County Total	0.81	1,009,378	1,017,516	1,023,358

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Glenn				
Orland	2.59	8,113	8,323	8,323
Willows	2.11	6,080	6,208	6,208
Unincorporated	2.64	14,405	14,785	14,869
County Total	2.51	28,598	29,316	29,400

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Humboldt				
Arcata	-1.43	18,223	17,963	17,963
Blue Lake	-0.62	1,285	1,277	1,277
Eureka	-0.45	26,820	26,699	26,699
Ferndale	0.29	1,378	1,382	1,382
Fortuna	0.09	12,112	12,123	12,123
Rio Dell	-0.63	3,308	3,287	3,287
Trinidad	-0.59	339	337	337
Unincorporated	-0.38	70,347	70,082	70,234
County Total	-0.49	133,812	133,150	133,302

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Imperial				
Brawley	0.44	27,229	27,349	27,349
Calexico	-0.33	41,032	40,896	40,896
Calipatria	-0.41	3,669	3,654	6,843
El Centro	-0.26	45,774	45,657	45,657
Holtville	-0.11	6,366	6,359	6,359
Imperial	2.80	19,364	19,907	19,907
Westmorland	-0.42	2,356	2,346	2,346
Unincorporated	-0.82	35,824	35,529	39,420
County Total	0.05	181,614	181,697	188,777

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Fiscal Year 2020-21

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Inyo				
Bishop	0.16	3,815	3,821	3,821
Unincorporated	0.09	14,666	14,679	14,763
County Total	0.10	18,481	18,500	18,584

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Kern				
Arvin	1.70	21,314	21,677	21,677
Bakersfield	1.43	387,236	392,756	392,756
California City	0.46	11,927	11,982	14,161
Delano	1.12	44,074	44,568	53,032
Maricopa	0.45	1,122	1,127	1,127
McFarland	0.77	13,468	13,572	14,388
Ridgecrest	0.97	28,364	28,640	29,350
Shafter	3.17	19,267	19,878	20,441
Taft	0.32	6,823	6,845	8,680
Tehachapi	0.94	8,980	9,064	12,758
Wasco	5.45	22,813	24,056	28,884
Unincorporated	0.75	315,236	317,600	320,299
County Total	1.27	880,624	891,765	917,553

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Fiscal Year 2020-21

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**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Kings				
Avenal	1.45	9,022	9,153	13,189
Corcoran	0.93	12,740	12,858	21,302
Hanford	0.75	58,907	59,349	59,349
Lemoore	0.97	26,254	26,509	26,509
Unincorporated	1.12	26,027	26,318	33,259
County Total	0.93	132,950	134,187	153,608

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

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**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Lake				
Clearlake	-0.46	14,363	14,297	14,297
Lakeport	-0.45	4,698	4,677	4,677
Unincorporated	-0.24	45,116	45,006	45,066
County Total	-0.31	64,177	63,980	64,040

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Fiscal Year 2020-21

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**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Lassen				
Susanville	1.22	7,979	8,076	13,717
Unincorporated	1.18	13,797	13,960	15,116
County Total	1.19	21,776	22,036	28,833

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Los Angeles				
Agoura Hills	-0.27	20,622	20,566	20,566
Alhambra	0.00	86,793	86,792	86,792
Arcadia	-0.09	57,262	57,212	57,212
Artesia	-0.27	16,448	16,404	16,490
Avalon	-0.25	3,939	3,929	3,929
Azusa	0.24	49,537	49,658	49,658
Baldwin Park	-0.08	76,311	76,252	76,252
Bell	0.06	36,510	36,531	36,531
Bellflower	-0.16	78,239	78,110	78,110
Bell Gardens	-0.31	42,579	42,449	42,449
Beverly Hills	-0.45	33,926	33,775	33,775
Bradbury	-0.38	1,056	1,052	1,052
Burbank	0.35	105,496	105,861	105,861
Calabasas	0.03	24,185	24,193	24,193
Carson	-0.05	93,153	93,108	93,108
Cerritos	0.00	49,995	49,994	49,994
Claremont	-0.18	35,872	35,807	35,807
Commerce	-0.47	12,929	12,868	12,868
Compton	-0.18	98,206	98,032	98,032
Covina	0.33	48,683	48,846	48,846
Cudahy	-0.23	24,227	24,172	24,172
Culver City	0.54	39,493	39,705	39,705
Diamond Bar	-0.23	57,308	57,177	57,177
Downey	-0.29	113,863	113,529	113,529
Duarte	-0.04	21,681	21,673	21,673
El Monte	0.10	116,563	116,675	116,675
El Segundo	-0.21	16,812	16,777	16,777
Gardena	0.07	60,892	60,937	60,937
Glendale	0.22	204,883	205,331	205,331
Glendora	0.44	51,840	52,067	52,067
Hawaiian Gardens	-0.25	14,685	14,649	14,649
Hawthorne	-0.19	87,071	86,903	86,903
Hermosa Beach	-0.14	19,641	19,614	19,614
Hidden Hills	0.32	1,862	1,868	1,868
Huntington Park	-0.21	59,642	59,515	59,515
Industry	0.00	427	427	427
Inglewood	-0.33	112,345	111,971	111,971
Irwindale	-0.62	1,443	1,434	1,434

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
La Canada Flintridge	-0.18	20,497	20,461	20,461
La Habra Heights	-0.16	5,470	5,461	5,461
Lakewood	-0.31	80,168	79,919	79,919
La Mirada	-0.27	49,007	48,877	48,877
Lancaster	0.10	157,174	157,338	161,699
La Puente	0.09	40,532	40,568	40,568
La Verne	0.03	33,289	33,300	33,300
Lawndale	-0.24	32,879	32,799	32,799
Lomita	-0.32	20,614	20,549	20,549
Long Beach	-0.12	472,730	472,140	472,217
Los Angeles	-0.06	4,010,280	4,007,960	4,010,684
Lynwood	-0.39	71,549	71,269	71,269
Malibu	-0.54	11,784	11,720	11,720
Manhattan Beach	-0.48	35,419	35,250	35,250
Maywood	-0.30	27,988	27,904	27,904
Monrovia	-0.06	37,956	37,935	37,935
Montebello	-0.31	63,742	63,544	63,544
Monterey Park	-0.34	60,943	60,734	60,734
Norwalk	-0.21	105,087	104,862	105,717
Palmdale	-0.24	157,117	156,737	156,737
Palos Verdes Estates	-0.30	13,230	13,190	13,190
Paramount	-0.19	55,569	55,461	55,461
Pasadena	0.11	144,686	144,842	144,842
Pico Rivera	-0.03	63,390	63,374	63,374
Pomona	0.09	154,675	154,817	154,817
Rancho Palos Verdes	-0.26	41,821	41,714	41,731
Redondo Beach	-0.24	67,154	66,994	66,994
Rolling Hills	-0.32	1,880	1,874	1,874
Rolling Hills Estates	0.39	8,035	8,066	8,066
Rosemead	0.30	54,198	54,363	54,363
San Dimas	-0.28	34,042	33,945	33,945
San Fernando	1.65	24,798	25,207	25,207
San Gabriel	-0.22	40,194	40,104	40,104
San Marino	-0.14	13,106	13,087	13,087
Santa Clarita	0.10	221,703	221,932	221,932
Santa Fe Springs	-0.29	18,303	18,250	18,295
Santa Monica	-0.13	92,480	92,357	92,357
Sierra Madre	-0.25	10,843	10,816	10,816
Signal Hill	-0.27	11,744	11,712	11,712
South El Monte	1.98	20,792	21,204	21,204

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
South Gate	-0.21	97,211	97,003	97,003
South Pasadena	-0.26	25,524	25,458	25,458
Temple City	0.14	36,098	36,150	36,150
Torrance	-0.26	145,922	145,546	145,546
Vernon	-0.34	298	297	297
Walnut	-0.16	29,977	29,929	29,929
West Covina	-0.30	106,313	105,999	105,999
West Hollywood	-0.36	36,335	36,203	36,203
Westlake Village	-0.18	8,227	8,212	8,212
Whittier	-0.31	87,073	86,801	86,801
Unincorporated	-0.50	1,038,938	1,033,771	1,034,689
County Total	-0.11	10,175,203	10,163,868	10,172,951

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Madera				
Chowchilla	-0.28	12,501	12,466	18,196
Madera	0.46	65,117	65,415	65,415
Unincorporated	-0.01	74,546	74,536	74,536
County Total	0.17	152,164	152,417	158,147

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Marin				
Belvedere	-0.70	2,139	2,124	2,124
Corte Madera	-0.24	10,138	10,114	10,114
Fairfax	-0.59	7,443	7,399	7,399
Larkspur	-0.63	12,331	12,253	12,253
Mill Valley	-0.47	14,743	14,674	14,674
Novato	-0.67	53,774	53,414	53,702
Ross	0.08	2,548	2,550	2,550
San Anselmo	-0.69	12,845	12,757	12,757
San Rafael	-0.66	60,207	59,807	59,807
Sausalito	-0.67	7,301	7,252	7,252
Tiburon	-0.43	9,581	9,540	9,540
Unincorporated	-0.59	64,851	64,469	68,659
County Total	-0.60	257,901	256,353	260,831

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Mariposa				
Unincorporated	0.04	17,979	17,986	18,067
County Total	0.04	17,979	17,986	18,067

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Mendocino				
Fort Bragg	-0.59	7,471	7,427	7,427
Point Arena	2.27	441	451	451
Ukiah	0.20	16,029	16,061	16,061
Willits	-0.88	5,117	5,072	5,072
Unincorporated	-0.65	59,160	58,774	58,935
County Total	-0.49	88,218	87,785	87,946

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Merced				
Atwater	0.03	31,370	31,378	31,378
Dos Palos	-0.05	5,549	5,546	5,546
Gustine	0.14	5,867	5,875	5,875
Livingston	2.33	14,709	15,052	15,052
Los Banos	1.54	41,287	41,923	41,923
Merced	2.37	86,081	88,120	88,120
Unincorporated	-0.13	94,636	94,511	95,627
County Total	1.04	279,499	282,405	283,521

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Modoc				
Alturas	-0.81	2,849	2,826	2,826
Unincorporated	-0.43	6,707	6,678	6,744
County Total	-0.54	9,556	9,504	9,570

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Mono				
Mammoth Lakes	-0.36	7,887	7,859	7,859
Unincorporated	-0.45	5,498	5,473	5,605
County Total	-0.40	13,385	13,332	13,464

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Monterey				
Carmel-By-The-Sea	0.25	3,939	3,949	3,949
Del Rey Oaks	-0.72	1,674	1,662	1,662
Gonzales	-0.70	8,566	8,506	8,506
Greenfield	0.97	18,109	18,284	18,284
King City	1.77	14,540	14,797	14,797
Marina	-1.62	22,688	22,321	22,321
Monterey	-1.45	24,554	24,199	28,170
Pacific Grove	-0.62	15,360	15,265	15,265
Salinas	-0.08	162,353	162,222	162,222
Sand City	0.52	383	385	385
Seaside	-2.10	29,964	29,335	33,537
Soledad	0.36	17,128	17,190	25,301
Unincorporated	-0.15	106,396	106,234	106,744
County Total	-0.31	425,654	424,349	441,143

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Napa				
American Canyon	-0.78	21,000	20,837	20,837
Calistoga	-0.56	5,378	5,348	5,348
Napa	-0.57	79,730	79,278	79,278
St Helena	-0.46	6,101	6,073	6,073
Yountville	-0.51	1,942	1,932	2,685
Unincorporated	-0.64	23,751	23,598	24,867
County Total	-0.61	137,902	137,066	139,088

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Nevada				
Grass Valley	0.11	12,851	12,865	12,865
Nevada City	-0.63	3,160	3,140	3,140
Truckee	0.57	16,136	16,228	16,228
Unincorporated	0.32	65,593	65,804	65,881
County Total	0.30	97,740	98,037	98,114

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Orange				
Aliso Viejo	0.46	49,815	50,044	50,044
Anaheim	0.18	356,652	357,308	357,325
Brea	1.67	44,879	45,629	45,629
Buena Park	-0.51	82,422	81,998	81,998
Costa Mesa	0.20	114,543	114,772	114,778
Cypress	0.60	48,976	49,272	49,272
Dana Point	-0.20	33,212	33,146	33,146
Fountain Valley	-0.39	56,099	55,878	55,878
Fullerton	-0.05	141,931	141,863	141,863
Garden Grove	-0.14	175,052	174,801	174,801
Huntington Beach	0.02	201,239	201,281	201,281
Irvine	1.53	277,462	281,707	281,707
Laguna Beach	-0.45	22,445	22,343	22,343
Laguna Hills	-0.52	31,674	31,508	31,508
Laguna Niguel	-0.07	65,363	65,316	65,316
Laguna Woods	-0.53	16,329	16,243	16,243
La Habra	0.08	63,319	63,371	63,371
Lake Forest	0.16	84,576	84,711	84,711
La Palma	-0.51	15,572	15,492	15,492
Los Alamitos	-0.08	11,576	11,567	11,567
Mission Viejo	-0.53	94,766	94,267	94,267
Newport Beach	0.09	85,706	85,780	85,780
Orange	-0.25	140,410	140,065	140,065
Placentia	-0.49	51,750	51,494	51,494
Rancho Santa Margarita	-0.53	49,051	48,793	48,793
San Clemente	0.06	64,541	64,581	64,581
San Juan Capistrano	0.47	36,149	36,318	36,318
Santa Ana	-0.77	337,639	335,052	335,052
Seal Beach	-0.42	24,480	24,376	24,992
Stanton	-0.05	39,097	39,077	39,077
Tustin	-0.14	80,491	80,382	80,382
Villa Park	-0.35	5,786	5,766	5,766
Westminster	-0.34	92,737	92,421	92,421
Yorba Linda	0.28	68,458	68,650	68,650
Unincorporated	0.26	128,082	128,421	128,421
County Total	0.04	3,192,279	3,193,693	3,194,332

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Placer				
Auburn	1.07	14,440	14,594	14,594
Colfax	1.46	2,121	2,152	2,152
Lincoln	1.31	48,679	49,317	49,317
Loomis	0.88	6,828	6,888	6,888
Rocklin	2.24	68,806	70,350	70,350
Roseville	2.73	141,299	145,163	145,163
Unincorporated	1.27	113,805	115,247	115,247
County Total	1.95	395,978	403,711	403,711

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Plumas				
Portola	-0.05	2,017	2,016	2,016
Unincorporated	0.12	16,225	16,244	16,244
County Total	0.10	18,242	18,260	18,260

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Riverside				
Banning	-0.05	31,142	31,125	31,125
Beaumont	3.72	49,630	51,475	51,475
Blythe	-0.37	13,710	13,659	19,255
Calimesa	5.65	8,830	9,329	9,329
Canyon Lake	0.05	10,995	11,000	11,000
Cathedral City	0.49	53,272	53,531	53,580
Coachella	0.64	46,885	47,186	47,186
Corona	0.91	166,723	168,248	168,248
Desert Hot Springs	-0.08	29,683	29,660	29,660
Eastvale	1.22	65,611	66,413	66,413
Hemet	0.02	85,159	85,175	85,175
Indian Wells	0.45	5,379	5,403	5,403
Indio	0.74	90,087	90,751	90,751
Jurupa Valley	0.91	106,115	107,083	107,083
Lake Elsinore	0.47	63,009	63,308	63,453
La Quinta	0.67	40,389	40,660	40,660
Menifee	2.49	94,732	97,093	97,093
Moreno Valley	0.80	207,181	208,838	208,838
Murrieta	1.20	114,193	115,561	115,561
Norco	-0.06	24,006	23,991	27,564
Palm Desert	0.14	52,911	52,986	52,986
Palm Springs	0.28	47,296	47,427	47,427
Perris	0.43	79,856	80,201	80,201
Rancho Mirage	1.21	18,886	19,114	19,114
Riverside	0.53	326,368	328,096	328,155
San Jacinto	1.18	50,431	51,028	51,028
Temecula	0.08	111,879	111,970	111,970
Wildomar	0.15	37,126	37,183	37,183
Unincorporated	0.79	382,077	385,084	385,388
County Total	0.79	2,413,561	2,432,578	2,442,304

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Sacramento				
Citrus Heights	0.09	87,731	87,811	87,811
Elk Grove	1.72	173,170	176,154	176,154
Folsom	3.05	73,815	76,065	81,610
Galt	0.76	25,655	25,849	25,849
Isleton	0.12	827	828	828
Rancho Cordova	1.22	77,438	78,381	78,381
Sacramento	1.13	505,230	510,931	510,931
Unincorporated	0.29	592,079	593,801	593,801
County Total	0.90	1,535,945	1,549,820	1,555,365

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Benito				
Hollister	1.62	39,998	40,646	40,646
San Juan Bautista	0.67	2,098	2,112	2,112
Unincorporated	0.92	19,417	19,595	19,595
County Total	1.37	61,513	62,353	62,353

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Bernardino				
Adelanto	0.73	34,857	35,113	35,663
Apple Valley	0.34	74,140	74,394	74,394
Barstow	0.13	23,790	23,822	24,268
Big Bear Lake	0.29	5,191	5,206	5,206
Chino	2.18	82,094	83,883	89,109
Chino Hills	0.12	82,310	82,409	82,409
Colton	0.48	53,862	54,118	54,118
Fontana	0.33	212,304	213,000	213,000
Grand Terrace	0.52	12,362	12,426	12,426
Hesperia	0.93	95,509	96,393	96,393
Highland	0.18	55,222	55,323	55,323
Loma Linda	0.53	24,329	24,459	24,535
Montclair	0.10	39,452	39,490	39,490
Needles	-0.78	5,289	5,248	5,248
Ontario	1.32	180,494	182,871	182,871
Rancho Cucamonga	0.18	175,201	175,522	175,522
Redlands	0.36	70,700	70,952	70,952
Rialto	0.21	104,334	104,553	104,553
San Bernardino	0.13	216,104	216,395	217,946
Twentynine Palms	2.55	18,365	18,834	29,258
Upland	0.32	78,564	78,814	78,814
Victorville	0.86	121,109	122,155	126,432
Yucaipa	0.15	55,629	55,712	55,712
Yucca Valley	0.14	22,205	22,236	22,236
Unincorporated	0.32	295,855	296,797	304,659
County Total	0.51	2,139,271	2,150,125	2,180,537

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Diego				
Carlsbad	0.73	113,635	114,463	114,463
Chula Vista	0.43	270,736	271,908	272,202
Coronado	-0.45	16,774	16,699	21,381
Del Mar	-0.16	4,275	4,268	4,268
El Cajon	0.28	104,104	104,393	104,393
Encinitas	0.14	62,096	62,183	62,183
Escondido	0.40	152,391	153,008	153,008
Imperial Beach	0.43	27,934	28,055	28,055
La Mesa	0.23	59,827	59,966	59,966
Lemon Grove	0.38	26,426	26,526	26,526
National City	-0.27	57,308	57,153	62,099
Oceanside	0.05	177,242	177,335	177,335
Poway	0.08	49,298	49,338	49,338
San Diego	0.07	1,410,653	1,411,662	1,430,489
San Marcos	0.58	96,651	97,209	97,209
Santee	0.38	57,780	57,999	57,999
Solana Beach	0.38	13,786	13,838	13,838
Vista	0.81	102,098	102,928	102,928
Unincorporated	0.59	465,611	468,381	505,675
County Total	0.27	3,268,625	3,277,312	3,343,355

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Francisco				
San Francisco	0.76	890,773	897,564	897,806
County Total	0.76	890,773	897,564	897,806

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Joaquin				
Escalon	0.48	7,442	7,478	7,478
Lathrop	5.64	25,401	26,833	26,833
Lodi	0.74	67,430	67,930	67,930
Manteca	1.68	83,395	84,800	84,800
Ripon	1.54	15,688	15,930	15,930
Stockton	0.35	314,598	315,691	318,522
Tracy	1.42	94,586	95,931	95,931
Unincorporated	1.33	151,610	153,625	156,208
County Total	1.06	760,150	768,218	773,632

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Luis Obispo				
Arroyo Grande	-0.85	17,839	17,687	17,687
Atascadero	-0.98	29,202	28,915	30,057
El Paso De Robles	0.27	31,136	31,221	31,221
Grover Beach	-0.80	13,320	13,214	13,214
Morro Bay	-0.79	10,269	10,188	10,188
Pismo Beach	-1.19	8,237	8,139	8,139
San Luis Obispo	-0.04	45,937	45,920	45,920
Unincorporated	-0.41	117,563	117,078	120,833
County Total	-0.42	273,503	272,362	277,259

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
San Mateo				
Atherton	-0.18	7,044	7,031	7,031
Belmont	-0.63	26,983	26,813	26,813
Brisbane	-0.56	4,659	4,633	4,633
Burlingame	-0.67	30,320	30,118	30,118
Colma	14.05	1,516	1,729	1,729
Daly City	-0.52	109,710	109,142	109,142
East Palo Alto	-0.60	30,979	30,794	30,794
Foster City	-0.54	33,211	33,033	33,033
Half Moon Bay	-0.39	12,480	12,431	12,431
Hillsborough	-0.03	11,421	11,418	11,418
Menlo Park	-0.57	35,319	35,118	35,254
Millbrae	-0.66	22,983	22,832	22,832
Pacifica	-0.64	38,579	38,331	38,331
Portola Valley	-0.35	4,623	4,607	4,607
Redwood City	0.71	86,139	86,754	86,754
San Bruno	-0.19	45,542	45,454	45,454
San Carlos	1.66	29,652	30,145	30,145
San Mateo	-0.47	103,569	103,087	103,087
South San Francisco	0.98	67,221	67,879	67,879
Woodside	0.23	5,663	5,676	5,676
Unincorporated	-0.60	66,483	66,083	66,083
County Total	-0.13	774,096	773,108	773,244

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Santa Barbara				
Buellton	1.05	5,407	5,464	5,464
Carpinteria	-0.23	13,366	13,335	13,335
Goleta	0.95	31,920	32,223	32,223
Guadalupe	4.02	7,769	8,081	8,081
Lompoc	-0.28	40,959	40,843	43,786
Santa Barbara	0.43	93,088	93,491	93,511
Santa Maria	0.41	106,969	107,407	107,407
Solvang	-0.23	5,575	5,562	5,562
Unincorporated	-0.14	140,239	140,040	142,471
County Total	0.26	445,292	446,446	451,840

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>		<b>Total Population</b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Santa Clara				
Campbell	0.28	42,168	42,288	42,288
Cupertino	0.08	59,504	59,549	59,549
Gilroy	0.40	56,854	57,084	57,084
Los Altos	-0.02	30,881	30,876	30,876
Los Altos Hills	0.23	8,394	8,413	8,413
Los Gatos	2.34	30,720	31,439	31,439
Milpitas	2.30	76,211	77,961	77,961
Monte Sereno	0.22	3,586	3,594	3,594
Morgan Hill	1.55	45,745	46,454	46,454
Mountain View	0.78	81,639	82,272	82,272
Palo Alto	0.18	69,082	69,206	69,226
San Jose	0.13	1,047,871	1,049,187	1,049,187
Santa Clara	1.34	127,401	129,104	129,104
Saratoga	0.09	31,002	31,030	31,030
Sunnyvale	0.47	155,766	156,503	156,503
Unincorporated	-1.00	86,903	86,035	86,989
County Total	0.37	1,953,727	1,960,995	1,961,969

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Santa Cruz				
Capitola	-0.22	10,130	10,108	10,108
Santa Cruz	-1.25	65,241	64,424	64,424
Scotts Valley	0.40	11,646	11,693	11,693
Watsonville	-0.30	51,672	51,515	51,515
Unincorporated	-0.23	133,715	133,411	133,493
County Total	-0.46	272,404	271,151	271,233

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Shasta				
Anderson	0.63	10,604	10,671	10,671
Redding	-0.01	91,611	91,603	91,743
Shasta Lake	0.60	10,593	10,657	10,657
Unincorporated	0.09	64,833	64,890	64,974
County Total	0.10	177,641	177,821	178,045

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Sierra				
Loyalton	-0.38	784	781	781
Unincorporated	-0.25	2,426	2,420	2,420
County Total	-0.28	3,210	3,201	3,201

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Siskiyou				
Dorris	-0.50	1,001	996	996
Dunsmuir	-0.43	1,641	1,634	1,634
Etna	-0.27	747	745	745
Fort Jones	-0.44	676	673	673
Montague	-0.51	1,370	1,363	1,363
Mount Shasta	-0.32	3,386	3,375	3,375
Tulelake	-0.44	914	910	910
Weed	-0.54	2,762	2,747	2,747
Yreka	-0.59	7,832	7,786	7,786
Unincorporated	-0.16	24,191	24,153	24,232
County Total	-0.31	44,520	44,382	44,461

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Solano				
Benicia	-0.32	27,263	27,175	27,175
Dixon	0.26	19,920	19,972	19,972
Fairfield	0.97	111,059	112,131	116,981
Rio Vista	4.10	9,594	9,987	9,987
Suisun City	-0.31	29,211	29,119	29,119
Vacaville	0.48	91,509	91,945	98,855
Vallejo	-0.24	119,349	119,063	119,063
Unincorporated	-0.10	18,304	18,285	19,072
County Total	0.34	426,209	427,677	440,224

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Sonoma				
Cloverdale	-0.71	9,279	9,213	9,213
Cotati	-1.25	7,628	7,533	7,533
Healdsburg	-0.63	12,166	12,089	12,089
Petaluma	-0.52	62,195	61,873	61,873
Rohnert Park	-0.15	43,134	43,069	43,069
Santa Rosa	-0.89	175,183	173,628	173,628
Sebastopol	-1.04	7,826	7,745	7,745
Sonoma	-1.02	11,164	11,050	11,050
Windsor	-1.22	28,596	28,248	28,248
Unincorporated	-0.89	139,098	137,864	138,532
County Total	-0.80	496,269	492,312	492,980

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Stanislaus				
Ceres	0.84	48,027	48,430	48,430
Hughson	0.91	7,232	7,298	7,298
Modesto	1.00	220,126	222,335	222,335
Newman	0.44	11,860	11,912	11,912
Oakdale	0.70	22,838	22,997	22,997
Patterson	0.44	22,974	23,074	23,074
Riverbank	0.66	24,867	25,030	25,030
Turlock	0.57	73,874	74,297	74,297
Waterford	1.00	8,806	8,894	8,894
Unincorporated	0.02	113,414	113,442	113,442
County Total	0.67	554,018	557,709	557,709

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Sutter				
Live Oak	0.39	9,164	9,200	9,200
Yuba City	-2.15	72,005	70,458	70,458
Unincorporated	-3.00	21,745	21,092	21,092
County Total	-2.10	102,914	100,750	100,750

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Tehama				
Corning	1.14	7,534	7,620	7,620
Red Bluff	0.56	14,166	14,245	14,245
Tehama	0.68	442	445	445
Unincorporated	0.87	42,311	42,680	42,819
County Total	0.83	64,453	64,990	65,129

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Trinity				
Unincorporated	-0.44	13,538	13,478	13,548
County Total	-0.44	13,538	13,478	13,548

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Tulare				
Dinuba	1.19	25,689	25,994	25,994
Exeter	0.19	11,009	11,030	11,030
Farmersville	0.03	11,396	11,399	11,399
Lindsay	0.01	13,153	13,154	13,154
Porterville	0.38	59,218	59,443	59,655
Tulare	2.07	66,457	67,834	67,834
Visalia	0.69	137,696	138,649	138,649
Woodlake	1.07	7,691	7,773	7,773
Unincorporated	0.35	143,933	144,433	144,489
County Total	0.73	476,242	479,709	479,977

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Tuolumne				
Sonora	-0.17	4,725	4,717	4,717
Unincorporated	-0.07	47,150	47,119	50,200
County Total	-0.08	51,875	51,836	54,917

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**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Ventura				
Camarillo	0.34	70,024	70,261	70,261
Fillmore	-0.73	15,680	15,566	15,566
Moorpark	-1.01	36,649	36,278	36,278
Ojai	-0.45	7,591	7,557	7,557
Oxnard	0.06	206,221	206,352	206,352
Port Hueneme	0.67	20,785	20,925	23,607
San Buenaventura	-0.70	106,963	106,217	106,276
Santa Paula	-0.60	30,573	30,389	30,389
Simi Valley	-0.44	125,664	125,115	125,115
Thousand Oaks	-0.88	127,610	126,484	126,484
Unincorporated	-0.66	93,226	92,611	95,001
County Total	-0.38	840,986	837,755	842,886

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**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Yolo				
Davis	0.01	69,179	69,183	69,183
West Sacramento	0.62	53,995	54,328	54,328
Winters	1.53	7,169	7,279	7,279
Woodland	1.12	60,068	60,742	60,742
Unincorporated	-1.02	30,485	30,173	30,173
County Total	0.37	220,896	221,705	221,705

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2020-21

**Attachment B**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020 and Total Population, January 1, 2019**

<b>County City</b>	<b><u>Percent Change</u></b>	<b><u>--- Population Minus Exclusions ---</u></b>		<b><u>Total Population</u></b>
	<b>2019-2020</b>	<b>1-1-19</b>	<b>1-1-20</b>	<b>1-1-2020</b>
Yuba				
Marysville	0.74	12,333	12,424	12,424
Wheatland	0.58	3,620	3,641	3,641
Unincorporated	3.27	58,791	60,715	62,822
County Total	2.72	74,744	76,780	78,887

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b><u>Percent Change</u></b> <b>2019-20</b>	<b><u>--- Population Minus Exclusions ---</u></b> <b>1-1-19</b>	<b><u>1-1-20</u></b>
<b>Alameda</b>			
Incorporated	0.44	1,512,751	1,519,431
County Total	0.37	1,661,577	1,667,800
<b>Alpine</b>			
Incorporated	0.00	0	0
County Total	-0.61	1,149	1,142
<b>Amador</b>			
Incorporated	0.49	12,452	12,513
County Total	-0.50	33,785	33,616
<b>Butte</b>			
Incorporated	-1.34	144,595	142,651
County Total	-5.07	221,521	210,291
<b>Calaveras</b>			
Incorporated	0.68	4,095	4,123
County Total	-0.07	44,984	44,951
<b>Colusa</b>			
Incorporated	-0.15	11,619	11,601
County Total	-0.40	21,990	21,902
<b>Contra Costa</b>			
Incorporated	0.29	976,476	979,304
County Total	0.26	1,150,537	1,153,477
<b>Del Norte</b>			
Incorporated	0.62	4,050	4,075
County Total	0.58	24,491	24,633
<b>El Dorado</b>			
Incorporated	1.10	33,140	33,505
County Total	1.70	189,915	193,143

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b><u>Percent Change</u></b> <b>2019-20</b>	<b><u>--- Population Minus Exclusions ---</u></b> <b>1-1-19</b>	<b><u>1-1-20</u></b>
<b>Fresno</b>			
Incorporated	0.95	839,353	847,328
County Total	0.81	1,009,378	1,017,516
<b>Glenn</b>			
Incorporated	2.38	14,193	14,531
County Total	2.51	28,598	29,316
<b>Humboldt</b>			
Incorporated	-0.63	63,465	63,068
County Total	-0.49	133,812	133,150
<b>Imperial</b>			
Incorporated	0.26	145,790	146,168
County Total	0.05	181,614	181,697
<b>Inyo</b>			
Incorporated	0.16	3,815	3,821
County Total	0.10	18,481	18,500
<b>Kern</b>			
Incorporated	1.55	565,388	574,165
County Total	1.27	880,624	891,765
<b>Kings</b>			
Incorporated	0.88	106,923	107,869
County Total	0.93	132,950	134,187
<b>Lake</b>			
Incorporated	-0.46	19,061	18,974
County Total	-0.31	64,177	63,980
<b>Lassen</b>			
Incorporated	1.22	7,979	8,076
County Total	1.19	21,776	22,036

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b>Percent Change</b> <b>2019-20</b>	<b>--- Population Minus Exclusions ---</b> <b>1-1-19</b>	<b>1-1-20</b>
<b>Los Angeles</b>			
Incorporated	-0.07	9,136,265	9,130,097
County Total	-0.11	10,175,203	10,163,868
<b>Madera</b>			
Incorporated	0.34	77,618	77,881
County Total	0.17	152,164	152,417
<b>Marin</b>			
Incorporated	-0.60	193,050	191,884
County Total	-0.60	257,901	256,353
<b>Mariposa</b>			
Incorporated	0.00	0	0
County Total	0.04	17,979	17,986
<b>Mendocino</b>			
Incorporated	-0.16	29,058	29,011
County Total	-0.49	88,218	87,785
<b>Merced</b>			
Incorporated	1.64	184,863	187,894
County Total	1.04	279,499	282,405
<b>Modoc</b>			
Incorporated	-0.81	2,849	2,826
County Total	-0.54	9,556	9,504
<b>Mono</b>			
Incorporated	-0.36	7,887	7,859
County Total	-0.40	13,385	13,332
<b>Monterey</b>			
Incorporated	-0.36	319,258	318,115
County Total	-0.31	425,654	424,349

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b><u>Percent Change</u></b> <b>2019-20</b>	<b><u>--- Population Minus Exclusions ---</u></b> <b>1-1-19</b>	<b><u>1-1-20</u></b>
<b>Napa</b>			
Incorporated	-0.60	114,151	113,468
County Total	-0.61	137,902	137,066
<b>Nevada</b>			
Incorporated	0.27	32,147	32,233
County Total	0.30	97,740	98,037
<b>Orange</b>			
Incorporated	0.04	3,064,197	3,065,272
County Total	0.04	3,192,279	3,193,693
<b>Placer</b>			
Incorporated	2.23	282,173	288,464
County Total	1.95	395,978	403,711
<b>Plumas</b>			
Incorporated	-0.05	2,017	2,016
County Total	0.10	18,242	18,260
<b>Riverside</b>			
Incorporated	0.79	2,031,484	2,047,494
County Total	0.79	2,413,561	2,432,578
<b>Sacramento</b>			
Incorporated	1.29	943,866	956,019
County Total	0.90	1,535,945	1,549,820
<b>San Benito</b>			
Incorporated	1.57	42,096	42,758
County Total	1.37	61,513	62,353
<b>San Bernardino</b>			
Incorporated	0.54	1,843,416	1,853,328
County Total	0.51	2,139,271	2,150,125

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b><u>Percent Change</u></b> <b>2019-20</b>	<b><u>--- Population Minus Exclusions ---</u></b> <b>1-1-19</b>	<b><u>1-1-20</u></b>
<b>San Diego</b>			
Incorporated	0.21	2,803,014	2,808,931
County Total	0.27	3,268,625	3,277,312
<hr/>			
<b>San Francisco</b>			
Incorporated	0.76	890,773	897,564
County Total	0.76	890,773	897,564
<hr/>			
<b>San Joaquin</b>			
Incorporated	0.99	608,540	614,593
County Total	1.06	760,150	768,218
<hr/>			
<b>San Luis Obispo</b>			
Incorporated	-0.42	155,940	155,284
County Total	-0.42	273,503	272,362
<hr/>			
<b>San Mateo</b>			
Incorporated	-0.08	707,613	707,025
County Total	-0.13	774,096	773,108
<hr/>			
<b>Santa Barbara</b>			
Incorporated	0.44	305,053	306,406
County Total	0.26	445,292	446,446
<hr/>			
<b>Santa Clara</b>			
Incorporated	0.44	1,866,824	1,874,960
County Total	0.37	1,953,727	1,960,995
<hr/>			
<b>Santa Cruz</b>			
Incorporated	-0.68	138,689	137,740
County Total	-0.46	272,404	271,151
<hr/>			
<b>Shasta</b>			
Incorporated	0.11	112,808	112,931
County Total	0.10	177,641	177,821
<hr/>			

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**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>	
	<b>2019-20</b>	<b>1-1-19</b>	<b>1-1-20</b>
<b>Sierra</b>			
Incorporated	-0.38	784	781
County Total	-0.28	3,210	3,201
<b>Siskiyou</b>			
Incorporated	-0.49	20,329	20,229
County Total	-0.31	44,520	44,382
<b>Solano</b>			
Incorporated	0.36	407,905	409,392
County Total	0.34	426,209	427,677
<b>Sonoma</b>			
Incorporated	-0.76	357,171	354,448
County Total	-0.80	496,269	492,312
<b>Stanislaus</b>			
Incorporated	0.83	440,604	444,267
County Total	0.67	554,018	557,709
<b>Sutter</b>			
Incorporated	-1.86	81,169	79,658
County Total	-2.10	102,914	100,750
<b>Tehama</b>			
Incorporated	0.76	22,142	22,310
County Total	0.83	64,453	64,990
<b>Trinity</b>			
Incorporated	0.00	0	0
County Total	-0.44	13,538	13,478
<b>Tulare</b>			
Incorporated	0.89	332,309	335,276
County Total	0.73	476,242	479,709

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

**Attachment C**  
**Annual Percent Change in Population Minus Exclusions\***  
**January 1, 2019 to January 1, 2020**

<b>County</b>	<b>Percent Change</b>	<b>--- Population Minus Exclusions ---</b>	
	<b>2019-20</b>	<b>1-1-19</b>	<b>1-1-20</b>
<b>Tuolumne</b>			
Incorporated	-0.17	4,725	4,717
County Total	-0.08	51,875	51,836
<hr/>			
<b>Ventura</b>			
Incorporated	-0.35	747,760	745,144
County Total	-0.38	840,986	837,755
<hr/>			
<b>Yolo</b>			
Incorporated	0.59	190,411	191,532
County Total	0.37	220,896	221,705
<hr/>			
<b>Yuba</b>			
Incorporated	0.70	15,953	16,065
County Total	2.72	74,744	76,780
<hr/>			

\*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.



AGENDA NO: A-6

MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 2, 2020

**FROM:** Matt Vierra, Fire Marshal  
Steven Knuckles, Fire Chief

**SUBJECT:** Authorization to Accept, if awarded, Staffing for Adequate Fire and Emergency Response (SAFER) Grant and Assistance to Firefighters Grant (AFG)

## RECOMMENDATION

Authorization for the Fire Department to accept the grant if awarded from the Department of Homeland Security and Federal Emergency Management Agency for consideration of funding under the Assistance to Firefighters Grants (AFG) for Personal Protective equipment and the Staffing for Adequate Fire and Emergency Response (SAFER) Grant for the hiring of a limited term firefighter.

## FISCAL IMPACT

The AFG will allow the Fire Department to purchase Firefighter turnout gear that includes boots, gloves, head protection for all full-time staff at the cost of \$37,388.00 with no local match required. The SAFER Grant also covers 100% of the “fully burdened” salary, i.e., salary, benefits, etc. of a Firefighter position which is \$120,675 annually, or \$241,350 for the two (2) positions annually. Under the Fire Department’s proposal to apply for two (2) positions, the grant request will be for \$724,050 for the three-year grant period. Under this year’s SAFER Grant there is no local match required during the grant’s three-year performance period because of the COVID-19 pandemic. If awarded, the Fire Department will maintain its current staffing level with no proposal to increase staffing, thereby supplanting General Fund expenses by that amount.

## BACKGROUND

Every year multiple grant funding opportunities are made available for Fire Departments around the nation. It is common practice for departments to continually apply for these types of grants to help support firefighter safety through strategic grant seeking and funding. The most well-known grants programs are the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA). The primary goal of the AFG and SAFER Grants is to enhance the safety of the public and firefighters with respect to fire-related hazards. This is done by providing direct financial assistance to eligible fire departments, nonaffiliated Emergency Medical Services organizations, and State Fire Training Academies. This funding is for critically needed resources to equip and train emergency personnel to recognized standards, enhance operations efficiencies, foster interoperability, and support community resilience. With the financial crisis created by COVID-19, DHS/FEMA recognizes the financial hardship for cities to maintain its Fire Department staffing. This year’s extremely competitive national SAFER grant will fully fund current positions already in place for 3-years with no obligation to

Prepared By:   MV   Dept Review:   SK    
City Manager Review:   SC   City Attorney Review:   CFN

maintain those positions after 3-years. If awarded, the Fire Department will maintain its current staffing level with no proposal to increase staffing. A similar SAFER grant was created in 2008 during the Great Recession.

## **DISCUSSION**

We now know that the risk of occupational cancer is among the greatest threats faced by modern firefighters and continually updating the personal protective equipment will improve the overall health and safety of firefighters. The AFG will allow our department to purchase and provide the latest protective equipment that will provide safety and the short-term and long-term health and well-being of our firefighters. In the 2020 edition of NFPA 1851, two advanced cleanings are now required each year, and protective clothing should be subject to advanced cleaning whenever it is exposed to products of combustion (e.g., fire gases and smoke particulates). This updated requirement will create challenges for many fire departments that currently do not have the resources to provide frequent cleaning of turnout gear which in return could shorten the life span of the PPE.

The NFPA states for suburban areas an agency should provide 10 firefighters within nine minutes at 80% of the time for a fire in a single-family residence. Current automatic contracts bring only 2 fire engines and one chief officer from neighboring agencies for a staffing level of 6. The average response from Morro Bay Fire is currently 3 paid and 1 reserve. The alarm also includes the request for the Fire Chief, Fire Marshal, and reserve firefighters. The goal of the SAFER grant program is to assist local fire departments with staffing and deployment capabilities to respond to emergencies and ensure that communities have adequate protection from fire and fire-related hazards. Local fire departments accomplish this by improving staffing and deployment capabilities, so they may more effectively and safely respond to emergencies. With enhanced staffing levels, departments should experience a reduction in response times and an increase in the number of trained personnel assembled at the incident scene. These grants also enhance the local fire departments' abilities to comply with staffing, response and operational standards established by the NFPA (NFPA 1710 and/or NFPA 1720).

The FEMA Safer Grant that we are applying for, and hope to get, will pay for 2 additional firefighter positions. If accepted, it would pay for the total salary and benefit costs for each of the funded positions to include payroll, taxes, and all anticipated costs over the next three years. Under normal circumstances SAFER Grants cover a three to five-year grant period with grant funding being reduced each year until the year when the City was responsible for 100% of the cost of the subject firefighters. Additionally, the earlier SAFER grants only covered allowable salary ranges, however the new SAFER grant covers "fully burdened" salaries, i.e., salaries, benefits, etc. The other significant change is that the grant covers 100% of all personnel costs due to COVID-19. The proposed two grant-funded positions would be brought into the Department at the Firefighter salary range and the start date would depend on the award date.

## **CONCLUSION**

The AFG and SAFER was created to provide funding directly to fire departments to help them increase or maintain the number of trained "front line" firefighters available in their communities. Applying for these types of grants is just one element of the mission of the Morro Bay Fire Department, "*To enhance the quality of life by providing exceptional emergency services.*" The anticipated grant funding awards are scheduled for fall 2020.

## **ATTACHMENTS**

None



AGENDA NO: A-7  
 MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** June 29, 2020  
**FROM:** Jennifer Callaway, Acting Public Works Director  
 Janeen Burlingame, Management Analyst  
**SUBJECT:** Resolution No. 66-20 Approving a Second Amendment to the Morro Bay Transit and Trolley Operations and Management Agreement with MV Transportation, Inc.

**RECOMMENDATION**

Staff recommends the City Council adopt Resolution No. 66-20 approving a Second Amendment to the Morro Bay Transit and Trolley Operations and Management Agreement with MV Transportation, Inc.

**FISCAL IMPACT**

There is no fiscal impact to the General Fund during the one-year extension period as Transit and Trolley services are operated with monies from the Transit Fund. Terms and conditions of the original Agreement would be applicable during the extension period of the Second Amendment. Per Section 5.1, compensation during the extension period would be based upon 80% of the annual percentage difference in the All Urban Consumers Price Index (CPI).

**DISCUSSION**

The City and MV Transportation, Inc. (MV) entered into an agreement effective January 1, 2015 for MV to provide year-round deviated fixed route and seasonal trolley services for the City. This Agreement is in effect through December 31, 2020.

At this time, the City would normally have been developing for release a Request for Proposals for operation and management of its transit services that would be awarded and become effective January 1, 2021; however, these have not been normal times with the emergence of the novel coronavirus (COVID-19) resulting in local, state, and national leaders declaring a state of emergency, including the issuance of a local shelter at home order that took effect March 19, 2020, and included the shutdown of many businesses during that time as well.

The region has begun a phased reopening of businesses per the conditions of the State’s Roadmap to Recovery, however there is still uncertainty surrounding when the State, County, and City would ultimately emerge from the shelter at home order and continue the long road of operational and economic recovery from COVID-19, particularly in light of the increase of confirmed cases locally and across the State.

Transportation Development Act (TDA) funding from the State, used for local transit operations, has begun to experience decreases as it is based on sales and fuel taxes. The full impact of these decreases will not be known for several more months or longer. As seen in the FY 20/21 City budget adopted by Council on June 23, 2020, there will be a large decrease in TDA funds allocated to the City for transit operations, resulting in service decreases in Transit and Trolley

Prepared By: J Burlingame      Dept Review: JC  
 City Manager Review: SC      City Attorney Review: BWB

beginning July 1, 2020.

With the uncertainty surrounding the continued recovery from COVID-19 and when businesses would be fully back open from the shutdown, as well as when the shelter at home order be lifted, there is also uncertainty of what type of bidding environment there would be should a transit operations Request for Proposals be released at this time. In addition, there is uncertainty whether transit companies would be interested in expanding during the extremely difficult financial times they are facing now, and will continue to face, as well as the increased costs of continuing to deal with making its working environments safe for employees and riders.

As such, a one-year extension to the current Agreement is prudent and would provide some financial certainty for both MV, its local employees, and the City's Transit Fund during these unprecedented and difficult times.

**CONCLUSION**

Staff recommends the City Council adopt Resolution No. 66-20 approving a Second Amendment to the Morro Bay Transit and Trolley Operations and Management Agreement with MV Transportation, Inc.

**ATTACHMENT**

1. Resolution No. 66-20

**RESOLUTION NO. 66-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING SECOND AMENDMENT TO MORRO BAY TRANSIT AND TROLLEY  
OPERATIONS AND MANAGEMENT AGREEMENT WITH MV TRANSPORTATION, INC.**

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

**WHEREAS**, effective January 1, 2015, the City of Morro Bay (City) and MV Transportation, Inc. (MV) entered into an agreement for MV to provide year-round deviated fixed route and seasonal trolley services for the City (the "Agreement"); and

**WHEREAS**, the Agreement is in effect through December 31, 2020 after a one-year extension was approved September 17, 2019 pursuant to Section 2.2 (Amendment No. 1); and

**WHEREAS**, in March 2020, local, state, and national leaders declared a state of emergency regarding the Coronavirus (COVID-19) global pandemic, including local a shelter at home order issued and effective March 19, 2020; and

**WHEREAS**, the region has begun a phased reopening of businesses per the conditions of the State's Roadmap to Recovery, however there is still uncertainty surrounding when the State, County, and City would ultimately emerge from the shelter at home order and continue the long road of operational and economic recovery from COVID-19; and

**WHEREAS**, Transit ridership has decreased by more than 65% during the pandemic as people began to self-quarantine and then as the shelter at home order took effect, only using service for essential travel; and

**WHEREAS**, Transportation Development Act funding from the State, used for local transit operations, has begun to experience decreases as it is based on sales and fuel taxes, and the full impact of these decreases will not be known for several more months; and

**WHEREAS**, funding decreases combined with ridership decreases, and the region in a phased reopening while also still being under a shelter at home order, has resulted in decreases in Transit service beginning with the 2020/2021 fiscal year and Trolley service beginning with the 2020 summer season; and

**WHEREAS**, there is uncertainty as to what type of bidding environment there would be should a Request for Proposals for transit operations and management be released at this time, let alone whether transit companies would be interested in expanding during the extremely difficult financial times they have been and will continue to face, as well as the increased costs of dealing with how to make working environments safe for employees and riders; and

**WHEREAS**, as such, a one-year extension of this Agreement is prudent and would provide financial stability for both MV, its local employees, and the City's Transit Fund during these unprecedented and difficult times; and

**WHEREAS**, City and MV staff are in support of a one-year extension of the current Agreement effective January 1, 2021 through December 31, 2021; and

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of Morro Bay approval of the Second Amendment to the Amended Agreement, attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020 by the following vote:

AYES:

NOES:

ABSENT:

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

ATTEST:

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

**CITY OF MORRO BAY  
SECOND AMENDMENT TO CONTRACT FOR MORRO BAY TRANSIT AND TROLLEY  
OPERATIONS AND MANAGEMENT**

This Amendment No. 2 to that certain agreement for Transit and Trolley operations and management services ("this Amendment") is made and entered into this 22nd day of June, 2020 by and between the City of Morro Bay, a municipal corporation ("City") and MV Transportation Inc., a California corporation ("MV") (sometimes collectively the "Parties").

**RECITALS**

- A. Effective January 1, 2015, the Parties entered into an agreement for MV to provide year-round deviated fixed route and seasonal trolley services for City (the "Agreement").
- B. The Agreement is in effect through December 31, 2020 after a one-year extension was approved September 17, 2019 pursuant to Section 2.2 (Amendment No. 1).
- C. In March 2020, local, state, and national leaders declared a state of emergency regarding the Coronavirus (COVID-19) global pandemic, including local a shelter at home order issued and effective March 19, 2020.
- D. The region has begun a phased reopening of businesses per the conditions of the State's Roadmap to Recovery, however there is still uncertainty surrounding when the State, County, and City would ultimately emerge from the shelter at home order and continue the long road of operational and economic recovery from COVID-19.
- E. Transit ridership has decreased by more than 65% during the pandemic as people began to self-quarantine and then as the shelter at home order took effect, only using service for essential travel.
- F. Transportation Development Act funding from the State, used for local transit operations, has begun to experience decreases as it is based on sales and fuel taxes, and the full impact of these decreases will not be known for several more months.
- G. Funding decreases combined with ridership decreases, and the region in a phased reopening while also still being under a shelter at home order, has resulted in decreases in Transit service beginning with the 2020/2021 fiscal year and Trolley service beginning with the 2020 summer season.
- H. There is uncertainty as to what type of bidding environment there would be should a Request for Proposals for transit operations and management be released at this time, let alone whether transit companies would be interested in expanding during the extremely difficult financial times they have been and will continue to face, as well as the increased costs of dealing with how to make working environments safe for employees and riders.
- I. As such, a one-year extension of this Agreement is prudent and would provide financial stability for both MV, its local employees, and the City during these unprecedented and difficult times.
- J. City and MV staff are in support of a one-year extension of the current Agreement effective January 1, 2021 through December 31, 2021.

Now, therefore, the Parties agree as follows:

1. The term of the Agreement is extended by one year and shall expire on December 31, 2021.
2. The terms and conditions of the Agreement applicable to an extension, including compensation rates as discussed in Section 5.1 of the Agreement, are applicable to this extension.
3. All other terms of the Agreement shall remain in full force and effect.
4. The effective date of this Amendment No. 2 shall be January 1, 2021.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 2 to be executed.

**CITY OF MORRO BAY**

**MV TRANSPORTATION**

By: \_\_\_\_\_  
John Heading, Mayor

By: Maria Meisenbach Smul, CEO

Attest:

\_\_\_\_\_  
Dana Swanson, City Clerk



AGENDA NO: A-8  
MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** June 29, 2020  
**FROM:** Jennifer Callaway, Acting Public Works Director  
Janeen Burlingame, Management Analyst  
**SUBJECT:** Approve Resolution No. 67-20 Authorizing Submission of Rural Transit Fund Grant Coronavirus Aid, Relief, and Economic Security (CARES) 5311 Phase 1 Cycle Application and Execution of Related Documents Upon Award

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 67-20 authorizing Submission of Rural Transit Fund Grant Coronavirus Aid, Relief, and Economic Security (CARES) 5311 Phase 1 Cycle Application and Execution of Related Documents Upon Award.

### FISCAL IMPACT

The City will submit a Rural Transit Fund (RTF) CARES 5311 Phase 1 Cycle application in the amount of \$105,064 for Morro Bay Transit operating costs eligible under CARES 5311 Phase 1 for the period February 1, 2020 through June 30, 2020. Funding would be provided at a 100% share, with no local match required from the Transit Fund.

### SUMMARY

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law to provide emergency assistance and health care response for individuals, families and businesses affected by the COVID-19 pandemic and provide emergency appropriations to support Executive Branch agency operations during the COVID-19 pandemic.

The Federal Transit Administration (FTA) was allocated \$25 billion to recipients of urbanized area (5307) and rural area (5311) formula funds, with \$22.7 billion to large and small urban areas and \$2.2 billion to rural areas. Funding would be provided at a 100% federal share, with no local match required, and would be available to support capital, operating, and other expenses generally eligible under those programs to prevent, prepare for, and respond to COVID-19, in addition to including operating expenses to maintain transit services as well as paying for administrative leave for transit personnel due to reduced operations during an emergency.

On April 2, 2020, the FTA provided apportionment tables for the public transit funding included in the CARES Act. This included approximately \$95 million to California for distribution through the State-administered FTA 5311 Rural and Intercity Transit program, via the local Metropolitan Planning Organizations (MPO), San Luis Obispo Council of Governments (SLOCOG).

Caltrans is disbursing CARES 5311 funds in two phases. Phase 1, occurring now, will allocate approximately 30% of the total amount available to current 5311 recipients, while Phase 2 will allocate the remaining 60% to all 5311 eligible recipients much later in the year, tentatively

Prepared By: J Burlingame      Dept Review: JC  
City Manager Review: SC      City Attorney Review: CFN

towards the end of the year though no date has been set yet from Caltrans. In Phase 1, the San Luis Obispo county region will be allocated \$591,000.

### **DISCUSSION**

On December 5, 2002 the San Luis Obispo Council of Governments (SLOCOG) adopted Resolution No. 02-16 to create a RTF program designed to streamline the lengthy federal process of applying for, receiving and using Federal Transportation Administration Section 5311 funds for rural transit agency projects by programming the region's share of Section 5311 funds to the Regional Transit Authority (RTA) for its operations and exchanging it with a like amount of State TDA funds, programmed through SLOCOG for 5311 eligible agencies.

As such, this means the City is not considered a current 5311 recipient and not included in the Phase 1 allocation to the region. Caltrans indicated those agencies that are 5311 eligible (of which the City is one of those eligible agencies) would be able to apply for Phase 2 funding that was yet to be allocated when they have developed the guidelines and are ready to move forward with that allocation process (tentatively set towards the end of the year). In addition, those agencies would have to execute a funding agreement with Caltrans that would take months to get through as well as develop and execute several federal requirements and plans they do not currently have in effect that would also take several months to create and enact.

SLOCOG recognizing the need to allocate some of the CARES Phase 1 funding to the City more expediently, discussed with RTA about doing another funding "swap" between CARES 5311 and the RTF program since RTA is already a 5311 funding recipient, has a funding agreement with Caltrans and is already compliant with the other requirements needed for federal funding it receives.

SLOCOG has requested a RTF CARES 5311 Phase 1 Cycle grant application be submitted to allocate RTF funds to the City in the amount of what we would be eligible to apply for under CARES for Phase 1 (100% of Morro Bay Transit's operating expenditures, less any fares collected, from February 1 through June 30, 2020). Staff has developed an estimate of such operating costs during that timeframe and will prepare an RTF application to submit to SLOCOG in the amount of \$105,064.

SLOCOG staff will be taking this to their Board for approval at its August meeting.

### **CONCLUSION**

Staff recommends the City Council adopt Resolution No. 67-20 authorizing Submission of Rural Transit Fund Grant Coronavirus Aid, Relief, and Economic Security (CARES) 5311 Phase 1 Cycle Application and Execution of Related Documents Upon Award.

### **ATTACHMENT**

1. Resolution No. 67-20

**RESOLUTION NO. 67-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING SUBMISSION OF APPLICATION  
TO THE RURAL TRANSIT FUND GRANT PROGRAM  
AND EXECUTION OF RELATED DOCUMENTS UPON AWARD**

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

**WHEREAS**, the San Luis Obispo Council of Governments (SLOCOG) began the Rural Transit Fund (RTF) program with Resolution No. 02-16 on December 5, 2002 by programming FTA Section 5311 funds to the San Luis Obispo Regional Transit Authority (RTA); and

**WHEREAS**, RTA has agreed to use these Federal funds for operating support and SLOCOG has agreed to exchange a similar amount of Transportation Development Act (TDA) funds for use in the RTF program; and

**WHEREAS**, SLOCOG, RTA, and other rural transit operators worked together to develop a process to exchange FTA Section 5311 formula funds with TDA funds to create the RTF, including Policies and Procedures to govern the RTF program; and

**WHEREAS**, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law to provide emergency assistance and health care response for individuals, families and businesses affected by the COVID-19 pandemic and provide emergency appropriations to support Executive Branch agency operations during the COVID-19 pandemic; and

**WHEREAS**, the FTA was allocated \$25 billion to recipients of urbanized area (5307) and rural area (5311) formula funds, with \$22.7 billion to large and small urban areas and \$2.2 billion to rural areas; and

**WHEREAS**, on April 2, 2020, the FTA provided apportionment tables for the public transit funding included in the CARES Act that included approximately \$95 million to California for distribution through the State-administered FTA 5311 Rural and Intercity Transit program; and

**WHEREAS**, Caltrans is disbursing CARES 5311 funds in two phases with Phase 1, occurring now, allocating approximately 30% of the total amount available to current 5311 recipients, while Phase 2 will allocate the remaining 60% to all 5311 eligible recipients much later in the year; and

**WHEREAS**, there is \$591,000 available for distribution with project applications for the RTF CARES 5311 Phase 1 cycle.

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**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that the City Manager, or his duly appointed representative, is authorized to submit an application to the Rural Transit Fund CARES 5311 Phase 1 cycle for \$105,064 in eligible CARES 5311 operating and capital expenditures for Morro Bay Transit, and to execute all related documents upon award for the project.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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

ATTEST:

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



AGENDA NO: A-9

MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 9, 2020

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of Resolution No. 73-20, Approving a Supplemental Lease Agreement to the United States Coast Guard Station Morro Bay Building Lease for Construction of a New Coast Guard Station Emergency Backup Power Generator to be Built Adjacent to the Coast Guard Building, Located on Lease Sites 141, at 1279 Embarcadero

## RECOMMENDATION

Staff recommend the City Council approve Resolution No. 73-20, included with this staff report as Attachment 1, approving a Supplemental Lease Agreement to the Coast Guard's Station Morro Bay building lease to enable the Coast Guard to build an emergency backup power generator.

## ALTERNATIVES

No alternatives are being presented.

## FISCAL IMPACT

There are no fiscal impacts to this action.

## BACKGROUND

The Coast Guard's Station Morro Bay building, built in the early 1990's, was not constructed with a permanent backup power generator in the event of a grid power failure. Instead, station personnel have relied on a portable generator over the years to provide very limited backup power when necessary. This is obviously not an ideal system for the area's Federal maritime security and response agency.

With the recent development of power provider PG&E's "Public Safety Power Shutdown" program and the real prospect for more common and longer-term power shutdowns, the Coast Guard began planning to install a permanent backup generator.

Completion of this project requires primarily two actions by the City; approval of the necessary permit entitlements through the standard City permitting process, and approval of a Supplemental Lease Agreement (SLA) to the Coast Guard's current 49-year lease for their station building lease on Lease Site 141. While the Coast Guard has been processing a building permit with the Community Development Department for the generator, the Harbor Department has worked with them on the SLA. A follow-on action will be an adjustment of the Coast Guard's lease lines to bring the generator footprint within their lease lines.

Prepared By: EE

Dept Review: EE

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

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

This item was brought to the Council on May 26, 2020 for direction, with the resulting SLA negotiated with the Coast Guard included with this staff report in Attachment 2.

### **DISCUSSION**

The generator will utilize approximately 24 square feet of space between the Coast Guard and Harbor Department buildings as illustrated in the included drawings with the SLA. This space is currently on the Harbor Department's lease site and used on occasion for storage. Placement of this generator will not have any effect on the Harbor Department's operations. In addition, while not being hard-wired to the Harbor Department building, the Coast Guard's building could be tapped for a limited amount of power for the Harbor Department in a power outage, although the Harbor Department does have its own portable backup generator if necessary.

### **CONCLUSION**

Approval of this SLA is another action in a long line of actions between the City of Morro Bay and United States Coast Guard to mutually support each-others' missions, and will ensure Coast Guard Station Morro Bay is well suited to continue serving the community and region in any power outage situation.

### **ATTACHMENT**

1. Resolution 73-20.
2. Supplemental Lease Agreement No. 0002 to the United States Coast Guard building lease No. DTCG89-91-L-6-63-160.

**RESOLUTION NO. 73-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A SUPPLEMENTAL LEASE AGREEMENT  
FOR UNITED STATES COAST GUARD STATION MORRO BAY  
BUILDING LEASE NO. DTCG89-91-L-6-63-160  
ON LEASE SITE 141 AT 1279 EMBARCADERO**

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

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

**WHEREAS**, the United States Coast Guard has leased City property for its station needs since 1967, is a tenant in good standing on Lease Site 141 and is a valuable community member; and

**WHEREAS**, the United States Coast Guard has stationed personnel, equipment and vessels in Morro Bay for the purposes of boating safety and enforcement, smuggling and drug interdiction, search and rescue and standing by the Morro Bay harbor entrance during hazardous conditions to assist vessels in transit and distress; and

**WHEREAS**, the United States Coast Guard Station Morro Bay building does not currently have a permanent backup power generator for use during power outages, and

**WHEREAS**, the United States Coast Guard desires to build a permanent backup power generator to ensure their station can effectively continue their mission in a power outage, and is currently processing a Building Permit for placement of a generator adjacent to their building; and

**WHEREAS**, the City of Morro Bay is supportive of the United States Coast Guard and their mission of serving their community and country.

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

1. The attached Supplemental Lease Agreement No. 0002 to the United States Coast Guard lease No. DTCG89-91-L-6-63-160 on Lease Site 141 memorializes the lease changes desired by both parties to accommodate a backup power generator.
2. The Mayor is hereby authorized to execute said Supplemental Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July, 2020 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
John Headding, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

**SUPPLEMENTAL LEASE AGREEMENT**

SUPPLEMENTAL AGREEMENT

DATE  
6/1/2020

NO. 0002

TO LEASE:

DTCG89-91-L-6-63-160

PREMISES: USCG Station Morro Bay

THIS AGREEMENT, made entered into this date by and between

CITY OF MORRO BAY, a municipal corporation

(whose address, for the purpose of this agreement, is

595 Harbor St,

Morro Bay, CA 93442)

Hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, the parties, for the considerations hereinafter mentioned, covenant and agree the said Lease is amended, deemed effective as of 6/1/2020 as follows:

The Government is authorized to place and maintain, and access for maintenance of, a 22kw GENERAC Backup Generator on the 24 square foot area as described in Exhibits "A" and "B," attached hereto and made a part hereof. Placement of that generator is subject to the requirements of Government obtaining a building permit and any other approvals from Lessor, in its capacity as a governmental agency

This amendment is authorized under direct leasing authority 14 U.S.C 501

All other terms and conditions of the Lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR:

BY \_\_\_\_\_  
(Signature) (Official Title)

Approved by: \_\_\_\_\_  
(Signature) (Title) (Date)

ATTEST:  
\_\_\_\_\_  
(Signature) (Title)

APPROVED AS TO FORM:  
\_\_\_\_\_  
(Signature) (Title)

UNITED STATES OF AMERICA

David E. Brumley  
Real Estate Contracting Officer  
United States Coast Guard

BY \_\_\_\_\_  
(Signature) (Official Title)

**Exhibit "A"**

EASEMENT LOCATION

A portion of Lease Site 140, in the City of Morro Bay, as per the Official Lease Site Map on file at the city offices of the City of Morro Bay, and as shown on a Record of Survey as filed on August 23, 1989 in Book 60 of Licensed Surveys at Page 94, in the Office of the County Recorder, County of San Luis Obispo, State of California, said portion being more particularly described as follows:

Commencing at the most northerly corner of said Lease Site 140, said corner being shown on said Record of Survey, said corner being marked upon the ground with a 5/8's inch iron rebar with a plastic cap stamped "RCE 29743", thence southwesterly along the northwesterly line of said Lease Site 140, South 36° 15' West 5.10 feet to a point, said point being the **true point of beginning**;

thence continuing along said northwesterly line of said Lease Site 140, South 36° 15' West 6.00 feet to a point;

thence leaving said northwesterly line of said Lease Site 140, at right angle southeasterly South 53° 45' East 4.00 feet to a point;

thence at right angle northeasterly and parallel to said northwesterly line of Lease Site 140, North 36° 15' East 6.00 feet to a point;

thence at right angle northwesterly North 53°45' West 4.00 feet to a point on the northwesterly line of said Lease Site 140, said point being the **true point of beginning**;

Containing 24.0 square feet of area.

The above described portion of said Lease Site 140 is graphically shown on Exhibit "B" attached hereto and made a part hereof.

END DESCRIPTION

SURVEYOR'S STATEMENT

This legal description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

Wm. E. Touchon      L.S. 4845      June 11, 2020  
Wm. E. Touchon      L.S. 4845      Date





**A PROCLAMATION OF THE CITY OF MORRO BAY  
RECOGNIZING PRESIDENT & CEO  
OF ECONOMIC VITALITY CORPORATION (EVC)  
MICHAEL MANCHAK FOR HIS SERVICE TO THE COMMUNITY**

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

**WHEREAS**, Michael Manchak served as the President and CEO of the Economic Vitality Corporation (EVC), a non-profit economic development organization serving the San Luis Obispo County; and

**WHEREAS**, throughout his nearly 16 years at the EVC, Michael along with the EVC team had many accomplishments, working hand-in-hand with their generous sponsors, volunteers and dedicated Board of Directors; and

**WHEREAS**, under Michael Manchak's leadership, the EVC has helped many people, their resources and projects have grown, and their sponsors have increased from 20 to over 100; and

**WHEREAS**, under Michael Manchak's leadership, the EVC's Board of Directors has also nearly tripled from 12 to 34; and

**WHEREAS**, Michael Manchak will enter into retirement from the EVC on June 30, 2020.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Morro Bay honors and recognizes Michael Manchak for his knowledge, dedication, leadership and outstanding service to the to the EVC and to the San Luis Obispo County Communities he served; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Morro would like to take the opportunity to extend him best wishes for many years filled with happiness in his retirement.



IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 14<sup>th</sup> day of July 2020

  
\_\_\_\_\_  
**JOHN HEADDING, MAYOR**  
City of Morro Bay, California

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<b>AGENDA NO:</b> B-1
<b>MEETING DATE:</b> July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** July 2, 2020

**FROM:** Nancy Hubbard, Contract Planner

**SUBJECT:** Appeal of Planning Commission Approval on June 2, 2020 of the Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) together with the mitigation monitoring and reporting program for a proposed 35-unit affordable housing project on .94 acres. The project is zoned MCR/R-4/PD/SP and is not within the Coastal Commission Appeals Jurisdiction

**RECOMMENDATION**

Council adopt Resolution No. 68-20, making the necessary findings to deny the appeal and uphold the Planning Commission approval of Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) for the site at 405 Atascadero Road to allow a 35-unit deed restricted affordable housing project on a .94 acre site.

**ALTERNATIVE**

The City Council could move to uphold the appeal and remand the project back to the Planning Commission for review of revised project as directed by Council.

**FISCAL IMPACT**

The project is not in the Coastal Commission Appeals Jurisdiction and, therefore, there is a \$275 fee required to file an appeal for land use decisions. Cost for staff time, legal counsel evaluation of the appeal, preparation of the staff report and hearing packet, public notification costs and staff and legal counsel attendance at the Council hearing is estimated to be \$3,495. The amount in excess of the appeal fee will be paid from the City's General Fund.

**BACKGROUND**

The Project, sponsored by the Housing Authority of San Luis Obispo (HASLO), is a 35-unit affordable housing project, in four 2 and 3-story buildings surrounding a central courtyard area. The project totals 26,052 square feet of building area on .94 acres. The design provides a single vehicular access to Sunset Ave and provides a parking lot with 35 spaces. The project is zoned MCR/R-4/PD/SP and is not within the Coastal Commission Appeals

Prepared By: <u>  NH  </u>	Dept Review: _____
City Manager Review: <u>  SC  </u>	City Attorney Review: <u>  BWB  </u>

Jurisdiction.

This project was presented to the Planning Commission for Conceptual Review on November 5, 2019. The Planning Commission recommendations to the applicant resulted in a revised project design, which was included in the January 17, 2020 resubmittal for the CUP/CDP/PKD. The application was deemed complete on February 7, 2020 and upon completion of the Mitigated Negative Declaration in May 2020, the project was scheduled for a Planning Commission (PC) hearing.

On June 2, 2020, the PC held a duly noticed public hearing to consider approval of the Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) for the site at 405 Atascadero Road that would allow a 35-unit affordable apartment project on a .94 acre site at the NE corner of Sunset Ave and Atascadero Road. The PC's review considered the proposed project, public comments regarding the project and the changes the applicant made in the design to specifically address the PC's Conceptual Review comments from November 2019.

Following a discussion about State Assembly Bill 1763 (effective January 1, 2020), which amends State law provisions that support and encourage approval of affordable housing projects, and includes provisions that **require that jurisdictions shall grant modified development standards to affordable housing projects that meet the necessary criteria or bear the burden of proof as to why such incentives were not granted**, the PC voted 5-0 to approve Resolution 11-20 with conditions and adopt the MND. (Attachment 3.)

### **PRIVATE PROJECT**

This project will be privately owned, subject to a 55-year affordable deed restriction recorded by the State Tax Credit Allocation Committee. HASLO will not own the completed facility, but rather the owner will be a private limited partnership, with San Luis Obispo Non-Profit Housing Corporation, a private 501cs non-profit organization, and the developer (Jim Rendler through an LLC), as co-general partners in the limited partnership, and private investors as the limited partners. The private investors will provide the funding to construct the project in exchange for tax benefits, including low-income housing tax credits, depreciation, and mortgage interest deductions. ***The project does not meet the definitions of a public space, public accommodation, public ownership, or publicly funded project.***

### **AB 1763 AND DENSITY BONUS LAW**

AB1763 was approved in October 2019 and became effective in January 2020 as an amendment to Section 65915 of the Government Code (Density Bonus Law) related to planning and zoning associated with affordable housing and density bonuses. This bill is an enhancement of the existing density bonus laws and related developer incentives currently included in Section 17.50.040 of the MBMC. AB1763 modifies the Density Bonus Law to require that a housing development in which 100% of the total units are for lower income households (defined as 80% of AMI or less) which is deed restricted for 55 years, **shall**

receive the following:

1. A density bonus of 80%, and
2. 4 developer incentives under the Density Bonus Law, which can include modification of development standards.

The project qualifies for this density bonus and these incentives, because 100% of the units in the project are deed restricted to be affordable to low income households.

Furthermore, under the Density Bonus Law, a City shall not apply any development standard that will have the effect of physically precluding the construction of a development that qualifies for a density bonus or incentives permitted by the Density Bonus Law, unless such incentive would have a specific adverse impact upon health, safety or the physical environment for which there is no feasible method to mitigate or avoid such impact (Section 65915(e)(1)). The City bears the burden of proof for denial of a requested concession or incentive.

**APPEAL:**

On June 12, 2020, the City received an appeal of the June 2, 2020 Planning Commission action approving Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) filed by Betty Winholtz (Attachment 2), which requests the PC decision be overturned and the project returned to Planning Commission with design modifications as stated as the requested relief or action in the Appeal. The appeal claims are paraphrased below with corresponding staff response.

**Appellant Claim #1:** The Appellant claims the two buildings in the project that have 3 stories and have more than 3,000 square feet per floor should have an elevator.

**Staff response:** *This concern was part of public comment and was discussed and addressed by the Planning Commission.* An elevator is not required for this project without regard to the funding source, which is privately funded and will be owned by a non-public entity.

- In accordance with the American Disabilities Act, this project is not a public building. The areas that require public accommodation, such as the leasing office, meet the accessibility criteria for the public. Residential units are not considered a public accommodation. ***In accordance with ADA, the residential apartments are not required to have elevator access.***
- The California building code (CBC) (Chapter 11A in CBC1104A.1) requires that all ground floor units be adaptable and accessible. This project is designed to meet this requirement. ***The building meets the requirements as a non-elevator building in the CBC Chapter 11A.***

- The California building code (Chapter 11B, CBC11B-206.2.3, Exception 4), relates to requirements and allowed exceptions for publicly funded multifamily projects. Exception 4 requires that one accessible route connect each story in a multi-story building for residential facilities where residential dwelling units with mobility features, common area and public use areas are on an accessible route. The proposed project, although it is not publicly funded, provides an accessible route to residential dwelling units with mobility features, common use areas and public use areas without providing an elevator. ***In accordance with CBC Chapter 11B, an elevator is not required for this project.***
- In accordance with the Uniform Federal Accessibility Standards (UFAS), this project does not require an elevator when at least one of each type of common area and amenity provided for use of the residents and visitors are available at the accessible grade level. This project provides all common areas and public amenities on the ground floor level. ***This project meets the non-elevator criteria of UFAS.***
- The project meets all of the health, life, and safety requirements required for any non-elevator multi-story residential building. The Fire Department Condition #5 is a standard requirement that clearly states that the provision applies “When elevators are provided”.

The appellant incorrectly includes reference to ADA Title III 5.1000, which only applies to places of public accommodation and commercial facilities. This project does not meet the definition of public accommodation or commercial facility under ADA Title III 1.2000 and 1.3000. The appellant incorrectly states that the project does not meet the requirements of the Fair Housing Amendments Act of 1988. On the contrary, the project has provided adaptable units in all ground floor residential apartments and all common areas are accessible.

**Appellant Claim #2:** The Appellant claims that there should be more parking on the site.

**Staff response:** *This concern was part of public comment and was discussed and addressed by the Planning Commission.* The appeal mistakenly states that the 53 required parking spaces should not include handicapped spaces, EV spaces and guest parking. MBMC 17.50.040 C.3 (which is consistent with the Density Bonus Law) states that upon request by a developer who qualifies for a density bonus, the City shall grant parking standards, ***inclusive of handicapped and guest parking.*** The developer requested a parking reduction to a total of 35 total spaces, inclusive of handicapped and guest parking, in order to make the project feasible and minimize disturbance of natural grade. The resulting parking ratio is consistent with HASLO’s experience with parking requirements for similar projects (which have not resulted in any adverse impacts), and meets the criterion as an incentive to be granted under Assembly Bill 1763, under multiple provisions: As a developer incentive, which requires that a city not impose a development standard that will have the effect of precluding the construction or development that qualifies for the density and/or

incentives permitted by this section; and a city shall grant the requested developer incentives, including a reduction in vehicular parking spaces if it results in identifiable cost reductions in construction for the developer. ***This project meets the requirements of a parking reduction in accordance with AB 1763.***

***Appellant Claim #3:*** The EV (electric vehicle) parking should be identified and clarified.

***Staff response:*** *This issue was raised in public comment at the PC hearing and was discussed by the Planning Commission.* The proposed EV charging spaces are identified on the plans for the project. State Assembly Bill No. 1100 requires that an EV charging space, or a future EV charging space, be counted as at least 1 parking space for the purpose of complying with the local jurisdiction parking requirements. An EV (or future EV) space that is also an accessible space must be counted as 2 spaces. ***The project meets the requirements of the CBC and AB1100 by providing infrastructure for future EV spaces, which will be available to residents of the project and will not reduce the total parking spaces provided.***

***Appellant Claim #4:*** The building height of 28 feet should not be approved and is calculated incorrectly, and project buildings should only be allowed to have two stories.

***Staff response:*** *This issue was raised in public comment at the PC hearing and was discussed by the Planning Commission.* The appellant is mistaken in the calculation of the building height (i.e. believing the building is 34 feet in height vs. 28 feet in height). The average natural grade is measured from the existing (pre-grading) high and low elevation immediately adjacent to the proposed building footprint, not the elevation of site following grading, in accordance with MBMC 17.12.310.

Furthermore, MBMC 17.40.110 D.2, establishing development standards for the North Main Street Specific Plan, states as follow:

The maximum height shall be generally two stories (above subterranean or semi-subterranean parking if provided) and not to exceed twenty-five feet; except that the planning commission may allow up to thirty feet to encourage roofline variations and sloping roof treatments provided that the additional height is necessary for such roof treatment and that corridors protecting significant views are provided.

Here, although the project exceeds 25 feet, the additional 3 feet is used to create more variation in building rooflines, as recommended by the PC at the Conceptual Review in November 2019. For purposes of context, staff notes that several market rate housing projects in the immediate neighborhood, and also within the North Main Street Specific Plan, were approved for 30 feet in height (on Rockview and Sunset). ***Therefore, the additional height is allowed under the MBMC.***

The project is also permitted to have three stories, for the same reason. The two-story

general requirement is a *height* requirement, as indicated by the beginning of MBMC 17,40.110 D.2: “The maximum height shall be....” Therefore, the exception for increased height to encourage roofline variation equally allows for additional stories to encourage roofline variation. Again, for purposes of context, staff notes that there are other projects within the North Main Street Specific Plan that have three stories, so it is consistent with past interpretation of the code provision to allow three stories here. ***Therefore, 3 stories are allowed under the MBMC.***

**CONCLUSION:**

The Planning Commission decision to approve the project following a thorough review and discussion which resulted in an approval with conditions of the Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (May 2020) for the site at 405 Atascadero Road that would allow a 35-unit affordable apartment project was in accordance with the findings included in Resolution 11-20.

Staff recommends the City Council deny the appeal and adopt Resolution 68-20.

**ATTACHMENTS:**

1. Council Resolution No. 68-20
2. Appeal filed by Betty Winholtz on June 12, 2020
3. PC Resolution No. 11-20
4. Applicant response to appeal comments

**Online documents:**

6/2/20 Planning Commission meeting, Staff report and presentation for 405 Atascadero Road, Agenda Item B-1

<http://www.morrobayca.gov/ArchiveCenter/ViewFile/Item/5354>

**RESOLUTION NO. 68-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DENYING AN APPEAL OF THE PLANNING COMMISSION  
APPROVAL OF A CONDITIONAL USE PERMIT (CUP19-12), A COASTAL  
DEVELOPMENT PERMIT (CDP20-001), PARKING EXCEPTION (PKG19-05)  
AND APPROVAL OF A MITIGATED NEGATIVE DECLARATION FOR A 35  
UNIT AFFORDABLE HOUSING PROJECT AT 405 ATASCADERO ROAD**

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

**WHEREAS**, the Planning Commission of the City of Morro Bay conducted a public hearing on June 2, 2020, for the purpose of considering approval of Conditional Use Permit (Cup19-12), Coastal Development Permit (Cdp20-001), Parking Exception (Pkg19-05) and approval of a Mitigated Negative Declaration for the site located at 405 Atascadero Road (“the Project”); and

**WHEREAS**, on June 2, 2020, the Planning Commission of the City of Morro Bay adopted Resolution 11-20 to approve Conditional Use Permit (Cup19-12), Coastal Development Permit (Cdp20-001), Parking Exception (Pkg19-05) and approval of a Mitigated Negative Declaration; and

**WHEREAS**, on June 12, 2020, an appeal of the Planning Commission action to approve the project was filed with the City of Morro Bay by Betty Winholtz specifically requesting the City Council overturn the Planning Commission’s approval and remand the project back to Planning Commission for review; and

**WHEREAS**, the City Council conducted a public hearing on July 14, 2020, to consider an appeal of the Planning Commission’s approval of the project, located in an area within the original jurisdiction of the California Coastal Commission; and

**WHEREAS**, notices of said public hearing were made at the time and in the manner required by law; and

**WHEREAS**, the City Council has duly considered all evidence, including the recommendations made by the Planning Commission, the testimony of the Appellants, the testimony of the business owner, and the evaluation and recommendations by staff, presented at said hearing.

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

**Section 1: Findings upholding the Planning Commission Approval**

- A. The Conditional Use Permit (Cup19-12), Coastal Development Permit (Cdp20-001), Parking Exception (Pkg19-05) and approval of a Mitigated Negative Declaration were approved in a manner consistent with the City’s General Plan, Local Coastal Program and Zoning Ordinance.

- B. The Planning Commission approval followed the provisions of State Assembly Bill 1763 providing earned incentives necessary to support the creation of affordable housing.
- C. The Planning Commission Hearing was adequately noticed in accordance with Government Code 65091.

**Section 2: Findings.** Based upon all the written and oral testimony and evidence presented to the Council at and for the above public hearing, the City Council makes the findings as included in Resolution No. 68-20.

**Section 3. Action.** The City Council does hereby deny the appeal filed on July 14, 2020 by Betty Winholtz and uphold the Planning Commission approval of Conditional Use Permit (Cup19-12), Coastal Development Permit (Cdp20-001), Parking Exception (Pkg19-05) and approval of a Mitigated Negative Declaration for the property located at 405 Atascadero Road, subject to the conditions as included in PC Resolution 11-20.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on this 14<sup>th</sup> day of July 2020, on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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

ATTEST

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

# CITY OF MORRO BAY



Public Services Department  
Planning Division

955 Shasta Avenue  
Morro Bay, CA 93442  
(805) 772-6577

## APPEAL FORM

### In CCC Appeals Jurisdiction?

YES – No Fee  
 NO – Fee Paid:  Yes  No

Project Address being appealed: <b>405 ATASCADERO ROAD</b>	
Appeal from the decision or action of (governing body or City officer): <input type="checkbox"/> Administrative Decision <input checked="" type="checkbox"/> Planning Commission <input type="checkbox"/> City Council	
Appeal of action or specific condition of approval: Resolution 11-20 granting a Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05) and a Mitigated Negative Declaration (April 2020) together with the mitigation monitoring and reporting program for a proposed 35-unit affordable housing project, in four 2- and 3-story buildings surrounding a courtyard area.	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): Conditional Use Permit (CUP19-12), Coastal Development Permit (CDP20-001), Parking Exception (PKG19-05)	
Date decision or action rendered: <b>June 2, 2020</b>	
Grounds for the appeal (attach additional sheets as necessary): 1. No elevators. 2. Parking exception. 3. EV versus handicap. 4. Height.	
Requested relief or action: 1. Require elevator if 3 story building. 2. Provide more on site parking. 3. Clarify EV's role: where and when 4. Lower height.	
Appellant (please print): <b>Betty Winholtz</b>	Phone: <b>772-5912</b>
Address: <b>405 Acacia</b>	
Appellant Signature: <u><i>Betty Winholtz</i></u> Date: <u><b>June 12, 2020</b></u>	

FOR OFFICE USE ONLY	
Accepted by: <u><i>Dana Swanson</i></u>	Date appeal filed: <u><b>6/12/2020</b></u>
Appeal body:	Date of appeal hearing:

## 1. Excerpted from the "Americans with Disabilities Act Title III Technical Assistance Manual"

**III-5.1000 General.** "All newly constructed places of public accommodation and commercial facilities must be readily accessible to and usable by individuals with disabilities to the extent that it is not structurally impracticable. What is "readily accessible and usable"? This means that facilities must be built in strict compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). There is no cost defense to the new construction requirements. What does "structurally impracticable" mean? The phrase "structurally impracticable" means that unique characteristics of the land prevent the incorporation of accessibility features in a facility. In such a case, the new construction requirements apply, except where the private entity can demonstrate that it is structurally impracticable to meet those requirements. This exception is very narrow and should not be used in cases of merely hilly terrain. The Department expects that it will be used in only rare and unusual circumstances."

**Title III-5.4000.** "Elevators are not required in facilities under three stories or with fewer than 3000 square feet per floor." In this project, 2 of the 4 buildings are 3 stories and have more than 3,000 square feet per floor." An elevator is required 2 buildings. The plans identify the Housing Authority of San Luis Obispo as the owner, a public agency, so this is a public project.

In addition, **Section 504** applies to all properties with government subsidies. The Fair Housing Amendments Act of 1988 (**FHAA**) distinguishes between adaptable and accessible. FHAA requires that all ground-floor units and all units in elevator buildings be adaptable. All common areas must be completely accessible, just as they are under Section 504.

**Fire Department Condition #5** is misleading: "Elevator Car to Accommodate Ambulance Stretcher. Where elevators are provided, at least one elevator shall be provided for fire department emergency access to all floors" (Staff Report, page 11.) No elevator is proposed, so there is no elevator car for a stretcher. How is the Fire Department suppose to carry a person down from a third floor? Clearly, having an elevator is a safety issue for the victim as well as the first responders.

2. If the number of **parking spaces required** (one space for each 1-bedroom=17 and 2 spaces for each 2-and 3-bedroom=36), that's 53 spaces for residential use. How can 53 spaces include guest parking, handicap parking, and electrical vehicle charging stations? (Staff Report, page 8) The applicant wants to provide only 33 standard parking spaces, less than one for each housing unit regardless of the number of bedrooms. That leaves no accommodation for guest parking and 2 for handicap parking (Title 24, State Building Code, Table 11B-208.2). Where are the 2 electrical vehicle charging stations\* in this mix? (Staff Report, page 11.)

None of the 3 findings that allow for a **parking exception** are met:

"a. The exception does not constitute a grant of special privilege and the reduced parking will be adequate to accommodate all the parking needs on the site." [It is a grant of special privilege and parking is not accommodated anywhere else on site.]

"b. The exception will not adversely affect the health, safety, or general welfare of the persons working or residing in the vicinity and no traffic safety problems will result from the proposed modification." [Neighbors testified and submitted an 80-signature petition to the Planning Commission that the vicinity and traffic safety would be adversely affected. Comments from Caltrans, the responsible party for both Atascadero Rd and Hwy 41, did not see their territory marked on the maps. Currently, overflow parking from 3 mobile home parks occurs on Atascadero Rd, and there is a yellow stripe with no turn lane on Hwy. 41 to Sunset. Sunset is the only entrance/exit to the planning site.]

"c. The exception is reasonably necessary for the applicant's full enjoyment of uses similar to those on adjacent properties." [There are no similar adjacent properties. One could either change all units to 1-bedroom keeping 35 units; or eliminate the 3rd story, retaining 21 units composed of 1-, 2-, and 3-bedrooms. In either case, parking requirements would be closer to being met, allowing "full enjoyment."]

The Staff Report, in Appendix C, suggests **2 other ways to get around the parking issue**, "Provisions in the PD overlay zone with the finding that the parking reduction will provide a better design and a greater public benefit. [OR] Provisions of the developer incentives, which allows for a reduction in the ratio of vehicular parking spaces that would otherwise be required, as long as, it results in identifiable cost reductions." I believe neither of these cases fit this situation. Cost reductions for whom? Fiscal savings for the developer, but physical consequences for the neighborhood. Greater benefit for whom? Not the neighborhood. A better design is not dependent on the number of spaces but the landscaping.

\*3. The 2 **charging stations** are considered parking places until "such time as there is a need." (Staff Report, page 4) Title 24, State Building Code states, "electric vehicle charging stations are not parking spaces" (11B-208.1 General). So once the charging stations are needed, the project provides 31 standard parking spaces and 2 handicap spaces. The Initial Study suggests that the current handicap parking is the future electric vehicle charging spaces. Where do the handicap spaces go then?

4. "The **North Main Specific Plan** area, MBMC Section 17.40.110D.2 states that the **maximum height** shall be 'generally' 2 stories (above subterranean or semi-subterranean parking) not to exceed 25 feet, except that Planning Commission may allow up to 30 feet to encourage roof line variations and sloping roof treatments, provided that the additional height is required for such roof

treatment." (Staff Report, page 8)[my bolding] The excess height is not for "roof line variations and sloping roof treatments, It is for living space. "Natural grade" will be raised by 4-feet-of-fill to protect Native American artifacts. So, the height is actually 32 feet above natural grade (28 foot building + 4 feet of fill). This violates the height limit by 7 feet, not just 3 feet. Not just the height is being violated, but so is the number of stories: 3 instead of 2.

**RESOLUTION NO. PC 11-20**

**A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION ADOPTING A MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND APPROVING COASTAL DEVELOPMENT PERMIT (CDP20-001) AND CONDITIONAL USE PERMIT (CUP19-12) AND PARKING EXCEPTION (PKG19-05) APPROVAL FOR A 35 UNIT AFFORDABLE APARTMENT COMPLEX PROPOSED FOR A .94 ACRE SITE IN THE MCR/R-4/PD/SP ZONE AND IS NOT LOCATED WITHIN THE COASTAL APPEALS JURISDICTION AT 405 ATASCADERO ROAD**

**WHEREAS**, the Planning Commission of the City of Morro Bay (the “City”) conducted a public hearing at the Morro Bay Veteran’s Hall, 209 Surf Street, Morro Bay, California, on June 2, 2020 for considering Coastal Development Permit CDP20-001, Conditional Use Permit CUP19-12, Parking Exception PKG19-05 and the associated Mitigated Negative Declaration for a 35 unit three-story apartments building (“Project”); and

**WHEREAS**, the City required a Mitigated Negative Declaration of Environmental Impact which was prepared in April 2020 and finalized in May 2020 and is the document included in this Resolution; and

**WHEREAS**, the applicant for the Project’s Coastal Development Permit CDP20-001, Conditional Use Permit CUP19-12, and Parking Exception PKG19-05 has agreed to the recommended mitigation measures determined through the Mitigated Negative Declaration; and

**WHEREAS**, notice of the public hearing was provided at the time and in the manner required by law; and

**WHEREAS**, the Planning Commission has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

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

**Section 1:** The foregoing recitals are all true, correct and incorporated herein by this reference.

**Section 2: Findings.** Based upon all the evidence, the Commission makes the following findings:

**California Environmental Quality Act (CEQA) Finding**

A. For purposes of the California Environmental Quality Act, an Initial Study was prepared for the project, which resulted in a Mitigated Negative Declaration (the “MND”) (SCH#2020030199), which was routed to the State Clearinghouse for the required 30-day review. All other legal noticing and review requirements have been met. The final MND, dated May 2020, outlines mitigation measures to be incorporated into the project to ensure the project will have a less than significant impact on the environment, the project applicants agreed to all mitigations, and such mitigations are provided for in a Mitigation and Monitoring Program which is attached hereto.

**Conditional Use Permit (CUP19-12) and Coastal Development Permit (CDP20-001).**

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

**Parking Exception (PKG 19-05) Findings:**

Pursuant to Section 17.44.050, the Planning Commission can grant a parking exception upon the following findings.

1. The exception to allow 35 total on-site parking spaces will not constitute a grant of special privilege inconsistent with the parking limitations upon other properties in the vicinity.
2. The grant of this exception will not adversely affect the health, safety or general welfare of persons working or residing in the vicinity and no traffic safety problems will result from the proposed modification of parking standards
3. The grant of this exception is reasonably necessary for the applicant's full enjoyment of uses like those upon the adjoining real property

***The parking reduction request was approved through one of the developer incentives as noted below and pursuant to the findings included below under State of California Assembly Bill No. 1763.***

**Planned Development Overlay Finding**

MBMC 17.40.030 A – allows for Planning Commission to approve modifications in development standards if such action would result in a better design or other public benefit.

- A. The project is designed to have a maximum height of 28 feet above average natural grade allows the project to maximize density which provides a greater public benefit and results in a better project design, providing for roofline variations.
- B. The project is designed with a 5 foot reduction in the required setback along Rockview Street, in order to minimize the site disturbance and use the grade changes in the NE corner to reduce the mass and scale of the building resulting in a better design.

**Developer Incentive Findings**

The project is requesting use of one of three earned developer incentive to grant an additional density bonus to allow 35 total housing units on the site. Pursuant to Zoning Code section 17.50.040.C.1, the City is required to grant the requested incentives unless one of the following findings can be made:

- a) The developer incentives are not required in order to provide affordable housing, as defined in Section 50052.3 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Government Code Section 65915(c).
- b) The developer incentives would have a specific adverse impact, as defined in paragraph (2) of Subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily

mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

- c) The developer incentives would be contrary to state or federal law.

**State of California Assembly Bill No. 1763**

***AB1763 was approved in October 2019 and became effective in January 2020 as an amendment to Section 65615 of the Government Code related to planning and zoning associated with affordable housing and density bonuses. AB1763 modifies the Density Bonus Law to require that a housing development in which 100% of the total units are for lower income households (defined as 80% of AMI or less) which is deed restricted for 55 years, shall receive the following:***

- 1. Approval of a density bonus of 80%***
- 2. Receive 4 developer incentives under the Density Bonus Law, which can include modification of development standards***
- 3. A City may not apply any development standard that will have the effect of precluding the construction or development that qualifies for the density or incentives permitted by this section, unless such incentive would have a specific adverse impact upon health, safety or physical environment for which there is no feasible method to mitigate or avoid such impact (Section 65615 (e)(1))***
- 4. The City shall bear the burden of proof for denial of a requested concession or incentive.***

**Section 3. Action.** The Planning Commission does hereby adopt the May 2020 Mitigated Negative Declaration (SCH#2020030199) with the Mitigation and Monitoring Program and approve Coastal Development Permit CDP19-12 Conditional Use Permit CUP20-001 and Parking Exception (PKG19-05) for the property located at 405 Atascadero Road subject to the following conditions:

**CONDITIONS OF APPROVAL**

**STANDARD CONDITIONS**

1. This permit is granted for the land described in the staff report dated May 26, 2020, for the project at 405 Atascadero Road (the "Property"), as depicted on plans received by the City on January 17, 2020 and an updated version received on May 6, 2020, as part of Coastal Development Permit CDP20-001, Conditional Use Permit CUP19-12 and Parking Exception PKG19-05, on file with the Community Development Department, as modified by these conditions of approval, and more specifically described as follows: 35 unit deed restricted affordable housing apartment complex.
2. **Inaugurate Within Two Years:** Unless the demolition is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Director (the "Director"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the

“MBMC”), General Plan and certified Local Coastal Program (LCP) in effect at the time of the extension request.

2. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Director. Any changes to this approved permit determined, by the Director, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
3. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless and Indemnification:
  - (a) The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City resulting from the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. Applicant understands and acknowledges the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.
  - (b) The applicant, as a condition of approval, shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property, arising at any time during or arising out of, or in any way connected with the actions or omissions of applicant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which applicant is legally liable, under the terms of this permit, unless solely caused by the gross negligence or willful misconduct of City, its officers, employees, or agents.
6. Compliance with Conditions: The applicant's establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.
7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

## **PLANNING CONDITIONS**

1. **Construction Hours:** Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. Monday through Friday and eight a.m. to seven p.m. on weekends, unless an exception is granted by the Community Development Director pursuant to the terms of this regulation.
2. **Dust Control:** Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and windblown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.
3. **Affordable Housing Requirement:** Prior to issuance of a Building Permit, applicant shall record a 55-year deed restriction committing to continuous use of the property for affordable housing at or below the low-income level (at or below 80% of area median income (AMI)).
4. **Archaeology:** See Mitigation Measures and Monitoring section incorporated as part of this Resolution. The applicant shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Community Development Director.
5. **Conditions of Approval on Building Plans:** Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.
6. **Lot Merger.** The subject project is located on three separate parcels, the applicant is required to complete and record a lot merger agreement prior to issuance of a building permit.
7. **Density Bonus.** The subject project is approved an additional density bonus allowing 35 affordable housing units on the site through use of one of the developer incentives allowed through MBMC Section 17.50.040 C.2-5 **and Assembly Bill 1763 amendment to Section 65615 of the Government Code, related to housing.**
8. **Exterior Side yard Setback:** The project is approved for a modification in the setback along Rockview Street to allow a 10-foot setback from the northerly property line.
9. **Maximum Height:** The maximum permissible height of the highest part of the roof structure must be no higher than 28 feet above Average Natural Grade (ANG). The finished grade elevation must be verified by a licensed surveyor and a certificate provided to the Planning Department.
10. **Color and Materials:** Colors and materials shall be as shown on Plan Sheet A5.0 which shows proposed exterior colors and materials. Any minor changes in colors or materials must be reviewed and approved by the Community Development Director.
11. **Street Trees:** *Applicant shall substitute another tree species for the Mediterranean Fan Palm included in the conceptual plant palette. Such replacement tree shall be submitted for approval by the Community Development Director. Condition added by Planning Commission June 2, 2020.*

12. Mitigating Negative Declaration – Mitigation and Monitoring Conditions: Applicant shall comply with all mitigation and monitoring conditions and shall submit reports to the city indicating compliance.
13. ***Rental priority to Morro Bay Residents and Workers: The applicant shall make the rental units available to Morro Bay residents and people working in Morro Bay first, before making available to the general public. This rental priority program shall apply to the same 55-year dead restriction period as noted in Planning Condition #3. The applicant shall prepare a rental priority program that will achieve this requirement for review and approval by the Community Development Director. Condition added by Planning Commission June 2, 2020.***

#### **BUILDING DEPARTMENT CONDITIONS:**

##### **PRIOR TO ISSUANCE OF A BUILDING PERMIT:**

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.
2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.
3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.
4. The owner shall comply with the City Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments in order for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.
5. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.
6. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability;

details shall be provided. Alternatively, submit a completed City of Morro Bay soils report waiver request.

7. **BUILDING PERMIT APPLICATION.** To apply for building permits, submit three (3) sets of construction plans to the Building Division.
8. The Title sheet of the plans shall include:
  - a. Street address, lot, block, track, and Assessor Parcel Number.
  - b. Description of use.
  - c. Type of construction.
  - d. Maximum Height of the building allowed and proposed.
  - e. Floor area of the building(s).
  - f. Vicinity map.
  - g. Minimum building set back per zoning designation or conditional use approval.

All construction will conform to the 2016 California Building Code (CBC), 2016 California Residential Code (CRC), 2016 California Fire Code (IFC), 2016 California Mechanical Code (CMC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Energy Code, 2016 California Green Code (CGBC), and Accessibility Standards where applicable and all City codes as they apply to this project.

(Code adoption dates are subject to change. The code adoption year is established by application date of plans submitted to the Building Division for plan review.)

**B. CONDITIONS TO BE MET DURING CONSTRUCTION:**

1. **SITE MAINTENANCE.** During construction, the site shall be maintained so as to not infringe on neighboring property, such as debris and dust.
2. **ARCHAEOLOGICAL MATERIALS.** In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify to county coroner. If human remains are found to be of ancient age and of archaeological and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.
3. A licensed surveyor or engineer shall verify pad elevations, setbacks, prior to foundation inspection, and/or building height prior to framing inspection when determined necessary by the Planning Division.

**C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF CERTIFICATE OF OCCUPANCY:**

1. Prior to building division final approval all required inspections from the other various divisions must have been completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card.
2. Title 24 form(s) 2F-6R (Certificate of installation) for building, mechanical, electrical, and plumbing systems.

#### **PUBLIC WORKS DEPARTMENT CONDITIONS:**

The following conditions are required at Building Permit submittal:

1. Survey: submit survey and title report.
2. Lot Merger: A lot merger is required for lots on the project parcel.
3. Stormwater Management: The City has adopted Low Impact Development (LID) and Post Construction requirements. All proposed projects must complete the "Performance Requirement Determination Form" to determine if any requirements should be submitted. All determined requirements shall be submitted by applicant. The requirements can be found in the Stormwater management guidance manual on the City's website [www.morro-bay.ca.us/mainmanual](http://www.morro-bay.ca.us/mainmanual)
4. Frontage Improvements: Installation of Public Improvements are required pursuant to the MBMC 14.44. as follows:
  - a. ***Installation of Rockview Street to match and tie into the existing finished street from existing multi-family development to property line frontage of proposed project. Then starting at property line frontage, street to expand per City Standard Detail A7 (Hillside Street detail) all the way to intersection at Sunset and Rockview. Condition modified by Public Works and approved by Planning Commission June 2, 2020.***
  - b. ***Installation of curb, gutter, sidewalk, and curb ramp at Sunset and Rockview intersection, per City of Morro Bay Standards off Rockview Street. Condition modified by Public Works and approved by Planning Commission June 2, 2020.***
  - c. Installation of curb, gutter, and sidewalk per City of Morro Bay Standards off Sunset Avenue.
  - d. Installation of a City standard driveway approach per City of Morro Bay Detail B-6 and B-9.
  - e. Installation of one street tree per 50 feet of property frontage, chosen from the approved City Street Tree list.
5. Caltrans Frontage Requirements: Atascadero Road falls within Caltrans jurisdiction and must be reviewed to meet their frontage requirements. Indicate and label the Caltrans right-of-way on plans and submit feedback from Caltrans review.
6. Traffic Impact Fees: The Applicant shall submit an updated traffic study for the new proposed use of the site. This study shall be used to further analyze the traffic flows at the intersection of "Main/Hwy 41 (Atascadero Rd.)/Hwy 1". The City has initiated a project of

proposed improvements at this location. The current estimated cost of the improvements is \$7,550,000. The applicant is conditioned to pay a pro rata fee proportional to increased traffic at this location.

7. Water: The City's "OneWater Plan" which is available at the following link; <https://www.morro-bay.ca.us/DocumentCenter/View/12500/OneWater-Plan-Final> identifies a deficiency due to low residual pressures occurring under MDD fire flow conditions that will affect this future development. To mitigate the deficiency, the OneWater plan requires an 8" diameter pipeline installation of approximately 100 feet, along Sunset (between Highway 41 and Atascadero Road) and the installation of an atmospherically controlled pressure reducing valve at the point of tie-in on Sunset Avenue.
8. Sewer: The City's "OneWater Plan" which is available at the following link; <https://www.morro-bay.ca.us/DocumentCenter/View/12500/OneWater-Plan-Final> identifies a **belly in the existing 6-inch diameter mainline to be replaced with a new 8-diameter pipe in a 20-inch diameter casing. The applicant is conditioned to pay a pro rata fee for their share of this replacement. Condition modified by Public Works and approved by Planning Commission June 2, 2020.**
9. Stormwater: The City's "OneWater Plan" which is available at the following link; <https://www.morro-bay.ca.us/DocumentCenter/View/12500/OneWater-Plan-Final> identifies a stormwater pipeline deficiency that will affect the risk of flooding for this future development. One option to mitigate this deficiency, is replace the existing 18" diameter pipeline with a 24" diameter pipeline, along Atascadero Road (at the intersection of Sunset Avenue and Atascadero Road). An alternative option is to install a stormwater system that will retain all on-site stormwater.
10. Sewer Lateral: Indicate and label new sewer lateral and connection.
11. Sewer Backwater Valve: Indicate and label sewer backwater valve on plan. A backwater valve, extended to and accessible from grade for maintenance, shall be installed on every Building sewer. Exception: Installation of backwater valve shall not be required when, to the satisfaction of Building Official, it is determined that the intent and purpose of this section is otherwise met.
12. Large Peak Flood Control: Submit drainage calculations to show that post-development peak runoff flows are reduced to within 5% of the pre-development flows from the 10, 25, 50 and 100-year rainfall events. (See attached Large Peak Flood Control Requirement sheet).
13. Detailed Erosion and Sediment Control Plan: Required for sites greater than 1/2 acre, or for building or other site disturbance proposed on slopes over 15%, or for projects located within critical areas. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. It must include a written narrative, detailed site plan, typical drawing, and details.
14. Water Meter: Indicate and label new water meter on plans and include size of meter(s).
15. Water Backflow Prevention Device: Label new water backflow preventers. Water backflow

preventer devices are required for fire water systems, irrigation systems (on a dedicated water meter), systems which may change in character of use (commercial rentals, etc.), gray water systems, or any plumbing system which has cross-connections or the ability to allow water of deteriorated sanitary quality to enter the public water supply. Add note to plan that device is required to be an approved domestic water backflow prevention device.

16. Grading and Drainage: Indicate on plans the existing and updated contours, drainage patterns, spot elevations, finish floor elevation and all existing and proposed drainage pipes and structures.
17. Utilities: Show all existing and proposed locations of the sewer lateral, water service, and water and sewer mains on the building plans. Include sizes where appropriate. Note the location of all overhead utilities and construction underground service entrances per the CBC.
18. Underground Utilities: Per MBMC 17.48.050, All utility service lines to all new development, except single-family residences, on vacant lands (including the demolition and replacement of individual structures), and to major redevelopment projects, shall be undergrounded.
19. Caltrans Encroachment Permits: Submit all comments from Caltrans regarding project requirements. Submit copy of Caltrans encroachment permit prior to building permit issuance from the City of Morro Bay.
20. Stormwater Pollution Prevention Plan (SWPPP): The SWPPP is required for all sites over 1 acre. Prior to issuance of a building permit, the owner shall submit a Notice of Intent (NOI) to the State Water Resources Control Board (SWRCB) and develop a SWPPP according to the requirements of a Construction General Permit. Incorporate City of Morro Bay Post Construction requirements to SWPPP. A copy of the SWPPP with the reference WDID shall be submitted to the City.

Add the following Notes to the Plans:

1. Any damage, as a result of construction operations for this project, to City facilities, i.e. curb/berm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay.
2. No work shall occur within (or use of) the City's Right of Way without an encroachment permit. Encroachment permits are available at the City of Morro Bay Public Works Office located at 955 Shasta Ave. A standard encroachment permit shall be required for the proposed driveway; the driveway shall comply with B-9 (Driveway Ramps: Size & Location). A sewer encroachment permit shall be required for any repairs or installation of a sewer lateral within the City right-of-way or within a utility easement. If a construction dumpster is used, the dumpster location shall be on private property, unless allowed by an encroachment permit within the City right-of-way.

### **FIRE DEPARTMENT CONDITIONS**

1. Fire Safety during Construction and Demolition shall be in accordance with 2019 California Fire Code, Chapter 33. This chapter prescribes minimum safeguards for construction,

alteration, and demolition operations to provide reasonable safety to life and property from fire during such operations.

2. Automatic fire sprinklers. An automatic fire sprinkler system, in accordance with NFPA 13-D, California Fire Code (Section 903) and Morro Bay Municipal Code (Section 14.08.090). Applicant shall submit sprinkler plans to Morro Bay Community Development Department for review
3. Fire Department access to equipment. Rooms or areas containing controls for Electrical, FAU, Alarm and Fire Sprinkler Systems shall be identified by approved and appropriate signage for Fire Department use.
4. Key box. Provide a flush-mounted Knox Box system no higher than 7' and appropriate keys for emergency Fire Department access. Obtain application from the Fire Prevention Office and the system installed prior to occupancy release
5. Elevator Car to Accommodate Ambulance Stretcher. Where elevators are provided, at least one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate an ambulance stretched 24-inches by 84-inches with not less than 5-inch radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3-inches high and shall be placed inside on both sides of the hoist way door frame. (MBMC 14.08.090)
6. Carbon monoxide alarms in new dwellings and sleeping units. An approved carbon monoxide alarm shall be installed in dwellings having a fossil fuel-burning heater or appliance, fireplace, or an attached garage. Carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions.
7. Hydrant location: Fire Hydrant Locations and Distribution shall be in accordance with 2019 California Fire Code.
8. Trash Enclosures: must comply with the 2019 California Fire Code. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or within 5 feet of combustible walls, openings, or combustible roof eave lines.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 2nd day of June 2020 on the following vote:

AYES: Lucas, Stewart, Barron, Ingraffia, Luhr  
NOES:  
ABSENT:  
ABSTAIN:

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Chairperson Gerald Luhr

ATTEST

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Scot Graham, Community Development Director

The foregoing resolution was passed and adopted this 2<sup>nd</sup> day of June 2020.



June 15, 2020

Nancy Hubbard  
Contract Planner  
City of Morro Bay

Re: 405 Atascadero Road

Dear Nancy,

This memo is in response to a comment that was raised during the June 2, 2020 planning commission hearing and in the subsequent appeal filed by Betty Winholz on June 12, 2020 for the proposed affordable housing project at 405 Atascadero Road.

There were questions raised at the planning commission hearing and in the appeal, some of which overlap. We respond to several questions below.

**Question: Is the proposed project privately or publicly funded.**

- This question is irrelevant. An elevator is not required regardless of the funding source.

**Question: Does the American with Disabilities Act (ADA) require an elevator?**

- As mentioned in the appeal, the ADA prohibits discrimination on the basis of disability in the activities of places of public accommodations and commercial facilities. This covers facilities that are open to the public (i.e. the leasing office). It does not include residential apartments, regardless of funding source. The ADA requires the leasing office to comply with the ADA requirements but is not applicable to the apartments.
- The proposed leasing office is on an accessible route and will be designed to be in full compliance of the ADA.
- Therefore, an elevator is not required by the ADA for this project.

**Question: Does Section 504 of the Rehabilitation Act of 1973 (Section 504) require an elevator?**

- Section 504 will apply to the project if it receives federal funding.
- The accessibility requirements in Section 504 are defined in the Uniform Federal Accessibility Standards (UFAS).
- Per UFAS Section 4.1.3 elevators are not required in residential facilities when at least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.
- The proposed project complies with this requirement.
- Therefore, an elevator is not required by Section 504 for this project.

**Question: Does the California Building Code (CBC) require an elevator if the project is privately funded?**

- CBC chapter 11A addresses privately funded multifamily projects.
- The relevant section in chapter 11A is CBC 1104A.1 which requires that all ground-floor units in nonelevator buildings shall be adaptable and on an accessible route.
- Non-ground-floor units in nonelevator buildings are not required to be on an accessible route.
- The proposed building is a nonelevator building and complies with this requirement. All ground-floor units are adaptable.
- Therefore, an elevator is not required by CBC Chapter 11A for this project.

**Question: Does the California Building Code (CBC) require an elevator if the project is publicly funded?**

- CBC chapter 11B addresses publicly funded multifamily projects.
- The relevant section in Chapter 11B is CBC 11B-206.2.3 Exception 4. This provides an exception to the requirement that one accessible route connect each story in multistory buildings for residential facilities where residential dwelling units with mobility features, all common use areas, and public use areas are on an accessible route.
- In the proposed project, residential dwelling units with mobility features, all common use areas, and public use areas are on an accessible route without providing an elevator.
- Therefore, an elevator is not required by CBC Chapter 11B for this project.

In summary, an elevator is not required for this project, regardless of the funding source.

**Question: How many parking spaces would normally be required vs. how many are provided?**

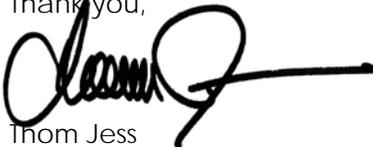
- The appeal mistakenly calculates that 53 spaces plus additional parking spaces for guests, handicap and EV charging stations should be required.
- Per the State Housing Density Bonus Law (Government Code 65915(p)(1)) at the request of the developer, a city shall not require a parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:
  - o Zero to one bedroom: one onsite parking space
  - o Two to three bedrooms: two onsite parking spaces
  - o Four or more bedrooms: two and one-half parking spaces
- The developer requested this parking ratio be used for the project. Therefore, the total parking required, inclusive of handicapped and guest parking is 51 spaces.
- Per Section 65915(2)(c) the developer shall receive the three incentives of concessions.
- The developer is requesting to use one of the incentives or concessions to further reduce the parking from 51 spaces to 35 spaces
- The developer has stated that the concession will result in identifiable and actual cost reductions necessary to provide the proposed affordable housing.
- The developer has demonstrated that 35 spaces (1:1 ratio) is adequate based on similar projects managed by the developer and that by granting the concession would not have a specific, adverse impact as defined in paragraph (2) of subdivision (d) of Section 65589.5.

**Question: Are future EV charging stations counted as part of the required parking?**

- The future EV charging stations, whether standard or accessible spaces, are included in the required number of parking spaces and are not required in addition to the number of required parking spaces.
- Per California Assembly Bill No. 1100, a standard EV charging space shall count as one parking space and an accessible EV charging space shall count as two parking spaces for the purposes of complying with any applicable minimum parking requirements established by a local jurisdiction.

Please see attached regulation sections for reference.

Thank you,



Thom Jess

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AGENDA NO: C-1

MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 6, 2020

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

**SUBJECT:** Consideration of Approving Three Election Resolutions to Place Before City Voters, at the November 3, 2020 General Municipal Election, a Local Recovery and Emergency Preparedness Sales Tax Ballot Measure to Repeal Chapter 3.22 (Transactions and Use Tax) and Add Chapter 3.26 (Transactions and Use Tax) to Title 3 of the Morro Bay Municipal Code to Raise the City’s Transactions and Use Tax Rate by 1 cent; Conduct First Reading, By Title Only, of the Proposed Ordinance Increasing the City’s Transactions and Use Tax Rate by 1 cent

## RECOMMENDATION

Staff recommends Council:

1. Consider approval of two election Resolutions Nos. 69-20 and 70-20 (Attachments 1 and 2) to place a proposed ordinance, for a locally controlled recovery and emergency preparedness measure increasing the City’s Transaction and Use Tax Rate by 1 cent , on the ballot for City voter consideration at the November 3, 2020 general municipal election; and,
2. Consider approval of a third election Resolution No. 71-20 (Attachment 3) if Council desires rebuttal arguments for the ballot measure; and,
3. ***If*** Council adopts election resolutions, conduct a first reading, by title only, with further reading waived, of the proposed Ordinance No. 635 “An Ordinance of the People of the City of Morro Bay, California, Repealing Chapter 3.22 and Adopting Chapter 3.26 of the Morro Bay Municipal Code to increase the City’s Transactions and Use Tax Rate from .5% to 1.5%” (Exhibit A to Resolution No. 69-20 submitting Ordinance to Voters), with the ordinance being subject to voter approval for enactment.

## FISCAL IMPACT

Staff estimate that the proposed local recovery and emergency preparedness measure would increase the City’s sales tax revenue by \$1.5 to \$2 million per year. (Note that as the COVID-19 pandemic continues estimates are uncertain.) The revenue will be deposited in the General Fund and will be available for general City purposes such as maintaining 24/7 911 emergency response and public safety services and protecting the financial stability of the City, its residents and businesses.

Estimated costs for adding this tax measure to the November 3, 2020 ballot is approximately \$4,000 payable to the County of San Luis Obispo Registrar-Recorder/County Clerk (who will be conducting the consolidated election). The budgeted funds for the November 2020 general municipal election

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

should cover these additional costs. Adding rebuttal arguments to printing costs are estimated to cost approximately another \$1,500, which would need to likely be paid for through a budget amendment. Typically, the County will bill the City with the exact amount owed in January or February following a November election.

## **BACKGROUND**

### **Pre-COVID-19 Long-Term Budget Challenges and Responses**

The City has faced a daunting long-term budget challenge ever since the Great Recession, with the closure of the Morro Bay Power Plant in 2013 and increasing costs of doing business that are outside of the City's control. City Council responded by making the achievement of financial and economic sustainability the City's top priority over the past several years. Many efforts have been made to better project the City's financial picture, control costs, and explore revenue opportunities.

As part of the annual budget planning process, the City developed a ten-year financial forecast in 2015. Since that time, in February each year staff updates that forecast as the City begins the budget development cycle for the upcoming fiscal year. The forecast includes developing assumptions for the City's revenues and expenditures with the goal of identifying expenditure limitations for the forthcoming budget year and future years.

Prior to the COVID-19 pandemic, the City has taken action to manage its costs while continuing to provide core services to the community, such as police, fire, parks and public facility maintenance, recreation, street maintenance, and code enforcement to name a few. Those actions include the following:

#### Cost Reduction Actions -

1. From Fiscal Year (FY) 2009/10 to FY 2018/19 total staff reductions of 2.5 Full Time Equivalents (FTEs).
2. Eliminated Deputy City Manager Position (FY 2017/18) – savings of \$120,000 annually.
3. Eliminated Capital Projects Manager/Senior Engineer position in Public Works.
4. Harbor Department, through restructuring, eliminated a position and reduced a position from full-time to part-time.
5. Reorganized the Utility Division in Public Works, reducing FTE count from 18 to 16.
6. Recreation Services Office Assistant reduced to a part-time position.
7. Reduced part-time hours and hired two full-time Maintenance Aides for front-line services (FY 2018/19) – No cost impact.
8. Reinstated School Resource Officer Position (FY 2018/19) funded through the Coastal School District.
9. Outsourced Dispatch service (FY 2014/15). Reduced accrual of long-term pension and compensated absences balances.
10. Contracted City Attorney services reducing accrual of long-term pension and compensated absences balances.
11. Layoffs and reductions in workforce due to economic downturn (FY 2010/11)
12. Early payoff of City's Fire Safety Classic Formula pension side fund (FY 2017/18 – saving \$10,000 and reducing future expenditures by \$163,000).
13. Lump Sum payment of unfunded accrued liability in July (FY 2018/19 and 2019/20) – total interest savings of \$139,908
14. Negotiated Pension cost participation, i.e. cost sharing, with City's Police Officers Association (FY 2018/19)
15. Negotiated labor agreements that included revenue targets to obtain modest cost of living allowances. (FY 2017/18 – FY 2019/20).

16. Payoff of Pension Tier II and Tier III unfunded accrued liability – interest savings of \$160,000
17. Purchased new fire engine through donations and Measure Q – no cost impact to the City’s General Fund.
18. Partnership Policy implementation, which matches community groups and the City to provide services to the community at lower costs.

Revenue Enhancements Actions -

1. Comprehensive Fee Study update to determine actual cost to provide services and associated fees to recover those costs.
2. Permitted two cannabis shops to open in summer/fall 2020
3. Partnered with Chamber of Commerce to provide economic development stewardship and ombudsman services to assist with enhancing the City’s economic development efforts.
4. In the process of implementing new RV camping
5. Exploring paid parking

Staff has examined citywide staffing levels and General Fund expenditures over the last several years, to include the most recent staffing reductions related to COVID-19 (which are discussed in more detail in a section below in the staff report). From FY 2009/10 through FY 2020/21 the City has cut 11.15 FTE positions (-11%). However, staffing costs have increased by 19% during that same period, primarily due to benefit costs that are outside of the City’s control.

	2009/10	2020/21	Difference	Percent Change
FTE's	99.25	88.1	-11.15	-11%
Staff Costs (GF)	8,154	9,705	1,551	19%

In addition, staff analyzed per capita cost of General Fund services, these include services such as police, fire, street and park maintenance. From FY 2008/09 to FY 2020/21, over an eleven-year period, per capita annual cost of General Fund services has increased by \$69.07 per resident. That equates to a 5.8% increase over ten years, which is a modest average increase of 0.5% per year, as illustrated below, and lower than the average in the county:

<b>Per Capita Costs of General Fund Services</b>	
2020 Population	10,188
2020/21 GF Expenditures	\$ 12,825,624
Cost of GF Services Per Resident	\$ 1,258.90
2009 Population	10,418
2008/09 Expenditures	\$ 12,395,650
Cost of GF Services Per Resident	\$ 1,189.83
Per Capital Increase over eleven years	\$ 69.07
Per Capita Percent Increase over eleven years	5.8%
Average Annual Increase	0.5%

Despite these comprehensive budget balancing efforts, the City still projected a deficit of \$428,000 for FY 2020/21, growing up to \$1.4 million by FY 2028/29, when presenting the FY 2019/20 mid-year

budget review to City Council on February 25, 2020 – pre COVID-19 outbreak.

### **COVID-19 Significantly Impacts City Budget**

The City's already challenging financial situation took on an entirely new depth in the wake of the COVID-19 pandemic and resulting State and San Luis Obispo shelter at home orders. The adopted FY 2020/21 Budget was developed under the umbrella of the City's Economic and Financial Recovery Plan entitled "Rock Solid Together," in which the Council's identified goals and provision of core services are balanced against the economic realities associated with the COVID-19 pandemic. It begins to position the City for what will likely be the nation's first recession since 2008. It is important to realize, however, that the full depth and breadth of the COVID-19 pandemic and pending recession is not yet fully understood and, as such, staff views the adopted FY 2020/21 Budget as a preliminary budget. The health and well-being of our residents remain our utmost concern and residents can rest assured the City is taking all necessary action to maintain essential City services and provide resources to our most vulnerable residents. Furthermore, the City must continue to ensure that we are prepared and self-reliant in the event of any future medical or catastrophic emergency including preparing our local Police and Fire Departments by preventing service reductions, updating emergency communication systems and maintaining rapid 911 emergency response capacity. The FY 2020/21 Budget was developed by utilizing the information available at this time, and we plan to revise as needed the budget multiple times throughout the year in response to the economic condition and changes that will inevitably arise.

On March 19, 2020, the City Council ratified the City Manager's administrative action to declare a local emergency and activate the City's short-term fiscal emergency plan as a result of the COVID-19 pandemic. Since development of the February 2020 financial forecast update, the unprecedented economic impacts associated with the local, national, and global mitigation of COVID-19 have necessitated significant revisions to growth projections for the City's primary revenue sources of Sales Tax and Transient Occupancy Tax (TOT). In close consultation with the City's sales tax consultant, HDL, a review of revenue receipts during the last great recession of 2008, and a review of national and regional hospitality research, staff revised these estimates.

On April 28, 2020, the City Council convened a special meeting to discuss the City's economic and financial recovery plan referred to as "Rock Solid Together." With budget deficit projections ranging between \$4M to \$5M or nearly a 27% to 34% loss of overall General Fund revenues, the City customized a comprehensive approach to stem the financial fallout from COVID-19 and begin the long road to fiscal health.

"Rock Solid Together" is built on the foundation that the City wishes to retain local control over core, essential government services and work towards being locally self-sufficient in the event of a future catastrophic emergency rather than awaiting aid that may never come from the state or federal governments. With this foundation, Rock Solid Together is comprehensive and attempts to assist the local business community where feasible and administer fiscal first aide to City finances in light of the significant economic wound inflicted by the pandemic.

To offset this deficit and present a balanced budget for Council consideration, staff defunded contributions to the City's internal service funds (to later be supplanted with new revenues expected to be derived from cannabis tax revenue per Resolution 19-19). In addition, significant reductions to salary and benefits were made, mostly due to defunding of vacant positions and staff layoffs (8 full-time employees and 70 part-time employees). This, combined with salary concessions from most

employees, will save the City over \$1.4 million (net of the CalPERS Tier II and Tier III UAL payoffs and lump sum payments to employees) for FY 2020/21. In addition, staff has significantly reduced non-personnel operating expenditures by over \$600,000. The budget was prepared with a concentrated focus on maintaining front line services where possible, with reduced staffing and expenditures. However, there will be service impacts related to these cuts, from response to processing times being delayed and ability to complete any discretionary street, trees and sidewalk work. The remainder of the budget was balanced through the use of General Fund emergency reserves. The City is not in a position, however, to use the reserves beyond FY 2020/21, as they are projected to be largely depleted by the end of this fiscal year.

Despite these efforts, the City cannot sustain its current service levels for public safety and other priority services without consideration of additional revenue. Thus, City Council requested that staff review revenue enhancement options, and has given general direction for staff to bring back for discussion placement of a local relief and recovery measure on the November 2020 ballot.

### **Community Priorities**

In the fall of 2019, the City conducted a community survey to solicit feedback from residents on their City service needs and priorities. 81 percent of respondents said they preferred maintaining Morro Bay's locally controlled Police and Fire Departments over contracting these services to outside agencies. The pandemic clearly demonstrates the need to be prepared for any medical crisis. Nearly 70% of calls to the Morro Bay Fire Department are related to emergency rescue and medical emergencies. As public safety is a significant part of the budget, the City seeks to prevent significant reduction to service of our local Morro Bay Fire and Police Departments so that local firefighter/paramedics, police officers and harbor patrol can continue to respond to local life-threatening emergencies.

Priorities identified in the survey by residents included:

- ✓ Maintaining 24/7 911 emergency response
  - Maintaining 24/7 paramedic services
  - Maintaining 24/7 police services
  - Maintaining 24/7 fire protection services
- ✓ Keeping beaches, public areas and public restrooms healthy, safe and clean
- ✓ Protecting the financial stability of the City, its residents and businesses
- ✓ Requiring public disclosure of all spending
- ✓ Keeping the harbor and waterfront clean and safe
- ✓ Preparing for any future medical or catastrophic emergency

The survey also demonstrated the community believes the City needs additional funding and that there is community support for additional revenues, such as a sales tax increase, to support community priorities identified above.

### **Community Engagement and City Manager's Round Table – Sales Tax and Other Budget Measures**

As noted above, the survey helped identify community needs and priorities. The community identified public safety, maintaining clean and safe beaches, waterfront and public facilities, and fiscal sustainability as top priorities. The City subsequently continued with a "Join the Conversation" outreach effort, to gain further community feedback. In total, the City received input from over 600 community members to express their service priorities. In light of the COVID-19 pandemic and financial impacts of this pandemic, the City has rebranded these outreach efforts to "Join the Conversation! Working Together Towards Recovery." Despite the City's prudent spending and

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conservative budgeting, COVID-19 has had a devastating effect on the City's primary revenue source of Tourism. This will have long-term implications for the City as reserves are being heavily relied upon to balance FY 2019/20 and FY 2020/21 budgets and this is not a sustainable practice beyond FY 2020/21. Therefore, in addition to the community outreach efforts, the City Manager formed a Roundtable Group (Group) of community members in May 2020 to provide valuable feedback and recommendations to the City Manager on both short-term and long-term revenue opportunities and expenditure reductions or cost control measures. The Group consisted of seven Morro Bay community members, all of whom have experience managing organizations/businesses and budgets and represent various perspectives about the City and community priorities. The Group met three times, where they reviewed the City's existing efforts to address the budget deficit, results from the 2019 Community survey, and considered additional measures.

The Group submitted a report to the City Manager on May 27, 2020 with recommendations for short-term revenue enhancements, expense reductions and long-term revenue enhancements. In addition to supporting the City's budget reduction efforts already put in place, the Group recommends that City Council consider placing a 1 cent sales tax measure on the November 2020 General Election ballot to address the impacts of COVID-19 and existing budget deficits. A one-cent sales tax would generate about \$1.5 million to \$2 million annually, which would help preserve core City services that the community have identified as top priorities, including public safety and maintaining safe and clean public areas

City Council reviewed this report at their June 5, 2020 meeting and generally supported the idea of bringing a discussion item back to Council for consideration of placing a local relief and recovery measure on the November 2020 ballot. One way to address current and projected City budget shortfalls would be to increase the City's sales tax rate. The California Constitution requires that new taxes be approved by voters. (Cal. Const. Art. XIII C, XIII A.)

### **Sales Tax**

California has many special taxing jurisdictions (districts), which are funded by a transaction (sales) and use tax rate that is added to the standard statewide rate of 7.25%. Morro Bay's current tax rate is 7.75% (or 7.75 cents on every taxable dollar), which includes a 0.5% sales tax add on known as Measure Q, which is primarily used for pavement work and public safety efforts. In some areas, there is more than one district tax in effect (Capitola, El Cajon, El Cerrito, Eureka, Ft Bragg, Nevada Town, Placerville, Santa Rosa, Sebastopol and Woodland). In others, there is no district tax in effect.

A Sales Tax increase may be imposed at a rate of 0.25% or a multiple thereof. The ordinance proposing the tax must be approved by majority vote of the voters in the city if the tax is for general purposes or two-thirds vote of all members of the governing body if the tax is for a specific purpose. The maximum combined rate of transactions and use taxes in any location may not exceed 2% (or 2 cents).

Sales and Use taxes are imposed on the total retail price of any tangible personal property. A portion of the tax is a State tax and a portion is locally imposed. The City receives 1% of the 7.25% sales tax plus 0.5% for the transaction and use tax from Measure Q. Distribution of sales and use taxes is shown below:



*Rates effective January 1, 2017 after the expiration of the 0.25% Proposition 30 temporary rate.  
In addition to the base, statewide rate of 7.25 percent, local voters may authorize additional "transactions and use tax" rates. These additional rates raise the total effective rate to as much as 9.75% in some locations.*

With the current Measure Q add on of an additional 0.5% (or .5 cents), the City generates approximately \$1,000,000 in additional sales tax revenue annually.

A review of sales tax rates for California cities reveal that 24.8% of cities (169) have a sales tax rate at or below the current sales tax rate in Morro Bay (7.75%) while 65.2% are higher (316). Based on discussions with several other cities in the County thus far, many are having similar conversations related to revenue generation topics and exploring sales tax options for the November 2020 election.

In September 2019, the City received a Tourism Sales Tax Analysis report from HDL, the City's sales tax consultant. HDL completed a study on behalf of the City that examined the tourism industry, specifically the estimated direct and indirect benefits to Morro Bay from hotels, restaurants and other industry group revenue generation by non-residents visiting the City. For purposes of this study, tourism is defined as traveling to a place which is different from your home city for various leisure or business purposes and staying there for some period. **Based on the study, during calendar year 2018, 69.9% of the City's sales tax was estimated to be generated by non-residents.** This does not include an analysis of economic segments that primarily would have little to no traditional visitor contribution like Business & Industry and Building & Construction – the study only included the five economic segments of Auto & Transportation, Food & Drug, Fuel & Service Stations, General Consumer Goods and Restaurants & Hotels.

On June 23, 2020, the City Council called a general municipal election to be held in the City of Morro Bay on November 3, 2020. If the Council so desires, it may submit a measure to the voters at the November 3, 2020, election to increase the sales tax rate.

## **DISCUSSION**

### **1. Three Election Resolutions**

Three election resolutions concerning the proposed sales tax ordinance are presented for consideration by the City Council.

The first Resolution No. 69-20 orders the submission of the proposed sales tax ordinance to the voters at the November 3, 2020 election (see below for details on the proposed sales tax ordinance). (See Attachment 1)

The second Resolution No. 70-20 is concerned with written arguments (both pro and con) about the sales tax ballot measure, as well as directing the City Attorney to prepare an impartial analysis of the proposed sales tax ordinance. (See Attachment 2) The second resolution establishes priorities under state law for choosing among multiple arguments. In consultation with the City Clerk the second resolution sets a deadline for written arguments (pro and con) of Tuesday, July 28, 2020 at the close of business.

The third Resolution No. 71-20 provides for the optional filing of rebuttal arguments to the primary written arguments. (See Attachment 3) The rebuttal arguments (if authorized by Council) are prepared by the opposite authors of the primary written arguments. In consultation with the City Clerk the third resolution sets a deadline for rebuttals of Friday, August 7, 2020 at the close of business.

## **2. Issues Concerning Three Election Resolutions**

- A. Ballot Label. The first Resolution No. 69-20 includes a “ballot label” which describes the proposed Ordinance No. 635 and which is the question actually presented to the voters. Ballot labels are limited to 75 words or less. The Council may revise the language used for the ballot label within the following state law restrictions:
- a. “If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.” (Election Code section 13119(b).)
  - b. “The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” (Election Code section 13119(c).)

One item to consider is whether the ballot label should include references to possible uses of the revenue. While the sales tax is a general tax and the revenue will be deposited into the City’s General Fund and may be spent for unrestricted general revenue purposes, the ballot label may make reference to possible uses (while not committing the revenue to those uses). For example, the ballot label could reference that revenue is available to fund Morro Bay public safety, repair of streets, maintenance of beaches and public areas, attracting and retaining local businesses, etc.

- B. Argument Authorization / Impartial Analysis. The second Resolution No. 70-20 authorizes written arguments for and against the proposed ballot measure. This resolution provides for the preference and priority of selection of written arguments as provided for in Election Code section 9287. Should Council desire to appoint one or more Council members to write an argument for or against the ballot measure, the resolution can be amended at the meeting to reflect such authorization. Otherwise, preference and priority for selection of written arguments shall be pursuant to State law. This resolution also requests an impartial analysis of the proposed ballot measure be prepared by the City Attorney.

- C. Rebuttals. Rebuttal arguments are optional under state law and are allowed at the discretion of the City Council. Disallowing rebuttal arguments will result in lowering the total cost for placing the sales tax measure on the ballot (as extra pages in the voter books cost more money). Staff estimates adding rebuttal arguments would cost approximately \$1,500. If the City Council does not desire to authorize rebuttal arguments then Council should not approve this third election Resolution No. 71-20.

### 3. Procedures

A two-thirds vote of all members of the City Council (i.e., 4 Councilmembers) will be required to pass the resolution to order the submission of the proposed sales tax measure to the voters and to approve the sales tax ordinance (Gov't Code § 53724(b); Rev. & Tax. Code Section 7285.9). Additionally, Revenue & Taxation Code Section 7285.9 requires that the City Council approve the sales tax ordinance, which can be done through the City Council approving, by a two-thirds vote (i.e., 4 votes), a first reading, by title only, of the sales tax ordinance. The City Council then can subsequently adopt the sales tax ordinance after the November 3, 2020, election, if it is approved by the voters.

Passage of the sales tax measure will require approval by a majority of the voters. The proposed taxes will generate revenue, deposited in the City's General Fund, available for any general governmental purpose. Thus, the taxes are considered "general taxes." Under Proposition 218, the levy of a new general tax must be approved by a majority of voters. (Cal. Const. art. 13C, § 2(b).)

### 4. Proposed Ordinance

Attached to this report is an ordinance that, if approved by the voters, would enact a transactions and use tax with a rate of 1% (or 1 cent), which in combination with the existing 0.5% rate, would result in a total 1.5% rate (or 1.5 cents). If submitted to the voters, and approved by voters, the total sales tax rate in Morro Bay would be 8.75%. This proposed tax would be a general tax and collected revenues would be deposited in the City's General Fund to fund City services and programs. If approved by the voters, the total *increase* in annual revenue resulting from this proposed transactions and use tax – *in addition to revenue collected under the current City tax* – is estimated to annually be \$1.5 to \$2 million.

State law caps the total transactions and use tax imposed in a county at 2 cents, including transaction and use taxes imposed by other public entities (e.g., San Luis Obispo County). (See Rev. & Tax. Code § 7251.1.) San Luis Obispo County currently imposes a transactions and use tax with a rate of 0.25 cent. This means that the City could increase its current 0.5 cent transactions and use tax rate to 1.75 cents, if desired. The community survey conducted in the fall of 2019 determined at that time that there was over 60% support for a 1 cent sales tax increase, but did not test if there was support for a higher sales tax increase. A 1 cent sales tax increase would help stabilize the City's General Fund operations to allow for the continued provision of public safety and other general City services. Any increment above that amount could be used to address other pending community priorities and deferred capital needs, such as investment in public infrastructure and amenities (public restrooms, park improvements, etc.).

The citizen's oversight committee established in Chapter 3.22 would remain in place under the new Chapter 3.26. Also, the ordinance provides for lawful future amendment by Council, with the exception of Council cannot increase the sales tax rate beyond what the voters approve.

**CONCLUSION**

Staff recommends Council consider approval of three election resolutions to place a proposed sales tax ordinance on the ballot for City voter consideration at the November 3, 2020 general municipal election, and conduct a first reading, by title only, of Ordinance No. 635.

**ATTACHMENTS**

1. Resolution No. 69-20 with Exhibit A as Ordinance No. 635
2. Resolution No. 70-20
3. Resolution No. 71-20

**RESOLUTION NO. 69-20**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
SUBMITTING TO THE VOTERS A MEASURE, ENTITLED  
MORRO BAY'S LOCAL RECOVERY/EMERGENCY PREPAREDNESS  
MEASURE, WHICH INCREASES THE CITY'S TRANSACTIONS AND  
USE TAX RATE FROM .5% TO 1.5%**

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

**WHEREAS**, the City has faced a daunting long-term budget challenge with the closure of the Morro Bay Power Plant in 2013 and increasing costs of doing business that are outside of the City's control; and

**WHEREAS**, City Council responded by making achieving financial and economic sustainability the City's top priority over the past several years; and

**WHEREAS**, many efforts have been made to better project the City's financial picture, control costs, and explore revenue opportunities; and

**WHEREAS**, as part of the annual budget planning process, the City developed a ten-year financial forecast in 2015; and

**WHEREAS**, since that time, in February each year staff updates that forecast as the City begins the budget development cycle for the upcoming fiscal year, and the forecast includes developing assumptions for the City's revenues and expenditures with the goal of identifying expenditure limitations for the forthcoming budget year and future years; and

**WHEREAS**, prior to the COVID-19 pandemic, the City has taken action to control its costs, including adopting measures with extensive expenditure impacts, examples including:

1. From FY 2009/10 to FY 2018/19 staff reductions of 2.5 Full Time Equivalents (FTEs);
2. Eliminated Deputy City Manager Position (FY 2017/18) – savings of \$120,000 annually;
3. Eliminated Capital Projects Manager/Senior Engineer position in Public Works;
4. Harbor Department, through restructuring, eliminated a position and reduced a position from full-time to part-time;
5. Reorganized the Utility Division in Public Works, reducing FTE count from 18 to 16;
6. Recreation Services Office Assistant reduced to a part-time position;

7. Outsourced Dispatch service (FY 2014/15) reducing accrual of long-term pension and compensated absences balances;
8. Contracted City Attorney services reducing accrual of long-term pension and compensated absences balances;
9. Layoffs and reductions in workforce due to economic downturn (FY 2010/11);
10. Early payoff of City's Fire Safety Classic Formula pension side fund (FY 2017/18 – saving \$10,000 and reducing future expenditures by \$163,000);
11. Lump Sum payment of unfunded accrued liability in July (FY 2018/19 and 2019/20) – total interest savings of \$139,908;
12. Negotiated Pension participation, i.e. cost sharing, with City's Police Officers Association (FY 2018/19);
13. Negotiated labor agreements that included revenue targets to obtain cost of living allowances (FY 2017/18 – FY 2019/20);
14. Payoff of Pension Tier II and Tier III unfunded accrued liability – interest savings of \$160,000;
15. Partnership Policy implementation, which matches community groups and the City to provide services to the community at lower costs; and

**WHEREAS**, prior to the COVID-19 pandemic, the City has taken action to control its costs, including adopting measures with extensive revenues impacts, examples including:

1. A comprehensive fee study update to determine actual cost to provide services and associated fees to recover those costs;
2. Permitted two medical cannabis shops to open in summer/fall 2020;
3. Partnered with Chamber of Commerce to provide economic development stewardship and ombudsman services to assist with enhancing the City's economic development efforts;
4. In the process of implementing new RV camping;
5. Exploring paid parking; and

**WHEREAS**, the City's already challenging financial situation took on an entirely new depth in the wake of the COVID-19 pandemic and resulting shelter at home orders; and

**WHEREAS**, the adopted FY 2020/21 Budget was developed under the umbrella of the City's Economic and Financial Recovery Plan entitled "Rock Solid Together," in which the Council's identified goals are balanced against the economic realities associated with the COVID-

19 pandemic, and it begins to position the City for what will likely be the nation's first recession since 2008; and

**WHEREAS**, the health and well-being of our residents remains our utmost concern and residents can rest assured, the City is taking all necessary action to maintain essential City services and provide resources to our most vulnerable residents; and

**WHEREAS**, on April 28, 2020, the City Council convened a special meeting to discuss the City's economic and financial recovery plan referred to as "Rock Solid Together"; and

**WHEREAS**, with budget deficit projections ranging between \$4M to \$5M or nearly a 27% to 34% loss of overall General Fund revenues, the City customized a comprehensive approach to stem the financial fallout from COVID-19 and begin the long road to fiscal health; and

**WHEREAS**, "Rock Solid Together" is built on the foundation that the City wishes to retain local control over core, essential government services and work towards being locally self-sufficient in the event of a future catastrophic emergency rather than awaiting aid that may never come from the state or federal governments; and

**WHEREAS**, with this foundation, Rock Solid Together is comprehensive and attempts to assist the local business community where feasible and administer fiscal first aide to City finances in light of the significant economic wound inflicted by the pandemic; and

**WHEREAS**, to offset this deficit and present a balanced budget for Council consideration, staff defunded contributions to the City's internal service funds (to later be supplanted with new revenues expected to be derived from cannabis tax revenue per Resolution 19-19); and

**WHEREAS**, in addition, significant reductions to salary and benefits were made, mostly due to defunding of vacant positions and staff layoffs (8 full-time employees and 70 part-time employees); and

**WHEREAS**, these measures, combined with salary concessions from most employees, will save the City over \$1.4 million (net of the CalPERS Tier II and Tier III UAL payoffs and lump sum payments to employees) for FY 2020/21; and

**WHEREAS**, in addition, staff has significantly reduced non-personnel operating expenditures by over \$600,000; and

**WHEREAS**, the budget was prepared with a concentrated focus on maintaining front line services where possible, with reduced staffing and expenditures. However, there will be service impacts related to these cuts, from response to processing times being delayed and ability to complete any discretionary street, trees and sidewalk work; and

**WHEREAS**, the remainder of the budget was balanced through the use of General Fund emergency reserves. The City is not in a position to use the reserves beyond FY 2020/21, as they are projected to be largely depleted by the end of this fiscal year; and

**WHEREAS**, despite these efforts, the City cannot sustain its current service levels for public safety and other priority services without consideration of additional revenue; and

**WHEREAS**, the City must ensure that we are prepared for any medical or catastrophic emergency including preparing our local Police and Fire Departments by preventing service reductions, updating emergency communication systems and maintaining rapid 911 emergency response times; and

**WHEREAS**, Morro Bay has its own locally controlled Police and Fire Departments and the City strives to maintain these local Police and Fire Departments rather than contract these public safety services with outside agencies; and

**WHEREAS**, an additional source of locally controlled revenue is needed to maintain City services and no money should be taken by Sacramento; and

**WHEREAS**, nearly 70% of calls to the Morro Bay Fire Department are related to emergency rescue and medical emergencies and the pandemic only shows the need to be prepared for any medical crisis; and

**WHEREAS**, the City must continue to prevent significant reduction to service of the local Morro Bay Fire Department so skilled, local firefighter-paramedics can continue to respond to emergencies; and

**WHEREAS**, protecting Morro Bay's character and keeping streets and the waterfront safe and clean and preserving open space will also protect local property values; and

**WHEREAS**, the City of Morro Bay currently has a general transactions and use tax (commonly known as a "sales tax") pursuant to the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code (commencing with Section 7251) and Chapter 2.3 of Part 1.7 of Division 2 of the Revenue and Taxation Code (commencing with Section 7285.9), with a rate of one half of one percent (0.5%), as established in Chapter 3.22 of the Morro Bay Municipal Code ("Sales Tax"); and

**WHEREAS**, on June 23, 2020, the City Council of the City of Morro Bay called a General Municipal Election to be held in the City of Morro Bay on November 3, 2020 ("General Municipal Election"); and

**WHEREAS**, the City Council of the City of Morro Bay desires to submit to the voters at the General Municipal Election a ballot measure that would increase the Sales Tax rate to one and one half percent (1.5%) ("Sales Tax Measure"); and

**WHEREAS**, pursuant to Revenue and Taxation Code section 7285.9, approving the Sales Tax Measure requires approval by a majority vote of the qualified voters of the City voting in an election on the issue; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** The ordinance attached hereto as Exhibit A, which increases the City's transactions and use tax rate from .5% to 1.5% ("Ordinance No. 635"), shall be submitted to the

voters of the City of Morro Bay as part of the General Municipal Election. As required by Elections Code Section 13247, the abbreviated form of the Sales Tax Measure to appear on the ballot is specified below in Section 2 of this Resolution. The Sales Tax Measure shall be entitled the “Morro Bay’s Local Recovery/Emergency Preparedness Measure.”

**Section 2.** The abbreviated form of the Measure to be placed on the ballot and submitted to the voters at the General Municipal Election is as follows:

<p style="text-align: center;"><b>MORRO BAY’S LOCAL RECOVERY/EMERGENCY PREPAREDNESS MEASURE</b></p> <p>To protect City of Morro Bay’s financial stability, local property values and City services, such as maintaining Morro Bay’s local Fire/Police Departments, 24/7 paramedics, 911 emergency response, health emergency/disaster preparedness; keeping beaches, public areas safe/clean; retaining/attracting businesses; and other general City services, shall the measure establishing 1¢ sales tax providing approximately \$2,000,000 annually until ended by voters be adopted, requiring independent audits, public oversight, all funds used locally?</p>	YES
	NO

**Section 3.** The City Council hereby approves the Ordinance, the form thereof, and approves its submission to the voters at the General Municipal Election.

**Section 4.** The City Clerk is hereby directed to file a certified copy of this Resolution with the San Luis Obispo County Board of Supervisors and the San Luis Obispo County Registrar of Voters.

**Section 5.** The City’s designated elections official is hereby authorized and directed to make any changes to the text of the Ordinance or this Resolution as required to conform to any requirements of law.

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**Section 6.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council, City of Morro Bay at a regular meeting thereof held on the 14th day of July, 2020 by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

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JOHN HEADDING  
Mayor

ATTEST:

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DANA SWANSON  
City Clerk

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

I, Dana Swanson, City Clerk of the City of Morro Bay, do hereby certify that the foregoing Resolution, being Resolution No. 69-20 was passed and approved by the City Council of the City of Morro Bay, at a regular meeting of said Council held on July 14, 2020 and that said Resolution was adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Dana Swanson  
City Clerk

**EXHIBIT A**  
**ORDINANCE**

**ORDINANCE NO. 635**

**AN ORDINANCE OF THE PEOPLE  
OF THE CITY OF MORRO BAY, CALIFORNIA  
REPEALING CHAPTER 3.22 AND ADOPTING CHAPTER 3.26 OF THE  
MORRO BAY MUNICIPAL CODE TO INCREASE THE CITY'S  
TRANSACTIONS AND USE TAX RATE FROM .5% TO 1.5%**

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

**WHEREAS**, the City has faced a daunting long-term budget challenge with the closure of the Morro Bay Power Plant in 2013 and increasing costs of doing business that are outside of the City's control; and

**WHEREAS**, City Council responded by making achieving financial and economic sustainability the City's top priority over the past several years; and

**WHEREAS**, many efforts have been made to better project the City's financial picture, control costs, and explore revenue opportunities; and

**WHEREAS**, as part of the annual budget planning process, the City developed a ten-year financial forecast in 2015; and

**WHEREAS**, since that time, in February each year staff updates that forecast as the City begins the budget development cycle for the upcoming fiscal year, and the forecast includes developing assumptions for the City's revenues and expenditures with the goal of identifying expenditure limitations for the forthcoming budget year and future years; and

**WHEREAS**, prior to the COVID-19 pandemic, the City has taken action to control its costs, including adopting measures with extensive expenditure impacts, examples including:

1. From FY 2009/10 to FY 2018/19 staff reductions of 2.5 Full Time Equivalents (FTEs);
2. Eliminated Deputy City Manager Position (FY 2017/18) – savings of \$120,000 annually;
3. Eliminated Capital Projects Manager/Senior Engineer position in Public Works;
4. Harbor Department, through restructuring, eliminated a position and reduced a position from full-time to part-time;
5. Reorganized the Utility Division in Public Works, reducing FTE count from 18 to 16;
6. Recreation Services Office Assistant reduced to a part-time position;

7. Outsourced Dispatch service (FY 2014/15) reducing accrual of long-term pension and compensated absences balances;
8. Contracted City Attorney services reducing accrual of long-term pension and compensated absences balances;
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10. Early payoff of City's Fire Safety Classic Formula pension side fund (FY 2017/18 – saving \$10,000 and reducing future expenditures by \$163,000);
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**WHEREAS**, prior to the COVID-19 pandemic, the City has taken action to control its costs, including adopting measures with extensive revenues impacts, examples including:

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3. Partnered with Chamber of Commerce to provide economic development stewardship and ombudsman services to assist with enhancing the City's economic development efforts;
4. In the process of implementing new RV camping;
5. Exploring paid parking; and

**WHEREAS**, the City's already challenging financial situation took on an entirely new depth in the wake of the COVID-19 pandemic and resulting shelter at home orders; and

**WHEREAS**, the adopted FY 2020/21 Budget was developed under the umbrella of the City's Economic and Financial Recovery Plan entitled "Rock Solid Together," in which the Council's identified goals are balanced against the economic realities associated with the COVID-

19 pandemic, and it begins to position the City for what will likely be the nation's first recession since 2008; and

**WHEREAS**, the health and well-being of our residents remains our utmost concern and residents can rest assured, the City is taking all necessary action to maintain essential City services and provide resources to our most vulnerable residents; and

**WHEREAS**, on April 28, 2020, the City Council convened a special meeting to discuss the City's economic and financial recovery plan referred to as "Rock Solid Together"; and

**WHEREAS**, with budget deficit projections ranging between \$4M to \$5M or nearly a 27% to 34% loss of overall General Fund revenues, the City customized a comprehensive approach to stem the financial fallout from COVID-19 and begin the long road to fiscal health; and

**WHEREAS**, "Rock Solid Together" is built on the foundation that the City wishes to retain local control over core, essential government services and work towards being locally self-sufficient in the event of a future catastrophic emergency rather than awaiting aid that may never come from the state or federal governments; and

**WHEREAS**, with this foundation, Rock Solid Together is comprehensive and attempts to assist the local business community where feasible and administer fiscal first aide to City finances in light of the significant economic wound inflicted by the pandemic; and

**WHEREAS**, to offset this deficit and present a balanced budget for Council consideration, staff defunded contributions to the City's internal service funds (to later be supplanted with new revenues expected to be derived from cannabis tax revenue per Resolution 19-19); and

**WHEREAS**, in addition, significant reductions to salary and benefits were made, mostly due to defunding of vacant positions and staff layoffs (8 full-time employees and 70 part-time employees); and

**WHEREAS**, these measures, combined with salary concessions from most employees, will save the City over \$1.4 million (net of the CalPERS Tier II and Tier III UAL payoffs and lump sum payments to employees) for FY 2020/21; and

**WHEREAS**, in addition, staff has significantly reduced non-personnel operating expenditures by over \$600,000; and

**WHEREAS**, the budget was prepared with a concentrated focus on maintaining front line services where possible, with reduced staffing and expenditures. However, there will be service impacts related to these cuts, from response to processing times being delayed and ability to complete any discretionary street, trees and sidewalk work; and

**WHEREAS**, the remainder of the budget was balanced through the use of General Fund emergency reserves. The City is not in a position to use the reserves beyond FY 2020/21, as they are projected to be largely depleted by the end of this fiscal year; and

**WHEREAS**, despite these efforts, the City cannot sustain its current service levels for public safety and other priority services without consideration of additional revenue; and

**WHEREAS**, the City must ensure that we are prepared for any medical or catastrophic emergency including preparing our local Police and Fire Departments by preventing service reductions, updating emergency communication systems and maintaining rapid 911 emergency response times; and

**WHEREAS**, Morro Bay has its own locally controlled Police and Fire Departments and the City strives to maintain these local Police and Fire Departments rather than contract these public safety services with outside agencies; and

**WHEREAS**, an additional source of locally controlled revenue is needed to maintain City services and no money should be taken by Sacramento; and

**WHEREAS**, nearly 70% of calls to the Morro Bay Fire Department are related to emergency rescue and medical emergencies and the pandemic only shows the need to be prepared for any medical crisis; and

**WHEREAS**, the City must continue to prevent significant reduction to service of the local Morro Bay Fire Department so skilled, local firefighter-paramedics can continue to respond to emergencies; and

**WHEREAS**, protecting Morro Bay's character and keeping streets and the waterfront safe and clean and preserving open space will also protect local property values; and

**WHEREAS**, the City of Morro Bay currently has a general transactions and use tax (commonly known as a "sales tax") pursuant to the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code (commencing with Section 7251) and Chapter 2.3 of Part 1.7 of Division 2 of the Revenue and Taxation Code (commencing with Section 7285.9), with a rate of one half of one percent (0.5%), as established in Chapter 3.22 of the Morro Bay Municipal Code ("Sales Tax"); and

**WHEREAS**, on July 14, 2020, the City Council of the City of Morro Bay adopted Resolution No. 69-20, submitting the Morro Bay General Transactions and Use Tax Measure ("Sales Tax Measure") to the voters at the General Municipal Election to be held in the City of Morro Bay on November 3, 2020 ("General Municipal Election"), which, if approved, would increase the City's Sales Tax rate to 1.5%; and

**WHEREAS**, as part of Resolution No. 69-20, on July 14, 2020, the City Council also approved this Ordinance, pursuant to Revenue & Taxation Code Section 7285.9, subject to the City voters' approval; and

**WHEREAS**, the General Municipal Election was also a regularly scheduled general election for members of the Morro Bay City Council; and

**WHEREAS**, Article XIII C, Section 2, of the California Constitution requires that an increase in a general tax must be submitted to the electorate and approved by a majority vote of the electorate; and

**WHEREAS**, Article XIII C, Section 2, of the California Constitution requires that the election at which a general tax increase is submitted to the electorate shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

**NOW THEREFORE, ON THE BASIS OF THE FORGOING, THE PEOPLE OF THE CITY OF MORRO BAY, AT THE NOVEMBER 3, 2020, GENERAL MUNICIPAL ELECTION, DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Adoption of Chapter 3.26.** Chapter 3.26 of the Morro Bay Municipal Code, attached hereto as Exhibit A, is hereby adopted.

**Section 2. Repeal of Chapter 3.22.** Chapter 3.22 of the Morro Bay Municipal Code is hereby repealed, effective on the Operative Date of Chapter 3.26 of the Morro Bay Municipal Code, as defined in Section 3.26.020 of the Morro Bay Municipal Code.

**Section 3. Environmental Review.** The adoption of this Ordinance is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section § 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

**Section 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Morro Bay hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

**Section 5. Appropriations Limit.** Pursuant to Article XIII B of the California Constitution, the appropriations limit for the City of Morro Bay is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by this tax.

**Section 6. City Council Authority to Amend.** This is a city council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Morro Bay. However, pursuant to Section 9217 of the California Elections Code, the city council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the city council) in any manner that does not increase a tax rate, or otherwise

constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

**Section 7. Date of Adoption; Effective Date.** Pursuant to Election Code Section 9217, this Ordinance shall be considered as *adopted* on the date that the City Council declares that the voters of the City of Morro Bay have approved the Ordinance by a vote of no less than a majority of the votes cast by the electors voting on the Sales Tax Measure at the General Municipal Election held on Tuesday, November 3, 2020, and shall go into *effect* ten (10) days thereafter.

**Section 8. Execution.** The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

**INTRODUCED** at this regular meeting of the City Council held on the 14th day of July 2020, by motion of \_\_\_\_\_ and seconded by \_\_\_\_\_.

I hereby certify that the foregoing Ordinance was **PASSED, APPROVED and ADOPTED** by the People of the City of Morro Bay, California voting on the 3<sup>rd</sup> day of November, 2020.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, California, on \_\_\_\_\_ by the following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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

APPROVED AS TO FORM:

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

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 635 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the \_\_\_\_ day of \_\_\_\_ 2020, and that it was so adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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

---

DANA SWANSON, City Clerk

## **EXHIBIT A**

### **Chapter 3.26 – Transactions and Use Tax**

#### 3.26.010 – Title.

This chapter shall be known as the Transactions and Use Tax Ordinance. The City of Morro Bay hereinafter shall be called “City.” This chapter shall be applicable in the incorporated territory of the City.

#### 3.26.020 – Operative date.

“Operative Date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of the ordinance codified in this chapter, unless modified pursuant to Section 3.26.040.

#### 3.26.030 – Purpose.

This chapter is intended to achieve the following purposes, among others, and the provisions hereof shall be interpreted in order to accomplish such purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt a tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

#### 3.26.040 – Contract with state.

Prior to the Operative Date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

#### 3.26.050 – Transactions tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 1.5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date.

#### 3.26.060 – Place of sale.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

#### 3.26.070 – Use tax rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date for storage, use or other consumption in said territory at the rate of 1.5% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

#### 3.26.080 – Adoption of provisions of state law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

#### 3.26.090 – Limitations of adoption of state law and collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the City of Morro Bay shall be substituted therefor. However, the substitution shall not be made:

1. When the word “State” is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. When the result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or,

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code.

B. The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this State” in Section 6203 and in the definition of that phrase in Section 6203.

1. “A retailer engaged in business in the City” shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.26.100 – Permit not required.

If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor’s permit shall not be required by this chapter.

3.26.110 – Exemptions and exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use, or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the Operative Date.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.26.120 – Citizens oversight committee.

A. Citizens Oversight Committee Established. There shall be a permanent citizens' advisory committee called the "citizens oversight committee" (hereinafter "committee"), which shall semi-annually review revenues and expenditures from the collection of the tax imposed by this chapter.

B. Committee Membership. The committee shall have seven citizen-members appointed by the city council for staggered four-year terms. Appointees shall be residents of the city; however, no member of the committee shall be an elected official. Each unanticipated vacancy shall be filled only for the duration of the unexpired term for that vacancy.

C. Committee Organization Procedures. The committee shall select one of its members as chairperson. The committee shall follow the rules of procedure of the city unless and until, upon the report and recommendation from the committee, the city council adopts a specific set of procedural rules for the committee.

D. Regular Meeting; Provision of Support Services and Information. The committee shall be subject to the provisions of the Brown Act (California Government Code Sections 54950 et seq.) and shall meet at least once each calendar year. A regular meeting schedule shall be determined in accordance with the Brown Act and thereafter meetings shall be noticed by the city clerk. The city manager or his/her designee shall serve as executive staff to the committee. In addition to receiving materials directly related to the functioning of the committee, the committee members shall also receive all agenda material and other primary staff reports (other than those which are confidential) as are provided to the city council.

E. Semi-Annual Report. The committee shall review a semi-annual expense report of the city relative to activities funded with the additional general purpose local sales tax monies. Not later than the last day of the sixth month following the end of the each city fiscal year, the committee will present its findings and conclusions to the city council for its review.

### 3.26.130 – State Law Amendments.

All amendments subsequent to the effective date of the ordinance first adopting this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

### 3.26.135 – City Amendments.

The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.

3.26.140 – Enjoining collection forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**RESOLUTION NO. 70-20**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
SETTING PRIORITIES FOR FILING WRITTEN ARGUMENT(S) AND  
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL  
ANALYSIS REGARDING THE MORRO BAY GENERAL  
TRANSACTIONS AND USE TAX MEASURE, SUBMITTED AT THE  
GENERAL MUNICIPAL ELECTION ON NOVEMBER 3, 2020**

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

**WHEREAS**, a General Municipal Election is to be held in the City of Morro Bay, California, on November 3, 2020, at which there will be submitted to the voters a ballot measure to consider adopting a proposed ordinance that increases the City's transactions and use tax rate from .5% to 1.5% ("Sales Tax Measure"), and the City Council has approved the Ordinance establishing the Sales Tax Measure and approved the submission thereof to the voters at the November 3, 2020, general municipal election.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** Pursuant to, and consistent with, Election Code Sections 9282, the City Council hereby affirms written arguments for, and against, the Sales Tax Measure may be submitted to the duly appointed elections official for the City of Morro Bay.

**Section 2.** In the event that more than one argument for or against the Sales Tax Measure is timely submitted, the City's duly appointed elections official shall give preference and priority for selection, in the order set forth in California Elections Code Section 9287, being first to arguments submitted by a member of the City Council, as authorized by the City Council, second to the individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure, third to bona fide associations of citizens, and fourth to individual voters who are eligible to vote on the measure.

**Section 3.** In accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City's designated elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code Section 9600. **All written arguments may be changed or withdrawn until and including the date fixed by the City's designated elections**

**official, being the close of business on Tuesday, July 28, 2020, after which time no arguments for or against the foregoing measure may be submitted to the elections official.**

**Section 4.** The City Council hereby directs the City’s designated elections official to transmit a copy of the Sales Tax Measure to the City Attorney. In accordance with California Elections Code Section 9280, the City Attorney is hereby directed to prepare an impartial analysis of the Sales Tax Measure (“Impartial Analysis”), not to exceed five hundred (500) words in length, showing the effect of the Sales Tax Measure on the existing law and the operation of the Sales Tax Measure. The analysis shall include a statement indicating whether the Sales Tax Measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the City. In the event the entire text of the Sales Tax Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: “The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the elections official’s office at (insert telephone number) and a copy will be mailed at no cost to you.” The impartial analysis shall be filed by the date set by the City’s designated elections official for the filing of primary arguments.

**Section 5.** The City’s designated elections official shall cause the City Attorney’s Impartial Analysis, and duly selected arguments, to be printed and distributed to voters in accordance with State law regarding same.

**Section 6.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council, City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

JOHN HEADDING  
Mayor

ATTEST:

---

DANA SWANSON  
City Clerk

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

I, Dana Swanson, City Clerk of the City of Morro Bay, do hereby certify that the foregoing Resolution, being Resolution No. 70-20 was passed and approved by the City Council of the City of Morro Bay, at a regular meeting of said Council held on July 14, 2020, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Dana Swanson  
City Clerk

**RESOLUTION NO. 71-20**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS  
REGARDING THE MORRO BAY GENERAL TRANSACTIONS AND  
USE TAX MEASURE, SUBMITTED AT THE GENERAL MUNICIPAL  
ELECTION ON NOVEMBER 3, 2020**

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

**WHEREAS**, a General Municipal Election is to be held in the City of Morro Bay, California, on November 3, 2020, at which there will be submitted to the voters a ballot measure to consider adopting a proposed ordinance that increases the City's transactions and use tax rate from .5% to 1.5% ("Sales Tax Measure"), and the City Council has approved the Ordinance establishing the Sales Tax Measure and approved the submission thereof to the voters at the November 3, 2020, general municipal election; and

**WHEREAS**, California Elections Code Section 9285 authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments regarding city measures submitted at municipal election.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** Pursuant to Elections Code Section 9285, when the City's designated elections official has selected the arguments for and against the Sales Tax Measure that will be printed and distributed to the voters, the City's designated elections official shall send copies of the argument in favor of the Sales Tax Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The author or a majority of the authors of an argument relating to the Sales Tax Measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. The final date for filing direct arguments is July 28, 2020, and as **such rebuttal arguments shall be filed with the City Clerk no later than the close of business on Friday, August 7, 2020.** The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code Section 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

**Section 2.** All previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

**Section 3.** The provisions of Section 1 of this Resolution shall apply only to the General Municipal Election to be held on November 3, 2020, and shall then be repealed.

**Section 4.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED AND ADOPTED** by the City Council, City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

JOHN HEADDING  
Mayor

ATTEST:

---

DANA SWANSON  
City Clerk

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

I, Dana Swanson, City Clerk of the City of Morro Bay, do hereby certify that the foregoing Resolution, being Resolution No. 71-20 was passed and approved by the City Council of the City of Morro Bay, at a regular meeting of said Council held on July 14, 2020, and that said Resolution was adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Dana Swanson  
City Clerk



AGENDA NO: C-2

MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 8, 2020

**FROM:** Chris F. Neumeyer, City Attorney

**SUBJECT:** Approval of Purchase and Sale Agreement for Permanent and Temporary Easements Related to the Water Reclamation Facility Over Portions of the Real Property Located Near the Intersection of South Bay Boulevard and Teresa Road, Assessor's Parcel No. 068-411-07

### RECOMMENDATION

Approve as submitted and authorize City Manager to sign the Purchase and Sale Agreement and all necessary documents to implement the agreement.

### ALTERNATIVES

No alternatives are recommended.

### FISCAL IMPACT

The purchase price for the easements is \$495,000. The City previously paid the property owners \$178,500 for a right-of-entry for the easements. Therefore, the balance due is \$316,500. The City will also pay escrow fees and costs and title insurance premiums estimated not to exceed approximately \$5,000. The existing, \$1,286,352, project property acquisition budget for the WRF will cover this expense, so there is not impact to the WRF contingency.

### BACKGROUND

The City Council previously approved the construction of a water reclamation facility (WRF) to replace an outdated wastewater treatment plant (WWTP). The existing WWTP does not meet federal Clean Water Act (CWA) standards for full secondary treatment and has been operating under a CWA waiver since 1984. In 2018, the City received a time schedule order (TSO) from the Central Coast Regional Water Quality Control Board requiring compliance with full CWA secondary treatment requirements by February 2023. Failure to comply by the deadline would result in the City being subject to substantial fines and penalties.

The City purchased a site for the WRF which did not have direct and adequate access from the nearest street. In addition, the City needed additional space for access for construction of the WRF and for a construction staging area.

01181.0001/656739.1

Prepared By:    CFN            Dept Review:           

City Manager Review:    SC    City Attorney Review:    CFN

## **DISCUSSION**

In November 2019, the City entered into a Right-of-Entry Agreement with the owners of property adjacent to the WRF site allowing the City access to the property for a period of approximately 10 months while the City and the property owners continued to negotiate a permanent roadway easement and a temporary construction easement in connection with the construction and operation of the WRF. Pursuant to the Right-of-Entry Agreement, the City paid the property owners \$178,500 as partial compensation for the easements.

The Right-of-Entry Agreement provided that if the parties could not reach agreement on the price of the easements, the City would proceed with an eminent domain action. Negotiations between the City and the property owners were recently concluded and resulted in the attached Purchase and Sale Agreement. The Purchase and Sale Agreement incorporates certain provisions of the Right-of-Entry Agreement that the parties intended would be of longer duration and provides for the execution and filing of grants of easement for the permanent roadway easement and the temporary construction easement.

The Purchase and Sale Agreement provides for a closing through escrow. By way of the escrow, the City will pay the property owners \$316,500, the balance of the agreed upon purchase price of \$495,000. The purchase price includes compensates for the impact of the easements and the WRF project on the value of the remaining property. In addition, the City will pay all escrow and closing costs and will obtain title insurance for the permanent roadway easement. The escrow fees, closing costs and title insurance premium are estimated not to exceed \$5,000. The easements will be acquired as-is.

As was also provided in the Right-of-Entry Agreement, the City agrees to cooperate with the property owners in processing and considering a zone change application from the existing Suburban Residential/Planned Development Overlay (R-A/PD) to a more dense zoning, including, but not limited to, Multiple-family residential (R-3) for the approximately 44 acre parcel.

Staff recommends the City Manager be authorized to sign the Right-of-Entry Agreement and all documents reasonably necessary to consummation of the transaction, including, but not limited to escrow instructions, the easement documents, and other documents the escrow holder may require in the performance of its duties.

## **ATTACHMENT**

1. Purchase and Sale Agreement

**AGREEMENT FOR PURCHASE AND SALE  
OF EASEMENTS AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF EASEMENTS AND JOINT ESCROW INSTRUCTIONS (Agreement) is made this \_\_\_ day of \_\_\_\_\_, 2020, by and among the City of Morro Bay, a municipal corporation (Buyer) and Daniel Paul Shepard and Franziska M. Shepard, Co-Trustees of the Daniel Paul Shepard Trust as to an undivided 38.25% interest; Daniel Paul Shepard and Fanziska Shepard, Trustees of the 1998 Daniel Paul Shepard Revocable Trust, as to an undivided 11.75% interest; and Michael A. Martz and Nancy Shepard Martz, Trustees of The Martz 2003 Trust (Schedule B), dated May 5, 2003, as to an undivided 50% interest (collectively the "Seller"). Individually, Seller and Buyer are sometime referred to as the "Party" and collectively, sometime both are referred to as the "Parties."

R E C I T A L S:

**A.** Seller is the owner of that certain unimproved real property located in the County of San Luis Obispo, State of California, (Assessor Parcel No. 068-411-007), more particularly described in Exhibit A and shown on Exhibit B, attached hereto and by this reference incorporated herein (Property).

**B.** For development of a new water reclamation facility (WRF), Buyer has purchased real property adjacent to the Property, more particularly described in Exhibit C, attached hereto and by this reference incorporated herein (South Bay Site).

**C.** Buyer desires to purchase:

1. a permanent non-exclusive easement in, over and upon that portion of the Property as described and depicted in Exhibits D-1 and E-1, attached hereto (Easement Area), and all improvements thereon for (i) installation, maintenance and operation of pipelines for the WRF, (ii) access to and from the South Bay Site; and (iii) related uses (Permanent Easement). The Permanent Easement shall run from the South Bay Site to Highway 1 and shall provide it is appurtenant to the South Bay Site after its acquisition by Buyer; and
2. a temporary exclusive construction easement adjacent to the Permanent Easement, as described and depicted In Exhibits D-2 and E-2 and that shall continue during the design, preconstruction and construction phases of the WRF, in, over and upon the Easement Area (Temporary Construction Easement).

The Permanent Easement and Temporary Construction Easement are collectively referred to hereinafter as "the Easements."

**D.** Seller desires to sell and Buyer desires to buy the Easements upon the terms and conditions more particularly set forth herein.

**E.** On November 1, 2019, the Parties entered into a Right of Entry Agreement (Right of Entry Agreement), allowing Buyer temporary use of the Easements while the Parties continued to negotiate the full purchase of the same. As consideration for this temporary use, Buyer paid to Seller \$178,500. Pursuant to the Right of Entry Agreement, this amount was also to be treated as a deposit towards the full purchase of the Easements by Buyer.

**F.** Because of the overriding public necessity for the Easements for access to the WRF, if the parties to this Agreement were not able to come to a negotiated agreement for City's purchase of the Easements, then City would otherwise have been required to commence the public review and meeting process to consider authorizing the use of its condemnation powers to acquire the

Easements. Therefore, the Parties agree Buyer is acquiring the Easements under the threat of condemnation.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS:**

**1. PURCHASE AND SALE OF EASEMENT.** Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer the Easements upon the terms and conditions in this Agreement.

**2. EFFECTIVE DATE; OPENING OF ESCROW.**

**2.1 Effective Date.** This Agreement shall be deemed effective upon execution of the Agreement by Buyer after approval by Buyer's City Council.

**2.2 Opening of Escrow.** Buyer and Seller hereby agree, within 30 days after this Agreement is effective, to open an escrow (Escrow) with First American Title Insurance Company (Escrow Holder) by causing an executed copy of this Agreement to be deposited with Escrow Holder (Opening of Escrow). The Escrow Officer shall be Lisa Irot, Subdivision Manager, First American Title, 899 Pacific Street, San Luis Obispo, CA 93401, Telephone 805.786.2042.

**3. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.**

**3.1 Purchase Price.** The purchase price for the Easements is Four Hundred and Ninety Five Thousand Dollars and no cents (\$495,000.00) (Purchase Price).

**3.2 Payment of Purchase Price.** Buyer has already paid seller outside of Escrow the sum of One Hundred and Seventy Eight Thousand Five Hundred Dollars and Zero Cents (\$178,500.00). The balance of the Purchase Price shall be paid by Buyer depositing Three Hundred Sixteen Thousand Five Hundred Dollars and Zero Cents (\$316,500.00) into Escrow Good Funds not less than one (1) business day prior to the Closing.

**4. FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.**

**4.1 Seller.** Seller agrees, on or before 12:00 noon at least one business day prior to the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate), which may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

a. Executed and recordable Grant of Permanent Access and Utility Easement in a form substantially similar to Exhibit F (Grant of Permanent Easement) and such other documents as reasonably required by Title Company (as defined in Section 6.1).

b. Executed and recordable Grant of Temporary Easement for Construction of Water Reclamation Facility in a form substantially similar to Exhibit G (Grant of Temporary Easement) and such other documents as reasonably required by Title Company (as defined in Section 6.1).

c. A Non-Foreign Affidavit as required by federal law.

d. Such other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**4.2 Buyer.** Buyer agrees, on or before 12:00 noon at least one business day prior to the Closing Date, Buyer will deposit with Escrow Holder all additional documents (executed and acknowledged, if appropriate), which are necessary to comply with the terms of this Agreement, including without limitation:

a. Two fully executed Certificate of Acceptances (in a form substantially similar to Exhibit H), for both the Grant of Permanent Easement and the Grant of Temporary Easement, which shall be attached to said documents, both of which the Escrow Holder shall have recorded in the Official Records of San Luis Obispo County.

b. Such other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**4.3 Good Funds.** All funds deposited in Escrow shall be in "Good Funds," which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

## **5. CLOSING DATE; TIME IS OF ESSENCE.**

**5.1 Closing Date.** Escrow shall close upon satisfaction of both Buyer's Conditions Precedent (as defined in Section 8.1) and Seller's Conditions Precedent (as defined in Section 8.2), but no later than thirty (30) days after the Opening of Escrow (Closing Date), unless otherwise extended as evidenced by a writing signed by both parties. The terms "Close of Escrow" and/or "Closing" are used herein to mean the time the Grant of Permanent Easement and Grant of Temporary Easement are filed for recording by the Escrow Holder in the Office of the County Recorder of San Luis Obispo County, California.

**5.2 Possession and Termination of Right of Entry Agreement.** Buyer has temporary possession of the portions of the Property subject to the Easements pursuant to the Right of Entry Agreement. Upon the Close of Escrow:

a. Buyer's possession of the portion of the Property subject to the Permanent Easement shall become permanent;

b. Buyer's possession of the portion of the Property subject to the Temporary Easement shall be governed by the terms of the Grant of Temporary Easement for Construction of Water Reclamation Facility; and

c. The Right of Entry Agreement shall terminate.

**5.3 Time is of Essence.** Buyer and Seller specifically agree time is of the essence under this Agreement.

**5.4 Extensions.** The Parties may, if mutually agreed upon, extend the deadlines in this Agreement. The City Manager may do so on behalf of Buyer.

## **6. TITLE POLICY.**

### **6.1 Approval of Title.**

a. Promptly following execution of this Agreement, but in no event later than five days following Opening of Escrow, a preliminary title report shall be issued by First American Title Company (Title Company), describing the state of title of the Property, together with copies of all exceptions listed therein and a map plotting all easements specified therein (Preliminary Title Report).

01181.0041/651656.2

Within ten days after Buyer's receipt of the Preliminary Title Report, Buyer shall notify Seller in writing (Buyer's Title Notice) of Buyer's disapproval of any matters contained in the Preliminary Title Report (Disapproved Exceptions).

b. In the event Buyer delivers Buyer's Title Notice within the required period, Seller shall have a period of ten business days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election either to (i) to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions (Seller's Notice). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions, then Buyer may elect either to terminate this Agreement and the Escrow (and file a condemnation action to complete its acquisition) or to accept title to the Permanent Easement, subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within five days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

c. Upon the issuance of any amendment or supplement to the Preliminary Title Report, which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to five days following receipt of notice of such additional exceptions.

**6.2 Title Policy.** At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA non-extended owner's policy of title insurance (Title Policy) insuring title to the Permanent Easement described in this Agreement vested in Buyer with coverage in the amount of the Purchase Price, containing no exception to such title, which has not been approved or waived by Buyer in accordance with Section 6.1. The cost of the Title Policy to Buyer shall be paid by Buyer, including the cost of any endorsements or an extended coverage policy or endorsement.

**7. ZONING.** Buyer will cooperate with Seller in processing and considering Seller's application for a zone change for the Property from Suburban Residential/Planned Development Overlay (R-A/PD) to a more intense zoning, including, but not limited to, Multiple-family residential (R-3)).

## **8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**8.1 Conditions to Buyer's Obligations.** The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent (Buyer's Conditions Precedent):

- a. Title Company will issue the Title Policy as specified in Section 6.2.
- b. Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- c. Seller's representations and warranties described in Section 11.1 below shall be true and correct as of the Closing Date.
- d. Seller is not in default of its obligations under this Agreement.

**8.2 Conditions to Seller's Obligations.** The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- a. Buyer has delivered the balance of the Purchase Price to Escrow Holder.
- b. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- c. Buyer is not in default of its obligations under this Agreement.

**9. MANAGEMENT OF WORK AREAS AND ACTIVITIES.** Buyer shall perform its activities on the Easements in a safe manner and in accordance with all applicable governmental and other laws, rules and regulations. No “hazardous or toxic wastes, substances or materials,” as such terms are or may from time to time be defined by Federal, state, county or municipal laws, ordinances, orders or regulations applicable to the use and enjoyment of the Property (which regulated materials are collectively hereinafter referred to as “Hazardous Materials”) shall be placed or used or allowed to be placed or used on the Property by Buyer or any of its employees, agents and contractors (collectively, “Buyer Parties”). Buyer shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics’, materialmen’s, contractors’ or subcontractors’ liens or any claim for damage arising from the work performed by Buyer or any Buyer Parties.

**10. AS-IS.** Buyer’s use of the Property is subject to all matters, rights, and rights-of-way of record, apparent, or of which Buyer has actual notice as of the date of execution of this Agreement. The possession and use of the Easements are conveyed by Seller to Buyer as-is, where is and with all faults. Buyer knowingly waives all such faults and existing conditions, and Seller makes no representation or warranties whatsoever, express or implied, or arising by operation of law with respect to the title, maintenance, repair, condition, design or marketability of the Easements. Notwithstanding the foregoing, Buyer has the right to address any unpermitted title exceptions through Escrow as part of transferring title to the Easements.

**11. REPRESENTATIONS AND WARRANTIES.**

**11.1 General Representations and Warranties.**

Seller hereby makes ONLY the following representations to Buyer, each of which is true in all respects as of the Opening of Escrow and shall be true in all respects on the date of Close of Escrow to the knowledge of Seller’s senior staff as of the Effective Date without duty to investigate:

- a. There are no unrecorded contracts, leases, claims or rights affecting the Easements or Easement Area and no agreements entered into by or under Seller which shall survive the Close of Escrow that would adversely affect Buyer’s rights with respect to the Easements or Easement Area, except as heretofore disclosed in writing by Seller to Buyer.

**11.2 Survival of Representations and Warranties of Seller.** The representations and warranties provided in this Section 11 shall survive the Closing and delivery of the Grant of Permanent Easement and Grant of Temporary Easement for a period of one year after the Closing.

**11.3 Breach; Indemnification.** If a breach of a representation or warranty occurs before Closing and the Party adversely affected by the breach is aware such a breach has occurred, then the breach shall be grounds to terminate this Agreement. Each Party agrees to indemnify, defend with counsel selected by the other Party, protect and hold harmless the other Party and its officers, employees and agents from and against all claims, damages, costs, liabilities and expenses of any kind whatsoever paid, incurred or suffered by or asserted against the Easements or any indemnified party directly or indirectly arising from or attributable to such breach caused by the breaching Party.

**12. ESCROW PROVISIONS.**

**12.1 Escrow Instructions.** Sections 1 through 6, inclusive, 8, 12, 15 and 16 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, then Buyer and Seller agree to execute Escrow Holder's standard escrow instructions; provided, that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to close Escrow.

**12.2 General Escrow Provisions.** Escrow Holder shall deliver the Title Policy to the Buyer and instruct the San Luis Obispo County Recorder to mail the Grant of Permanent Easement and Grant of Temporary Easement to Buyer at the address set forth in Section 15 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in San Luis Obispo, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that Party's instructions.

**12.3 Payment of Costs.**

a. **Cost Allocation.** Buyer shall pay all Escrow and Title Policy costs; provided, that the Parties understand no documentary transfer taxes will be due and payable because Buyer is a governmental agency not subject to such taxes.

b. **Closing Statement.** At least three business days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary Escrow closing statement, which shall include each Party's respective shares of costs. The preliminary closing statement shall be approved in writing by the Parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the Parties.

**12.4 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, then either Party may elect to cancel this Escrow upon written notice to the other Party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement. In the event Buyer cancels this Agreement or Escrow, Buyer shall be required to condemn the Easements or otherwise comply with the abandonment procedures under California eminent domain law.

**12.5 Information Report.** Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report (Information Report) and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code subdivision 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such Party reasonably deems to be required to be disclosed to the Internal

Revenue Service by such Party pursuant to Internal Revenue Code subdivision 6045(e), and further agree neither Buyer nor Seller shall seek to hold any such Party liable for the disclosure to the Internal Revenue Service of any such information.

**12.6 No Withholding as Foreign Seller.** Seller represents and warrants to Buyer Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

**12.7 Brokerage Commissions.** Buyer agrees to indemnify and hold harmless Seller from and against all liabilities, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee, including, but not limited to the Buyer's Broker. Seller represents to Buyer it has not entered into any agreement to pay a broker's commission or finder's fee with respect to this transaction.

**13. (Intentionally omitted)**

**14. NON-COLLUSION.** No official, officer, or employee of Buyer has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of Buyer participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non interest" pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, and Buyer's official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Seller further warrants and represents (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any Buyer official, officer, or employee, as a result or consequence of obtaining or being awarded any agreement. Seller is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**15. NOTICES.** Any notice which either Party may desire to give to the other Party or to the Escrow Holder must be in writing and may be given by personal delivery which will be deemed received the following day or by mailing the same by registered or certified mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the Party to whom the notice is directed as set forth below, or such other address and to such other persons as the Parties may hereafter designate:

**To Seller:** Twin Palms Property Management  
Attn: Nancy Martz  
P.O. Box 3884  
Santa Barbara, CA 93130  
(805) 452-3497  
nsmartz@yahoo.com

**To Buyer:** City of Morro Bay

955 Shasta Avenue  
Morro Bay, CA 93442  
Attention: Rob Livick, PE/PLS - Public Works Director

**With a Copy to:** Aleshire & Wynder, LLP  
2361 Rosecrans Avenue, Suite 475  
El Segundo, CA 90245-5086  
Attention: June S. Ailin Esq.

**To Escrow Holder:** First American Title Insurance Company  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_, Escrow Officer

**16. GENERAL AND SPECIAL PROVISIONS.**

**16.1 Assignment.** Neither Party shall have the right to assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

**16.2 Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both Parties. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**16.3 No Waiver.** No delay or omission by either Party in exercising any right or power accruing upon the compliance or failure of performance by the other Party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

**16.4 Modifications and Amendments.** Any amendment or modification must be in writing executed by each Party.

**16.5 Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**16.6 Merger.** This Agreement and other documents incorporated herein by reference contain the entire understanding between the Parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

**16.7 Maintenance and Repairs.** Buyer shall be responsible to landscape the Easement Area and provide the water to the landscaping. Buyer shall also be responsible for all maintenance

and repairs within the Easement Area, except for any repairs required due to the actions or inactions of Seller or its contractors, agents, or invitees.

**16.8 Execution in Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on the Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement for Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

**SELLER:**

**BUYER:**

**The 1998 Daniel Paul Shepard Revocable Trust**, as to an undivided 11.75% interest

By: \_\_\_\_\_  
Scott Collins, City Manger

By: \_\_\_\_\_  
Daniel Paul Shepard,  
Trustee

\_\_\_\_\_, 2020

By: \_\_\_\_\_  
Franziska M. Shepard,  
Trustee

**ATTEST:**

**The Daniel Paul Shepard Trust**, as to an undivided 38.25% interest

\_\_\_\_\_  
Dana Swanson, City Clerk

By: \_\_\_\_\_  
Daniel Paul Shepard,  
Co-Trustee

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Franziska M. Shepard,  
Co-Trustee

\_\_\_\_\_  
Christopher F. Neumeyer, City Attorney

**The Martz 2003 Trust (Schedule B)**, as to an undivided 50% interest

By: \_\_\_\_\_  
Michael A. Martz,  
Trustee

By: \_\_\_\_\_  
Nancy Shepard Martz,  
Trustee

**Exhibit "A"**  
**Legal Description**

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

All that portion of Lot 11 of the Subdivision of the Rancho San Bernardo, in the City of Morro Bay, County of San Luis Obispo, State of California, according to map recorded January 5, 1907 in Book 1, Page 6 of Maps, lying Southwesterly of the Northeasterly boundary line of the City of Morro Bay, which boundary line is also identical with the Southerly line of the Whale Rock Conveyance Conduit easement its described in final Decree of Condemnation in the San Luis Obispo County Court, Case No. 24639, a certified copy of which was recorded March 23, 1961 in Book 1115, Page 39 of Official Records.

EXCEPTING therefrom that portion lying Southerly of the Northerly line of the property condemned for freeway purposes by the State of California recorded March 25, 1958 in Book 933, Page 307 of Official Records.

ALSO EXCEPTING therefrom that portion lying Westerly of the Northerly prolongation of the Southeasterly line of Morro Bay Vista Tract No. 1, as shown on map recorded June 10, 1925 in Book 3, Page 57 of Maps.

ALSO EXCEPTING therefrom that portion described in a deed to Safecare Company, Inc. a Washington corporation, recorded June 30, 1971 in Book 1621, Page 778 of Official Records.

ALSO EXCEPTING therefrom that portion described in a deed to Robert J. Zingrabe, et al, recorded July 3, 1975 in Book 1841, Page 745 of Official Records.

END OF DESCRIPTION

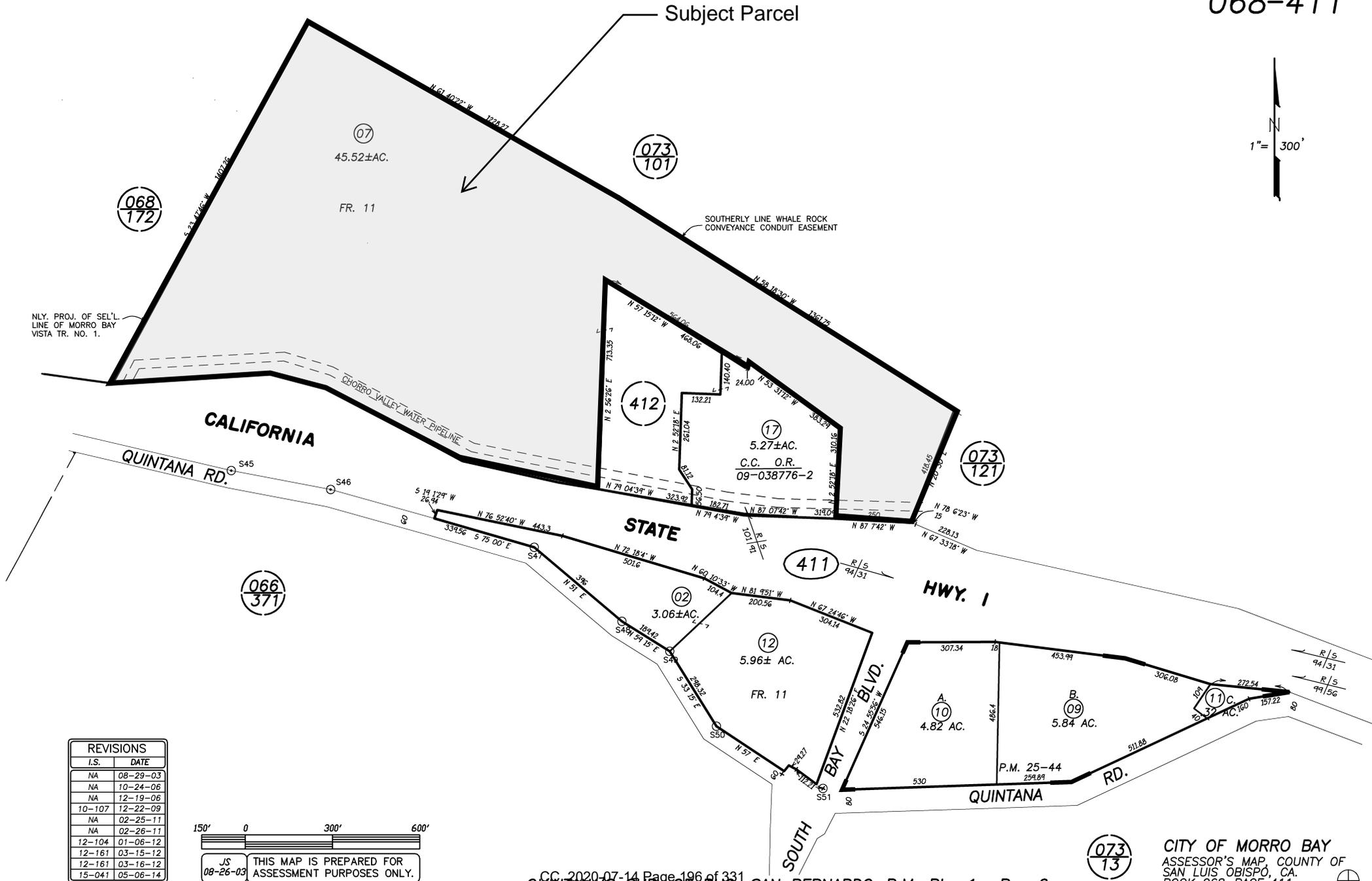
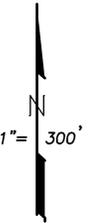
**EXHIBIT B**  
**DEPICTION OF THE PROPERTY**

01181.0041/651656.2

57505491.v1

EXHIBIT B

068-411



REVISIONS	
I.S.	DATE
NA	08-29-03
NA	10-24-06
NA	12-19-06
10-107	12-22-09
NA	02-25-11
NA	02-26-11
12-104	01-06-12
12-161	03-15-12
12-161	03-16-12
15-041	05-06-14



JS  
08-26-03  
THIS MAP IS PREPARED FOR  
ASSESSMENT PURPOSES ONLY.

073  
13

**EXHIBIT C**

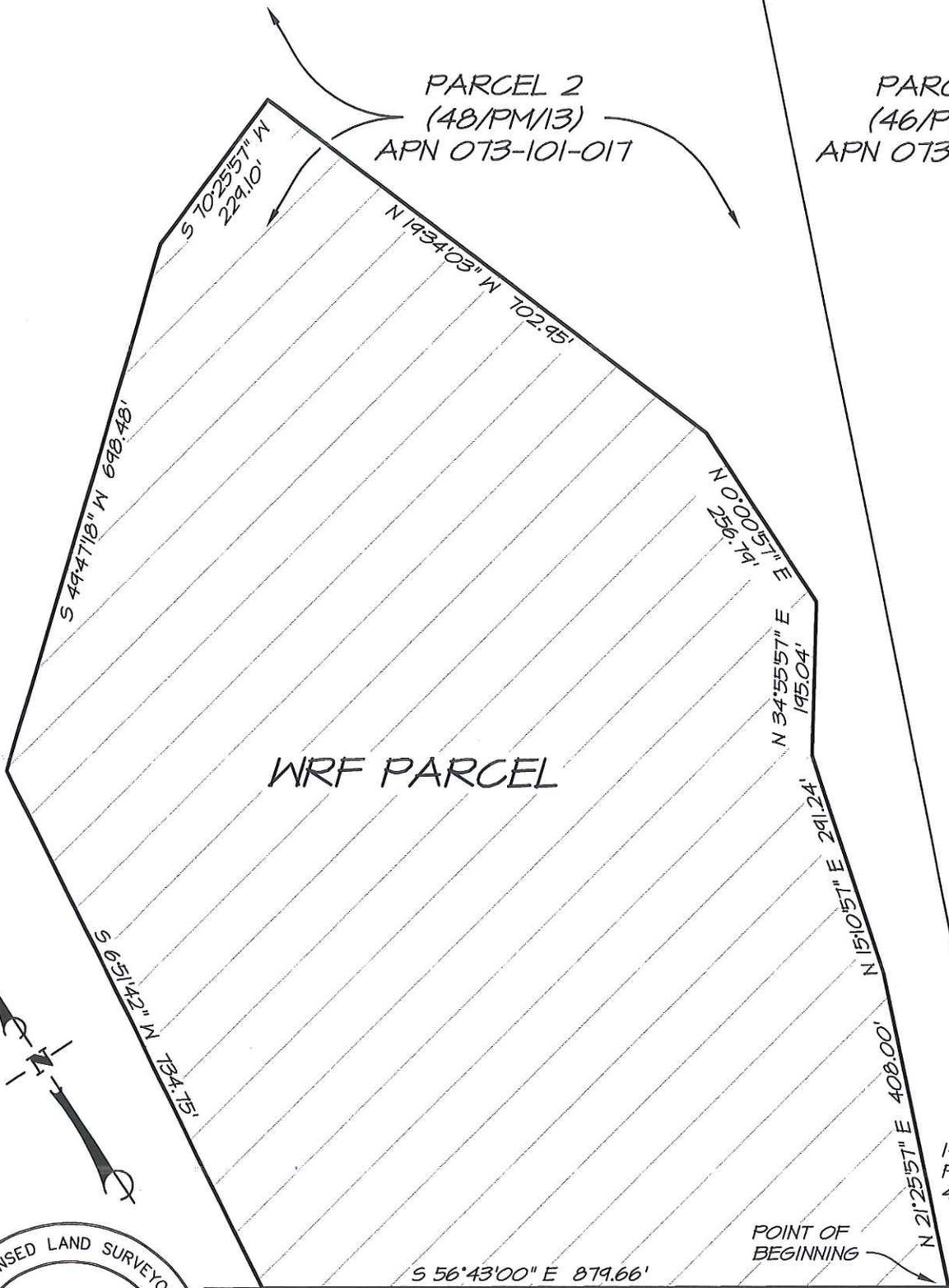
**LEGAL DESCRIPTION OF THE SOUTH BAY SITE**

The real property located in the County of San Luis Obispo, State of California described as follows

PARCEL 2  
(48/PM/13)  
APN 073-101-017

PARCEL 1  
(46/PM/15)  
APN 073-121-022

WRF PARCEL



1-1/2" IRON  
PIPE PER  
48/PM/13

POINT OF  
BEGINNING



APN 068-411-007

JOANN HEAD LAND SURVEYING

Post Office Box 887  
Santa Margarita, CA 93453  
(805) 674-1530



June, 2019

020-05 EX WRF.dwg

EX HIBIT "D-1" Legal Description Access Easement

A portion of Lot 11 of the Map of the Subdivisions of a part of the Rancho San Bernardo in the City of Morro Bay, County of San Luis Obispo, and State of California, as shown on map recorded in Book 1, at Page 6 of Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a 1-1/2" iron pipe at the southeast corner of Parcel 2 of Parcel Map No. CO/MB 89-363 as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder;

thence, along the southwesterly line of said Parcel 2, N 56°43'00" W, 166.14 feet;

thence, leaving said southwesterly line, S 12°58'30" W, 37.70 feet;

thence, S 4°01'53" W, 183.79 feet;

thence, S 15°18'43" W, 260.42 feet to the northerly right-of-way of State Highway 1 as shown on State of California Division of Highways District 5 Right of Way Map 05-SLO-01;

thence, along said right-of-way, S 87°06'24" E, 69.36 feet;

thence, continuing along said right-of-way, S 87°06'24" E, 4.83 feet to the east line of said Lot 11;

thence, along said east line, N 21°56'54" E, 415.65 feet to the Point of Beginning.

End of Description.

  
JoAnn B. Head



EDHIBIT "D-2": Legal Description Temporary Construction Easement "B"

A portion of Lot 11 of the Map of the Subdivisions of a part of the Rancho San Bernardo in the City of Morro Bay, County of San Luis Obispo, and State of California, as shown on map recorded in Book 1, at Page 6 of Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a point on the south line of Parcel 2 of Parcel Map No. CO/MB 89-363 in the County of San Luis Obispo, State of California, as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder, distant thereon N 56°43'00" W, 166.14 feet from a 1-1/2" iron pipe at the southeast corner of said Parcel 2 as shown on said map;

thence, leaving said line, S 12°58'30" W, 37.70 feet;

thence, S 4°01'53" W, 183.79 feet;

thence, S 15°18'43" W, 260.42 feet to the northerly right-of-way of State Highway 1 as shown on State of California Division of Highways District 5 Right of Way Map 05-SLO-01;

thence, along said right-of-way, N 87°06'24" W, 180.83 feet to the east line of Parcel 2 of Lot Line Adjustment MBAL 08-0159 described in Certificate of Compliance recorded July 15, 2009 as Document #2009038776 in the Office of the San Luis Obispo County Recorder;

thence, along said east line, N 2°50'12" E, 284.40 feet;

thence, leaving said east line N 33°17'00" E, 289.71 feet to said south line of above described Parcel 2 of Parcel Map No. CO/MB 89-363;

thence, along said south line, S 56°43'00" E, 116.86 feet to the Point of Beginning.

End of Description.

  
JoAnn B. Head



# EXHIBIT "E-1"

PARCEL 2  
(48/PM/13)  
APN 073-101-017

POINT OF BEGINNING  
1-1/2" IRON PIPE PER  
48/PM/13

PARCEL 1  
(46/PM/75)  
APN 073-121-022

LOT 11  
1 MB 6

APN 068-411-007

PARCEL 2  
MBAL 08-159  
DOC #2009038776  
APN 068-411-017

TERESA DRIVE (PRIVATE)

STATE HIGHWAY 1

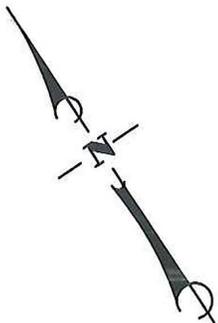


JOANN HEAD LAND SURVEYING

Post Office Box 887  
Santa Margarita, CA 93453  
(805) 674-1530

June, 2019

020-05 EX PE Shepard.dwg



SCALE IN FEET



# EXHIBIT "E-2"

PARCEL 2  
(48/PM/13)  
APN 073-101-017

PARCEL 1  
(46/PM/75)  
APN 073-121-022

APN 068 -411-007

PARCEL 2  
MBAL 08-159  
DOC #2009038776  
APN 068-411-017

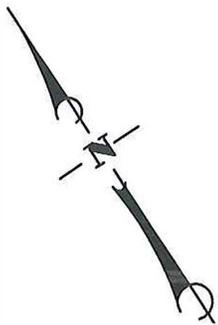
POINT OF BEGINNING

1-1/2" IRON PIPE  
PER 48/PM/13

LOT 11  
1 MB 6

EASEMENT "B"

(PRIVATE)



SCALE IN FEET



JOANN HEAD LAND SURVEYING

Post Office Box 887  
Santa Margarita, CA 93453  
(805) 674-1530

June, 2019

020-05 EX PE Shepard.dwg

**EXHIBIT F**

**FORM OF GRANT OF PERMANENT EASEMENT**

**FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Morro Bay  
955 Shasta Avenue  
Morro Bay, CA 93442  
Attn: Public Works Director

APN: 073-010-017 (Space Above This Line for Recorder’s Office Use Only)  
Exempt from Documentary Transfer (Exempt from Recording Fee per Gov. Code §6103)  
Taxes under R&T Code 11922

**GRANT OF PERMANENT ACCESS AND UTILITY EASEMENT**

This Grant of Easement (Easement Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by Daniel Paul Shepard and Franziska M. Shepard, Co-Trustees of the Daniel Paul Shepard Trust as to an undivided 38.25% interest; Daniel Paul Shepard and Fanziska Shepard, Trustees of the 1998 Daniel Paul Shepard Revocable Trust, as to an undivided 11.75% interest; and Michael A. Martz and Nancy Shepard Martz, Trustees of The Martz 2003 Trust (Schedule B), dated May 5, 2003, as to an undivided 50% interest (Grantor), in favor of the City of Morro Bay, a municipal corporation (“Grantee”).

**RECITALS:**

- A. Grantor is the fee owner of that certain real property located at in the County of San Luis Obispo (APN 073-010-017) legally described on Exhibit A attached hereto (Property).
- B. Grantee desires to acquire a permanent non-exclusive easement in, over and upon that portion of the Property as described and depicted in Exhibits B and C, attached hereto (Easement Area), and all improvements thereon for (i) installation, maintenance and operation of pipelines for a new water reclamation facility (WRF) on a site adjacent to the Property, which site is described in Exhibit D (South Bay Site), (ii) access to and from the South Bay Site for maintenance and operation of the WRF.
- C. Grantor is willing to grant to Grantee the Easement under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Recitals Incorporated.** The foregoing recitals are true and correct and incorporated herein.

**2. Effective Date.** This Easement Agreement shall be effective upon recordation in the Official Records of San Luis Obispo County (Effective Date).

**3. Easement.** Grantor hereby grants to Grantee and its successor and assigns a non-exclusive easement in gross over the Easement Area to construct, install, maintain, operate, repair, replace and modify the pipelines for the WRF. The Easement shall run from the South Bay Site to Highway 1 and it is appurtenant to the South Bay Site and operative once the South Bay Site has been acquired by Grantee.

**4. Notice of Intent to Access the Easement Area.** Construction related to the WRF and any future material replacement or maintenance of the pipelines for the WRF located within the Easement Area shall require prior notice to Grantor, which notice shall include a description of the work to be performed.

**5. Maintenance and Repairs.** Grantee shall landscape the Easement Area and provide water to the landscaping, subject to Grantor's approval of the landscape design, which shall not be unreasonably withheld, conditioned or delayed. When Grantor develops the servient tenement, Grantee shall landscape and maintain the Easement Area in a manner consistent with the landscape plan for the servient tenement. Grantee shall also be responsible for all maintenance and repairs within the Easement Area except for any repairs required due to the actions of Grantor or its contractors, agents, or invitees.

**6. Miscellaneous.**

**6.1. Relationship of the Parties.** Nothing in this Easement Agreement shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture, or any other association between Grantor and Grantee other than the relationship described herein.

**6.2. Entire Agreement.** This Easement Agreement, including all exhibits hereto (which are hereby incorporated herein by reference for all purposes), contains the full and final agreement of every kind and nature between the parties concerning the subject matter set forth herein.

**6.3. Modification or Amendment.** This Easement Agreement may not be amended, modified or changed in any way except other than by a written agreement executed by Grantor and Grantee and duly recorded in the Official Records of the County of San Luis Obispo.

**6.4. Partial Invalidity.** If any provision of this Easement Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Easement Agreement in its application shall not be affected by such partial invalidity but shall be enforced to the fullest extent permitted by law.

**6.5. Applicable Law.** This Easement Agreement shall be governed by the laws of the State of California and jurisdiction for any action shall be San Luis Obispo County.

**6.6. Counterparts.** This Easement Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Easement Agreement.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Easement Agreement to be executed as of the day and year first above written.

**“GRANTOR”**

By: \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**“GRANTEE”**

**CITY OF MORRO BAY**, a municipal corporation

By: \_\_\_\_\_  
Scott Collins, City Manager

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & Wynder, LLP

By: \_\_\_\_\_  
Christopher F. Neumeyer, City Attorney

**Exhibit "A"**  
**Legal Description**

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

All that portion of Lot 11 of the Subdivision of the Rancho San Bernardo, in the City of Morro Bay, County of San Luis Obispo, State of California, according to map recorded January 5, 1907 in Book 1, Page 6 of Maps, lying Southwesterly of the Northeasterly boundary line of the City of Morro Bay, which boundary line is also identical with the Southerly line of the Whale Rock Conveyance Conduit easement its described in final Decree of Condemnation in the San Luis Obispo County Court, Case No. 24639, a certified copy of which was recorded March 23, 1961 in Book 1115, Page 39 of Official Records.

EXCEPTING therefrom that portion lying Southerly of the Northerly line of the property condemned for freeway purposes by the State of California recorded March 25, 1958 in Book 933, Page 307 of Official Records.

ALSO EXCEPTING therefrom that portion lying Westerly of the Northerly prolongation of the Southeasterly line of Morro Bay Vista Tract No. 1, as shown on map recorded June 10, 1925 in Book 3, Page 57 of Maps.

ALSO EXCEPTING therefrom that portion described in a deed to Safecare Company, Inc. a Washington corporation, recorded June 30, 1971 in Book 1621, Page 778 of Official Records.

ALSO EXCEPTING therefrom that portion described in a deed to Robert J. Zingrabe, et al, recorded July 3, 1975 in Book 1841, Page 745 of Official Records.

END OF DESCRIPTION

EXHIBIT "B" Legal Description Access Easement

A portion of Lot 11 of the Map of the Subdivisions of a part of the Rancho San Bernardo in the City of Morro Bay, County of San Luis Obispo, and State of California, as shown on map recorded in Book 1, at Page 6 of Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a 1-1/2" iron pipe at the southeast corner of Parcel 2 of Parcel Map No. CO/MB 89-363 as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder;

thence, along the southwesterly line of said Parcel 2, N 56°43'00" W, 166.14 feet;

thence, leaving said southwesterly line, S 12° 58'30" W, 37.70 feet;

thence, S 4°01'53" W, 183.79 feet;

thence, S 15°18'43" W, 260.42 feet to the northerly right-of-way of State Highway 1 as shown on State of California Division of Highways District 5 Right of Way Map 05-SLO-01;

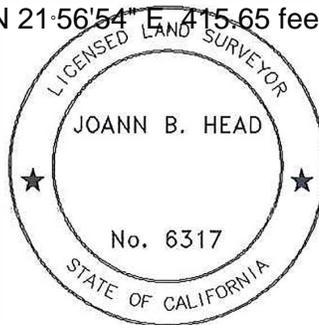
thence, along said right-of-way, S 87°06'24" E, 69.36 feet;

thence, continuing along said right-of-way, S 87°06'24" E, 4.83 feet to the east line of said Lot 11;

thence, along said east line, N 21°56'54" E, 415.65 feet to the Point of Beginning.

End of Description.

  
JoAnn B. Head



# EXHIBIT "C"

PARCEL 2  
(48/PM/13)  
APN 073-101-017

POINT OF BEGINNING  
1-1/2" IRON PIPE PER  
48/PM/13

PARCEL 1  
(46/PM/75)  
APN 073-121-022

LOT 11  
1 MB 6

APN 068-411-007

PARCEL 2  
MBAL 08-159  
DOC #2009038776  
APN 068-411-017

TERESA DRIVE (PRIVATE)

STATE HIGHWAY 1

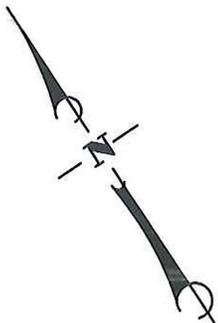


JOANN HEAD LAND SURVEYING

Post Office Box 887  
Santa Margarita, CA 93453  
(805) 674-1530

June, 2019

020-05 EX PE Shepard.dwg

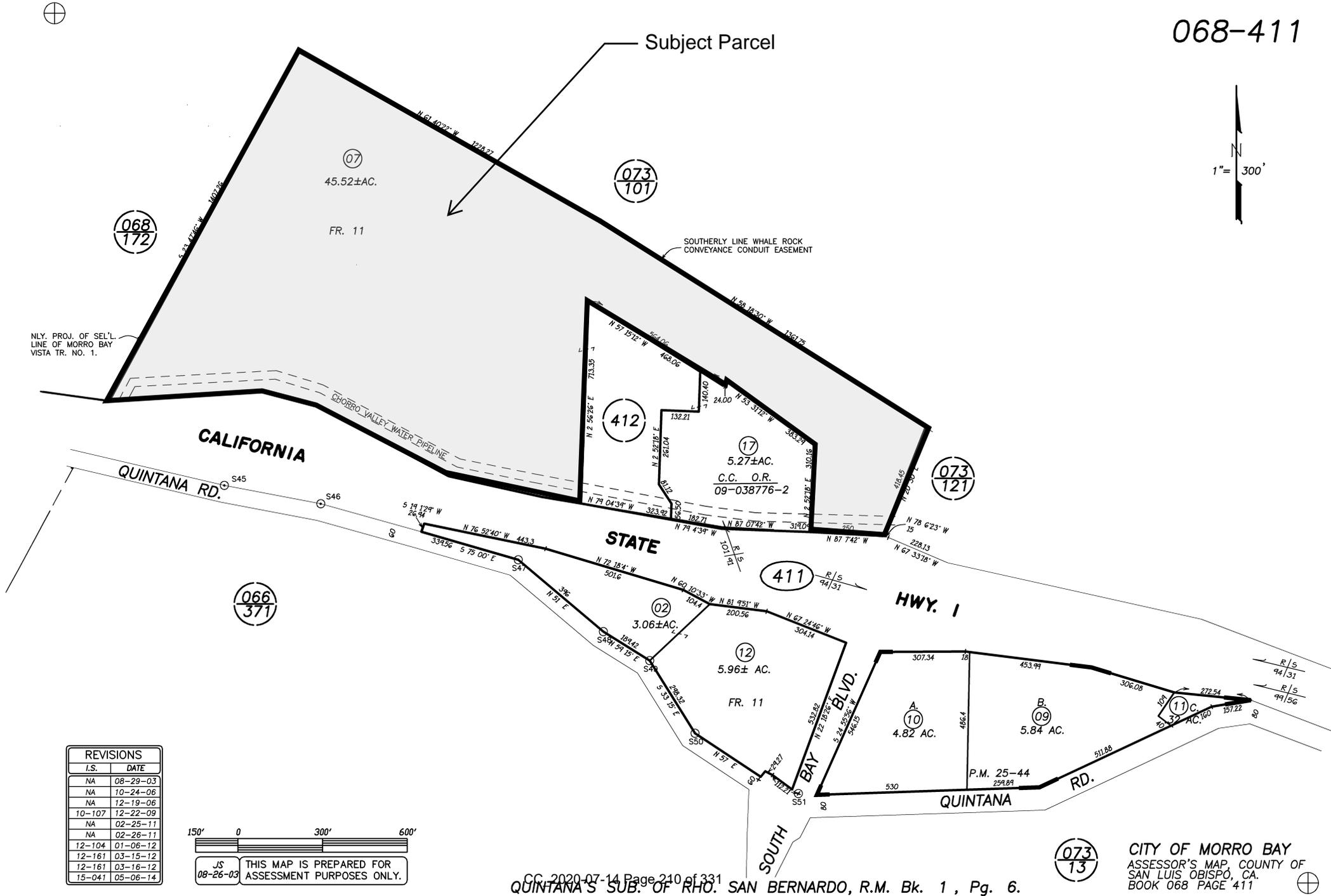


SCALE IN FEET



EXHIBIT D

068-411



NLY. PROJ. OF SEL'L. LINE OF MORRO BAY VISTA TR. NO. 1.

Subject Parcel

SOUTHERLY LINE WHALE ROCK CONVEYANCE CONDUIT EASEMENT

07  
45.52±AC.  
FR. 11

073  
101

068  
172

412

17  
5.27±AC.  
C.C. O.R.  
09-038776-2

073  
121

066  
371

411

STATE

HWY. 1

02  
3.06±AC.

12  
5.96± AC.  
FR. 11

A  
10  
4.82 AC.

B  
09  
5.84 AC.

C  
11  
1.37 AC.

REVISIONS	
I.S.	DATE
NA	08-29-03
NA	10-24-06
NA	12-19-06
10-107	12-22-09
NA	02-25-11
NA	02-26-11
12-104	01-06-12
12-161	03-15-12
12-161	03-16-12
15-041	05-06-14



JS  
08-26-03  
THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

073  
13

**EXHIBIT G**

**FORM OF GRANT OF TEMPORARY EASEMENT**

**FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Morro Bay  
955 Shasta Avenue  
Morro Bay, CA 93442  
Attn: Public Works Director

APN: 073-010-017  
Exempt from Documentary Transfer Taxes  
under R&T Code 11922

(Space Above This Line for Recorder’s Office  
Use Only)  
(Exempt from Recording Fee per Gov. Code  
§6103)

**GRANT OF TEMPORARY EASEMENT FOR CONSTRUCTION  
OF WATER RECLAMATION FACILITY**

This Grant of Temporary Construction Easement (TCE) is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by Daniel Paul Shepard and Franziska M. Shepard, Co-Trustees of the Daniel Paul Shepard Trust as to an undivided 38.25% interest; Daniel Paul Shepard and Fanziska Shepard, Trustees of the 1998 Daniel Paul Shepard Revocable Trust, as to an undivided 11.75% interest; and Michael A. Martz and Nancy Shepard Martz, Trustees of The Martz 2003 Trust (Schedule B), dated May 5, 2003, as to an undivided 50% interest (Grantor), in favor of the City of Morro Bay, a municipal corporation (“Grantee”).

**RECITALS:**

A. Grantor is the fee owner of that certain real property located at in the County of San Luis Obispo (APN 073-010-017) legally described on Exhibit A attached hereto (Property).

B. Grantee desires to acquire temporary, but exclusive, temporary construction easement in, over and upon that portion of the Property as described and depicted in Exhibits B and C, attached hereto (TCE Area), and all improvements thereon for construction of a new water reclamation facility (WRF) on a site adjacent to the Property, which site is described in Exhibit D (South Bay Site) and that shall continue during the design, preconstruction and construction phases of the WRF.

C. Grantor is willing to grant to Grantee the TCE under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Recitals Incorporated.** The foregoing recitals are true and correct and incorporated herein.

01181.0041/651656.2  
57505491.v1

**2. Effective Date.** This TCE shall be effective on March 23, 2020 (Effective Date), and shall continue for a period of two (2) years (Expiration Date).

**3. Temporary Construction Easement.** As of the Effective Date, Grantor grants to Grantee and its successors and assigns an exclusive easement in gross for ingress and egress over the TCE Area to secure access for the construction of the WRF on the South Bay Site, subject to the provisions of Section 5, below. Grantor shall maintain the TCE Area clear and unobstructed so as not to impair access by Grantee and its employees, agents or other authorized personnel to the TCE Area in accordance with all local governmental requirements during the duration of the TCE. Access to the TCE Area shall not unreasonably interfere with Grantor's use of the Property.

**4. Notice of Intent to Access the TCE Area.** Construction related to the WRF located within the TCE Area shall require prior notice to Grantor, which notice shall include a description of the work to be performed.

**5. Insurance.** During the TCE period, Grantee will assure that its contractors and any other agents entering the TCE Area maintain public liability and property damage insurance in commercially reasonable amounts and that such coverage shall be maintained at all times during said period. Grantee will further ensure that the contractors retained by Grantee and who will enter the TCE Area shall name Grantee and Grantor as additional co-insureds under their general commercial liability policies protecting such contractors, Grantee and Grantor against claims for bodily injury and property damage, providing a combined single limit coverage in an amount not less than \$2,000,000 per occurrence. Grantee will also request that its contractor name any person or entity controlling, controlled by, or under common control with Grantor, and each of their respective owners, shareholders, partners, members, divisions, officers, directors, employees, representatives and agents, and all of their respective successors and assigns (collectively, the "Grantor Parties") as additional insureds to the extent such Grantor Parties can be named without additional cost or expense to such contractor.

**6. Restoration.** After completion of any work performed by Grantee or its agents, contractors, or employees, but before the expiration of the TCE, Grantee shall, at its sole cost and expense, restore the TCE Area as close as reasonably possible to its original character (as existing/measured at the time of the Effective Date of this TCE). Grantee shall notify Grantee upon completion of its restoration work and provide Grantee an opportunity to inspect and confirm compliance with this provision.

**7. Miscellaneous.**

**7.1. Relationship of the Parties.** Nothing in this TCE shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture, or any other association between Grantor and Grantee other than the relationship described herein.

**7.2. Entire Agreement.** This TCE, including all exhibits hereto (which are hereby incorporated herein by reference for all purposes), contains the full and final agreement of every kind and nature between the parties concerning the subject matter set forth herein.

- 7.3. Modification or Amendment.** This TCE may not be amended, modified or changed in any way except other than by a written agreement executed by Grantor and Grantee and duly recorded in the Official Records of the County of San Luis Obispo.
- 7.4. Partial Invalidity.** If any provision of this TCE shall be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this TCE in its application shall not be affected by such partial invalidity but shall be enforced to the fullest extent permitted by law.
- 7.5. Applicable Law.** This TCE shall be governed by the laws of the State of California and jurisdiction for any action shall be San Luis Obispo County.
- 7.6. Counterparts.** This TCE may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this TCE.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this TCE to be executed as of the day and year first above written.

**“GRANTOR”**

By: \_\_\_\_\_

Its \_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

**“GRANTEE”**

**CITY OF MORRO BAY**, a municipal corporation

By: \_\_\_\_\_  
Scott Collins, City Manager

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & Wynder, LLP

By: \_\_\_\_\_  
Christopher F. Neumeyer, City Attorney

**Exhibit "A"**  
**Legal Description**

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

All that portion of Lot 11 of the Subdivision of the Rancho San Bernardo, in the City of Morro Bay, County of San Luis Obispo, State of California, according to map recorded January 5, 1907 in Book 1, Page 6 of Maps, lying Southwesterly of the Northeasterly boundary line of the City of Morro Bay, which boundary line is also identical with the Southerly line of the Whale Rock Conveyance Conduit easement its described in final Decree of Condemnation in the San Luis Obispo County Court, Case No. 24639, a certified copy of which was recorded March 23, 1961 in Book 1115, Page 39 of Official Records.

EXCEPTING therefrom that portion lying Southerly of the Northerly line of the property condemned for freeway purposes by the State of California recorded March 25, 1958 in Book 933, Page 307 of Official Records.

ALSO EXCEPTING therefrom that portion lying Westerly of the Northerly prolongation of the Southeasterly line of Morro Bay Vista Tract No. 1, as shown on map recorded June 10, 1925 in Book 3, Page 57 of Maps.

ALSO EXCEPTING therefrom that portion described in a deed to Safecare Company, Inc. a Washington corporation, recorded June 30, 1971 in Book 1621, Page 778 of Official Records.

ALSO EXCEPTING therefrom that portion described in a deed to Robert J. Zingrabe, et al, recorded July 3, 1975 in Book 1841, Page 745 of Official Records.

END OF DESCRIPTION

EXHIBIT "B": Legal Description Temporary Construction Easement

A portion of Lot 11 of the Map of the Subdivisions of a part of the Rancho San Bernardo in the City of Morro Bay, County of San Luis Obispo, and State of California, as shown on map recorded in Book 1, at Page 6 of Maps in the Office of the San Luis Obispo County Recorder, described as follows:

Beginning at a point on the south line of Parcel 2 of Parcel Map No. CO/MB 89-363 in the County of San Luis Obispo, State of California, as shown on map recorded in Book 48, at Page 13 of Parcel Maps in the Office of the San Luis Obispo County Recorder, distant thereon N 56°43'00" W, 166.14 feet from a 1-1/2" iron pipe at the southeast corner of said Parcel 2 as shown on said map;

thence, leaving said line, S 12°58'30" W, 37.70

feet; thence, S 4°01'53" W, 183.79 feet;

thence, S 15°18'43" W, 260.42 feet to the northerly right-of-way of State Highway 1 as shown on State of California Division of Highways District 5 Right of Way Map 05-SLO-01;

thence, along said right-of-way, N 87°06'24" W, 180.83 feet to the east line of Parcel 2 of Lot Line Adjustment MBAL 08-0159 described in Certificate of Compliance recorded July 15, 2009 as Document #2009038776 in the Office of the San Luis Obispo County Recorder;

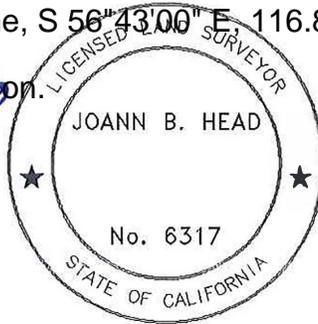
thence, along said east line, N 2°50'12" E, 284.40 feet;

thence, leaving said east line N 33°17'00" E, 289.71 feet to said south line of above described Parcel 2 of Parcel Map No. CO/MB 89-363;

thence, along said south line, S 56°43'00" E, 116.86 feet to the Point of

Beginning End of Description.

JoAnn B. Head



# EXHIBIT "C"

PARCEL 2  
(48/PM/13)  
APN 073-101-017

PARCEL 1  
(46/PM/75)  
APN 073-121-022

APN 068 -411-007

PARCEL 2  
MBAL 08-159  
DOC #2009038776  
APN 068-411-017

POINT OF BEGINNING

1-1/2" IRON PIPE  
PER 48/PM/13

LOT 11  
1 MB 6

EASEMENT "B"

(PRIVATE)

TERESA DRIVE

STATE HIGHWAY 1



JOANN HEAD LAND SURVEYING

Post Office Box 887  
Santa Margarita, CA 93453  
(805) 674-1530

June, 2019

020-05 EX PE Shepard.dwg

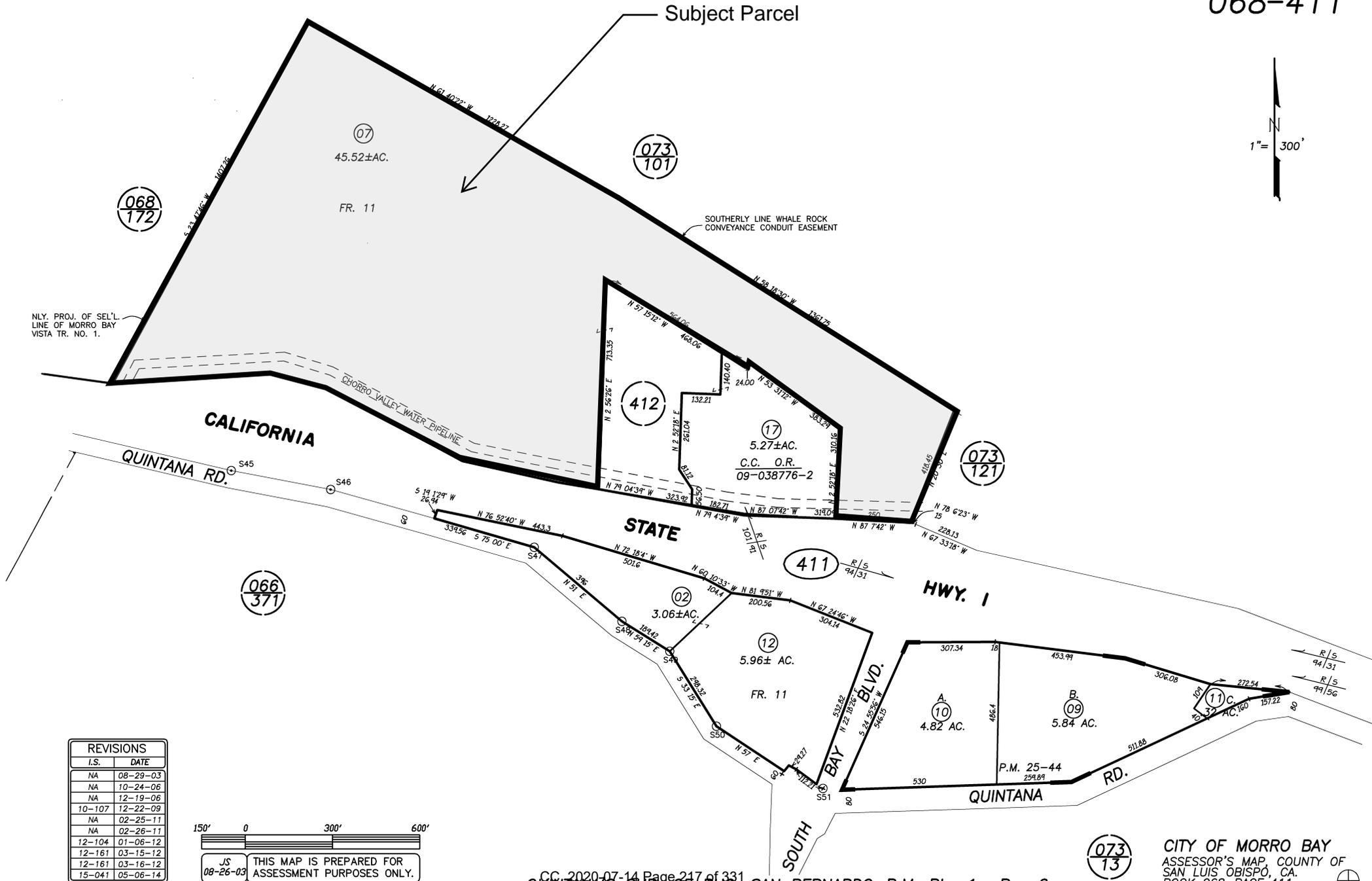
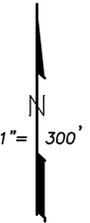


SCALE IN FEET



EXHIBIT D

068-411



NLY. PROJ. OF SEL'L. LINE OF MORRO BAY VISTA TR. NO. 1.

SOUTHERLY LINE WHALE ROCK CONVEYANCE CONDUIT EASEMENT

07  
45.52±AC.

073  
101

068  
172

FR. 11

412

17  
5.27±AC.  
C.C. O.R.  
09-038776-2

073  
121

066  
371

411

STATE

HWY. 1

02  
3.06±AC.

12  
5.96± AC.

A  
10  
4.82 AC.

B  
09  
5.84 AC.

C  
11  
5.37±AC.

REVISIONS	
I.S.	DATE
NA	08-29-03
NA	10-24-06
NA	12-19-06
10-107	12-22-09
NA	02-25-11
NA	02-26-11
12-104	01-06-12
12-161	03-15-12
12-161	03-16-12
15-041	05-06-14



JS  
08-26-03  
THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

073  
13

CITY OF MORRO BAY  
ASSESSOR'S MAP, COUNTY OF  
SAN LUIS OBISPO, CA.  
BOOK 068 PAGE 411

**EXHIBIT H**  
**CERTIFICATE OF ACCEPTANCE**  
(Government Code, Section 27281)

THIS IS TO CERTIFY the interest in real property conveyed by the attached subject document to the CITY OF MORRO BAY, a municipal corporation, is hereby accepted consistent with action of the City Council on \_\_\_\_\_, 2020, and the CITY OF MORRO BAY as grantee consents to the recordation thereof by its duly authorized officer.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the City's official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF MORRO BAY, a municipal corporation

By: \_\_\_\_\_  
Scott Collins, City Manager



AGENDA NO: C-3

MEETING DATE: July 14, 2020

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** July 7, 2020

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Adoption of Resolution No. 72-20 Approving a New Harbor Department Lease Management Policy that Includes a New Master Lease Format, Rescinding Resolutions No. 66-01 that Approved the Current Lease Management Policy and No. 31-02 that Approved a New Master Lease Format, and Provide Direction on New Policy Implementation Next Steps

## RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 72-20 approving a new Harbor Department Lease Management Policy (LMP) and Master Lease format, rescind Resolution Nos. 66-01 and 31-02, and provide input and direction on policy next steps as outlined in this staff report.

## ALTERNATIVES

The Council could opt not to adopt Resolution No. 72-20 and direct staff accordingly.

## 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 regarding lease site auditing, and 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.

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. A few months into the effort Mr. Blackford and Mr. Held resigned for personal reasons, and Harbor Advisory Board Chair Ron Reisner was appointed by the board to replace Mr. Blackford. Mr. Held was not replaced. The group continues to work and provide input to staff to this day.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JP

On May 12, 2020, staff brought the LMP working group's final policy draft to Council for initial review and feedback, and sought direction on five areas. Those areas were:

1. Policy Implementation and Future Lease Management
2. Formula for Determining Lease Term (duration)
3. Lease Site Financing
4. City Control of Future Lease Site Development and Redevelopment
5. Financial Auditing

Council was generally supportive of the policy itself and appreciative of the working group's work product and requested a few minor changes. Council-requested changes in the LMP document are shown in redline format in the final policy included as Attachment 1 to this staff report.

In addition to those changes, Council directed staff to bring back recommendations regarding the five areas above, and broke those down into three general categories: "vision, money and management," which are discussed below.

Staff subsequently met with the Council subcommittee assigned to the LMP (Councilmembers McPherson and Davis) to help determine achievable next steps. These steps were brought to the Harbor Advisory Board (HAB) on June 25, 2020 for their input, which are referenced below where appropriate. Staff includes questions for City Council in each section

## **DISCUSSION**

### Vision

- A. *Lease site development and redevelopment.* Ensuring future lease site development and redevelopment and implementation of the LMP are in harmony with the General Plan/Local Coastal Program and other City planning and policy documents is paramount. The HAB concurred with this sentiment.

It would be staff's intent to ensure close work with the Community Development Department in these regards.

*Council Question: Does the Council support this methodology?*

- B. *Lease policy initiative implementation.* Use the City Council goal-setting process to identify and implement major lease policy initiatives. The HAB concurred with this sentiment.

In addition to developing a process and metrics for lease site financial and physical auditing over the next year as discussed below, staff intends to bring forward during the upcoming 2021 goal-setting process recommendations for achievable additional new policy initiatives. Such initiatives warranting further research and development, which could be implemented by way of "policy directive" documents, could be:

- A process by which to determine what the City wants to see and put in a lease site Request For Proposal (RFP)
- A process by which to determine when and how to implement lease site consolidation
- Additional lease term (duration) guidance
- A License Agreement program
- A Building Lease program
- A process for fair market rent studies and benchmarking

Council Questions:

*Does the Council support a “policy directive” approach to major policy initiatives, and to implement these directives by way of the goal-setting process?*

*In addition, does the Council have any input on prioritizing the above list, and/or others?*

- C. *Lease site control.* The new policy document endeavors to better “put the City in the driver’s seat” with regard to lease site development and redevelopment in order to provide a more consistent approach to redevelopment over time, ensuring the City’s broader economic interests are achieved and that the community’s overall vision of the waterfront is realized. This concept is exemplified in several locations in the policy document, including V(K), V(L) and V(M).

In addition, when a lease site is to be put out to bid in a RFP process, the City can and should dictate its vision for the site in this process and the RFP document.

Finally, consolidation of lease sites to achieve planning or economy of scale opportunities, as stipulated in the LMP, is another City tool to implement its vision for change on the Embarcadero.

HAB input on this issue was generally supportive of increasing the City’s role, but to caution the City about “spot-zoning,” getting too specific about dictating business types (“let the market rule”) and ensuring the City has and makes known a clear vision of what it wants.

Council Question: *Does the Council concur that these are the primary means to guide and steer future waterfront lease site development/redevelopment?*

Money

- A. *Achieving Long-Term Financial Sustainability for the Harbor Fund.* Based in part on Council discussion and input at the June 3, 2020, budget workshop, staff are currently at various stages of pursuing the following possible new revenue-generating initiatives:
- A pilot waterfront RV camping program
  - Paid parking along the Embarcadero and associated waterfront areas
  - Local recovery/emergency preparedness ballot measure

The HAB supported these initiatives.

Council Question: *Does the Council have any further input and/or recommendations regarding these initiatives?*

Management

- A. *Completing the LMP and its exhibits.* The HAB concurred completing the final policy document, its exhibits and the new master lease template (previously referred to as the “master lease format”) to go along with the policy is a high priority. A draft new master lease template is included in the LMP as Exhibit F.

The new master lease template was taken from a recent new master lease approved on the waterfront, which itself was modified and updated several times over recent years with new master lease approvals. These leases were all based on the City’s modern “master lease format” approved in 2002.

Of note in the new template, which was updated to both “modernize” it and to ensure it was in harmony with provisions in the new lease management policy, are the following:

1. The 2002 format had prolific use of the word “shall,” which is less used today because it has a connotation that one “has a duty to,” which is not necessarily the correct legal sense to convey. It has been replaced with “will” or “must,” depending on the circumstances.
  2. The 2002 lease format required semi-annual minimum rent payments, but in the mid 2000’s the City Council approved by resolution the allowance for monthly minimum rent payments to help tenants with cash flow. In the new lease template, the tenant is afforded either option (Section 2.01).
  3. Language was added to the “Hazardous Materials” section (and it was renamed) with additional “environmental considerations” such as compliance with environmental regulations and best management practices and programs (Section 3.05).
  4. Language was added to the “Leasehold Mortgages” article explicitly stating financing related to or using the leasehold interest as collateral must be for the sole use on the leased premises in question or the Tidelands Trust area (Article 5).
  5. Language was added to the maintenance section requiring a tenant using any public or other property for their business operations, but not on their actual lease site, must clean and maintain that public or other property. An example is a sidewalk or walkway a tenant has to utilize to get their trash dumpster to the street for service, and if that path is damaged or dirtied it is the tenant’s responsibility to take care of it (Section 6.01).
  6. The section holding the tenant responsible for the seawalls, revetments, pilings, docks and other improvements in the water portion of the lease site was modified to more clearly require the tenant to periodically inspect those improvements for condition at least every ten years (Section 6.02).
  7. The section providing for recovery of attorney’s fees was removed because it can create an incentive for a tenant to challenge a City action or inaction. It is the City Attorney’s opinion the provision for recovery of attorney’s fees in legal actions is best left to existing law, statute and the courts (was Section 12.01).
  8. A new “force majeure” section was added to provide for flexibility in the event of unforeseen major disruptive circumstances outside the City or tenant’s control, such as the current pandemic (Section 12.10).
  9. The exhibit listing the City’s insurance requirements (formerly Exhibit B) was removed because those requirements get periodically updated and changed, and it is now an exhibit in the lease management policy instead. This is referenced in Section 7.02.
- B. *Lease site financial and physical auditing.* Develop a process and metrics for lease site financial and physical auditing, as stipulated in the LMP, over the next year and enact in fall/winter 2021. The HAB supported this approach, and suggested staff seek professional input, check with how other harbors about their auditing practices and develop a methodical process in order to streamline it for both the City and tenants.

Council Question: Does the Council support this approach?

- C. *City in-house versus contract private lease and property management services.* Should the City continue with in-house (Harbor Department) management versus contracted private management of the lease sites and leasing program?

As Council may know, the Harbor Department has limited capacity to fulfill its core duties. The Department has lost several administrative support positions, due to both the economic recession, and the loss of the power plant's \$275,000 annual outfall lease revenues.

The department is, therefore, at six full-time positions now and still tasked with an equal if not greater service level requirement than before, where it was historically at eight full-time positions compliment. Because of these staffing changes, now would seem an ideal time to address "reorganizing" the Harbor Department's overall makeup, cost-allowing, to create a more effective lease and property management program.

The HAB generally concurred with this opportunity, and noted the City should conduct a cost-benefit analysis to evaluate in-house versus contracted lease/property management. Staff concur with this sentiment.

A search of "sister" agencies in California by a subcommittee of the LMP update group revealed a mixed bag of mostly in-house management, with "inconsistency the only consistency among the smaller comparison set of harbors." A spreadsheet of their initial findings is included with this staff report as Attachment 2. Although the subcommittee was unable to identify and contact any contract municipal property management firms for basic cost or contract information, it is known such firms exist and are engaged in similar efforts.

In general, commercial property management fees range from 4% to 12% of rents collected, depending on the scope and depth of negotiated services provided.

When a Business Manager position was under recruitment for the Harbor Department in 2013, it was to be primarily focused on lease and property management. At the time, the position was being considered in the unrepresented Management Group of employees, and in the same pay range group as the City's current Management Analyst. The current pay range for that position is \$63,795 to \$77,738 (not including benefits). Depending on whether or not a new recruit from a hiring would come in with PERS tenure and at what level, total personnel costs for adding a new Business Manager position would likely range from \$100,000 to \$120,000 per year.

In addition, it should be noted the City's recent Master Fee and Cost Allocation Study used to implement fee-recovery measures will have current and pertinent data that would be critical in conducting a cost-benefit analysis. Total employee, program and citywide overhead costs to manage the Tidelands leasing program were identified as approximately \$300,000 in that study, with the staffing in place at the time.

In order to determine, therefore, whether continued in-house or contracted lease/property management is the most cost- and management-effective way forward for Morro Bay's waterfront leases, staff recommend Council authorize and empower staff, with continued assistance from the LMP update group, to:

- Seek private firms capable and potentially interested in managing Morro Bay's Tidelands Trust lease sites, and create a set of management parameters for them to consider in order to ensure consistency when providing cost and other feedback
- Engage said firms to provide cost/fee estimates in order to determine a general magnitude of costs and services for contract lease/property management
- Conduct a cost-benefit analysis between in-house versus contract lease/property management, including analysis of several models where varying degrees of in-house versus contract management are evaluated, to bring back to Council for consideration

*Council Question: Does the Council support this approach, and does Council have any input or direction regarding the analysis as outlined above?*

### **CONCLUSION**

While the new LMP is necessarily much more detailed and involved than the current policy, and includes many new areas of endeavor that will take time and effort to implement and manage effectively, staff and the Council subcommittee on the policy update concur the above items are reasonable and achievable implementation first steps.

Staff believe subsequent steps will be largely dependent on whether continued in-house or contract management is employed, what those two management models might look like (and what they cost) and what future Council's priorities are. In short, done correctly, successful implementation of the new LMP will be a strategic endeavor done over several years.

### **ATTACHMENTS**

1. Final draft of the Harbor Department Lease Management Policy
2. Policy update group subcommittee spreadsheet on in-house/contract lease management
3. Resolution No. 72-20



**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*)**

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## 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 but not limited to, and with differing degrees of weighting the importance of each as the City Council may deem appropriate:

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 will 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 (Exhibits B, C, D and G subject to administrative change without notice under construction)

A. Definitions and Acronyms

1. Allowed Use: a use that is allowed on a lease site per that site's Master Lease, but that must also be an approved use per that site's various land entitlement use permits.
2. **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.
3. **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, knowledgeably 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.
4. Approved Use: a use that is approved on a lease site per that site's various land entitlement use permits, including but not limited to Conditional Use Permits, Temporary Use Permits or Minor Use Permits.
5. **Base Rent**: also known as "Annual Minimum Rent" or "Base Rent." See "Annual Minimum Rent."
6. **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.
7. **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.
8. **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.
9. **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.
10. **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.
11. **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.
12. **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.

13. **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.
14. **Fair Market Value:** see "Appraised Value."
15. **General Plan or "GP":** the City's comprehensive, long-term plan for the physical development of the City.
16. **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.
17. **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.
18. **Holdover:** occupancy of the leased premises after the lease term has expired, in accordance with the terms of the individual lease agreements.
19. **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.
20. **Internet Sales:** sales physically conducted on the internet, although conducted as part of a business entity on a lease site.
21. **Lease Amendment:** any formal revision or change to an existing lease by adding, deleting or changing a provision, or by modifying the wording.
22. **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."
23. **Leases Assumption:** see "Lease Assignment."
24. **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.
25. **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.
26. **Lease Term:** the period of time in which a lease agreement is valid.
27. **License Agreement:** an agreement for use of public property that does not convey the typical exclusive use or rights as in a lease agreement.
28. **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.
29. **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.

30. **Master Lease Template:** the City Council-approved “standard” lease agreement from which all lease negotiations for new leases are to be initially based.
31. **Master Tenant:** the tenant or lessee named in a lease agreement who holds or possesses a given leasehold.
32. **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.
33. **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.”
34. **Minimum Rent:** also known as “Annual Minimum Rent” or “Base Rent.” See “Annual Minimum Rent.”
35. **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.
36. **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.
37. **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.

38. **Subtenant:** a third-party tenant or lessor that enjoys a sublease.
39. **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.
40. **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.
41. **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.

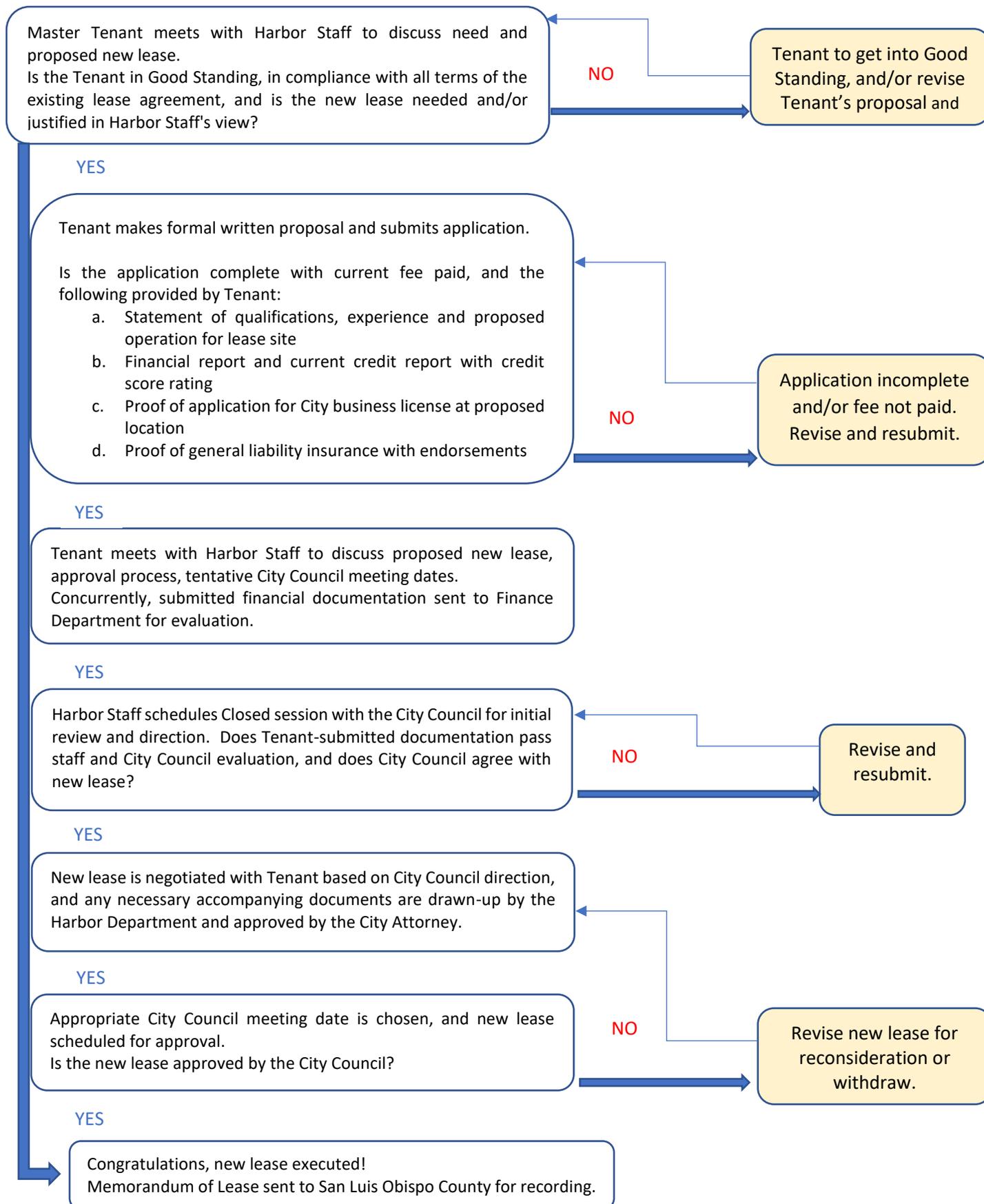
B. Flow Charts ~~(TBD)~~

- I. New Master Lease ~~RFP Process~~
- II. Sublease Approval ~~Development/Redevelopment/Lease Extension~~
- III. Lease Amendment ~~Assignment and Assumption (lease sale)~~
- IV. Assignment and Assumption (lease sale) ~~Lease Amendment~~
- V. Expiring Lease/Lease Site Redevelopment
- ~~V~~-VI. Consent to Encumber (loan) Approval

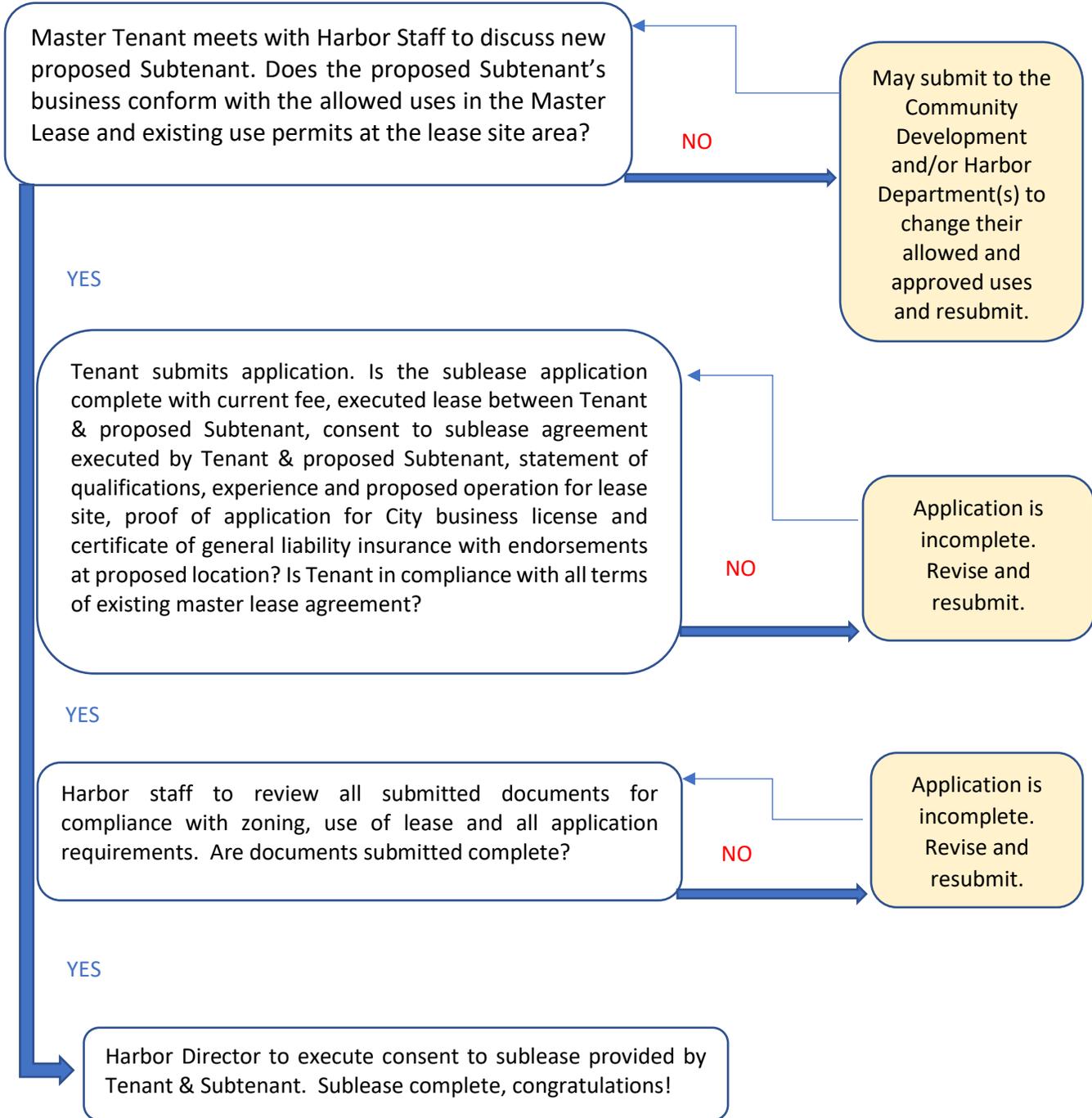
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## NEW MASTER LEASE - Flow Chart

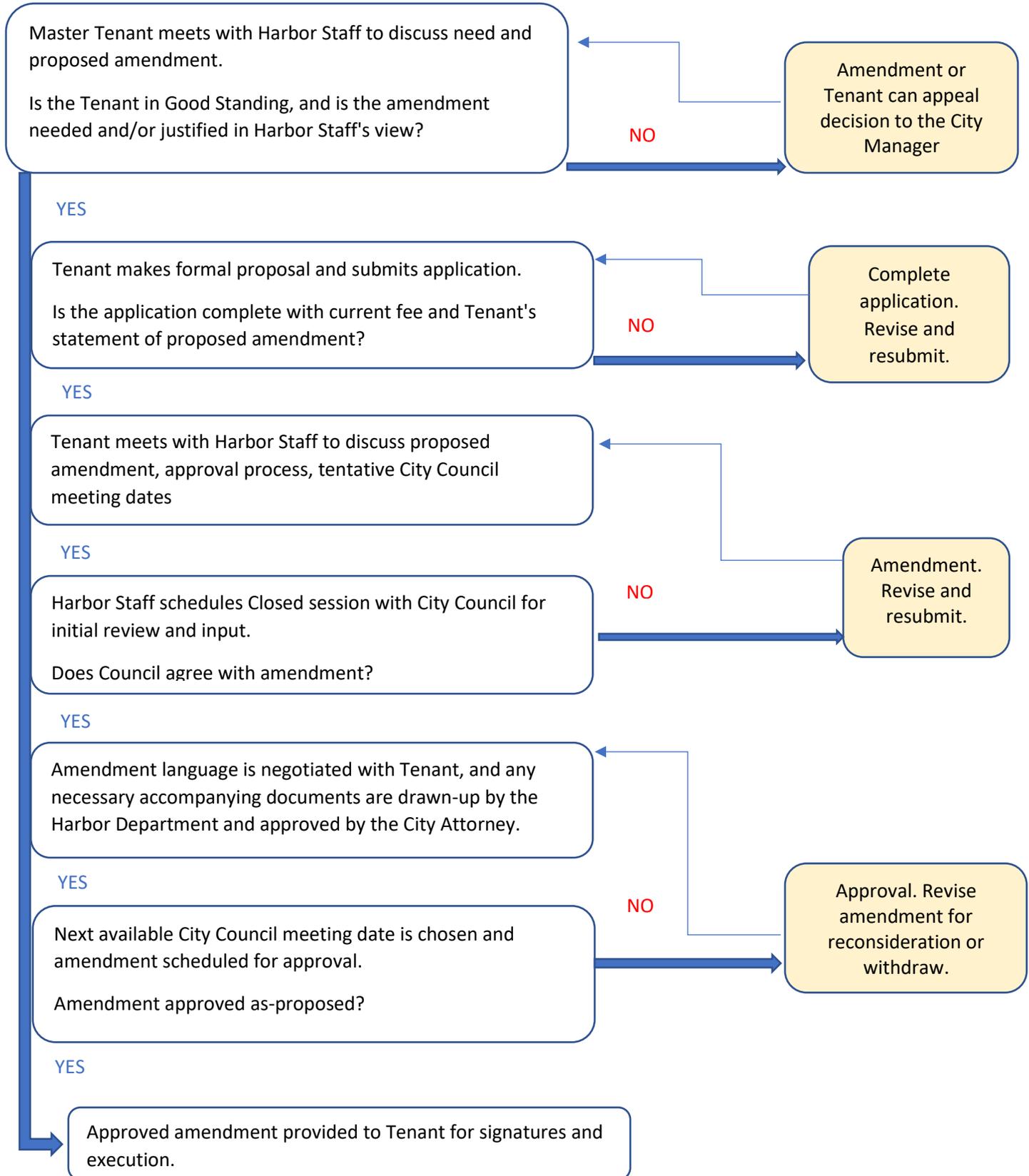


### SUBLEASE APPROVAL - Flow Chart



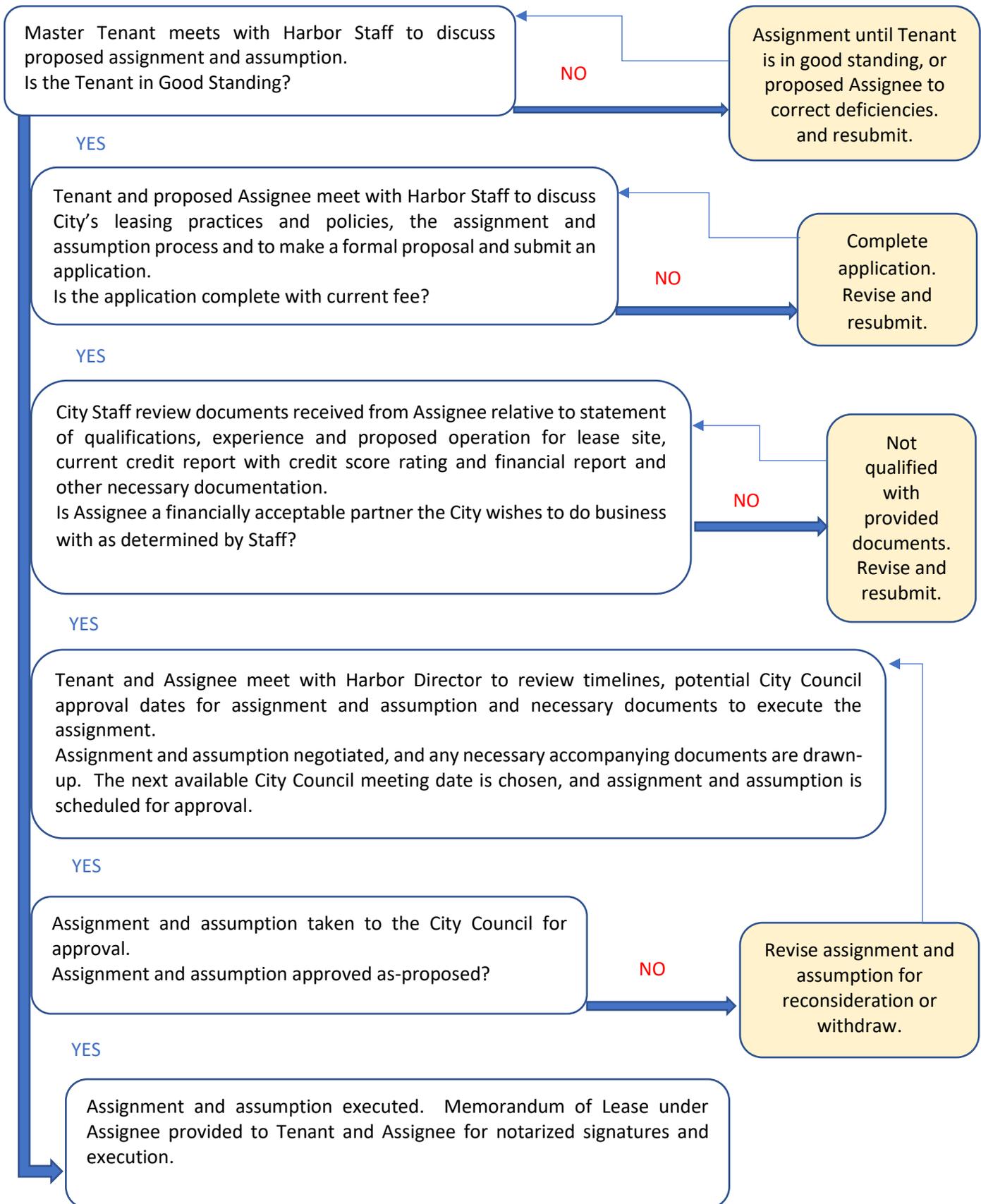
# Exhibit B

## LEASE AMENDMENT - Flow Chart



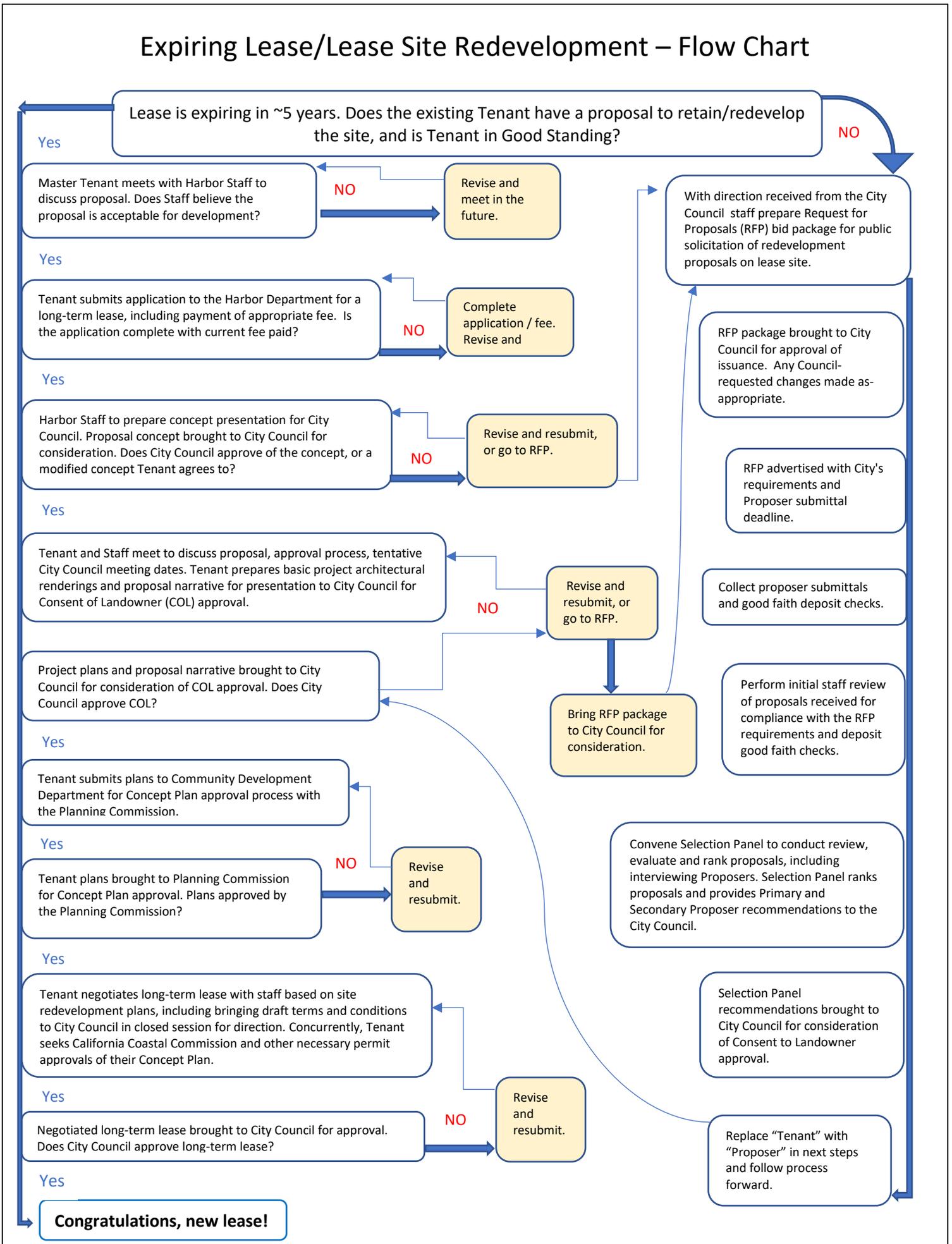
# Exhibit B

## ASSIGNMENT & ASSUMPTION - Flow Chart



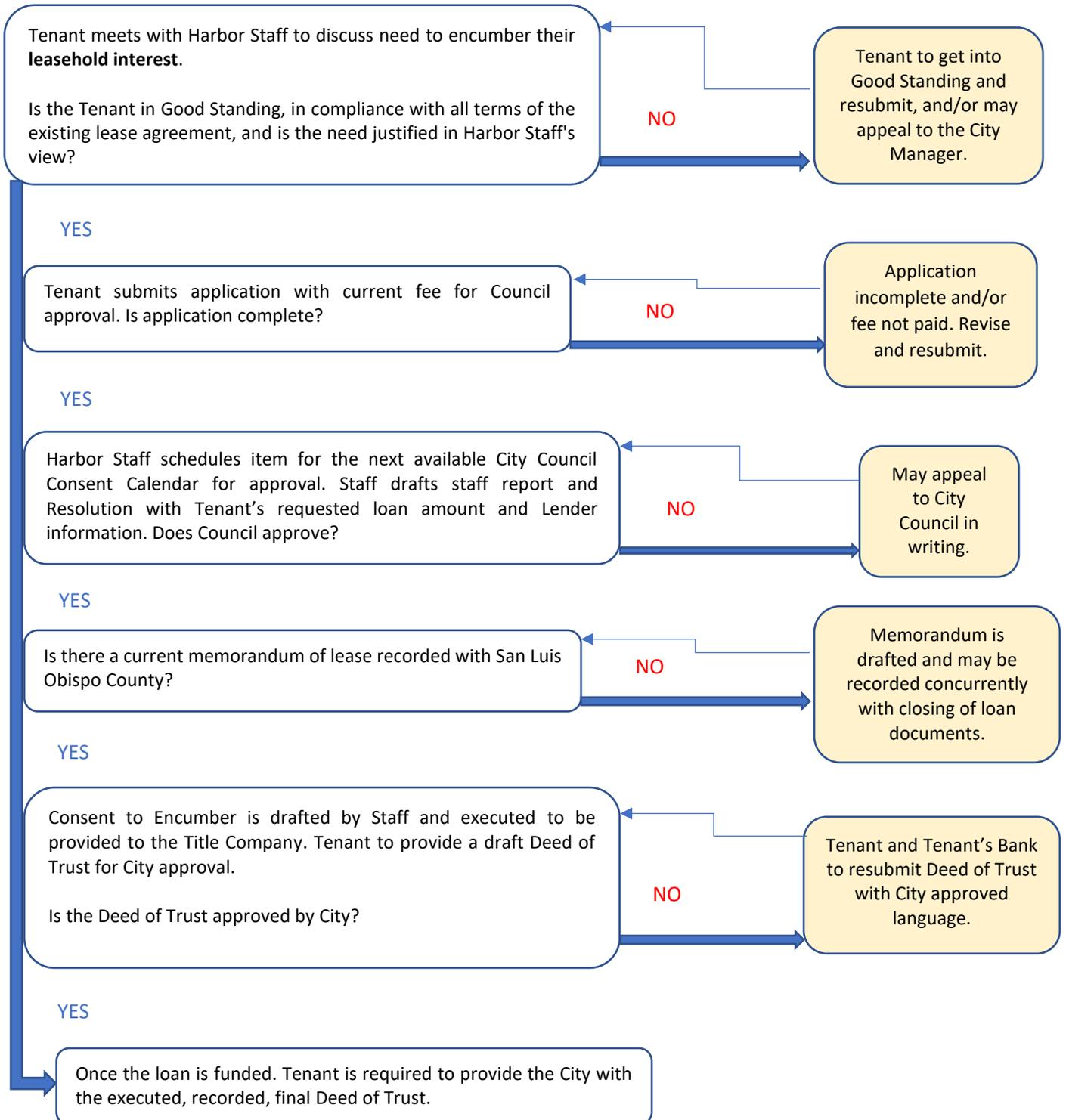
# Exhibit B

## Expiring Lease/Lease Site Redevelopment – Flow Chart



# Exhibit B

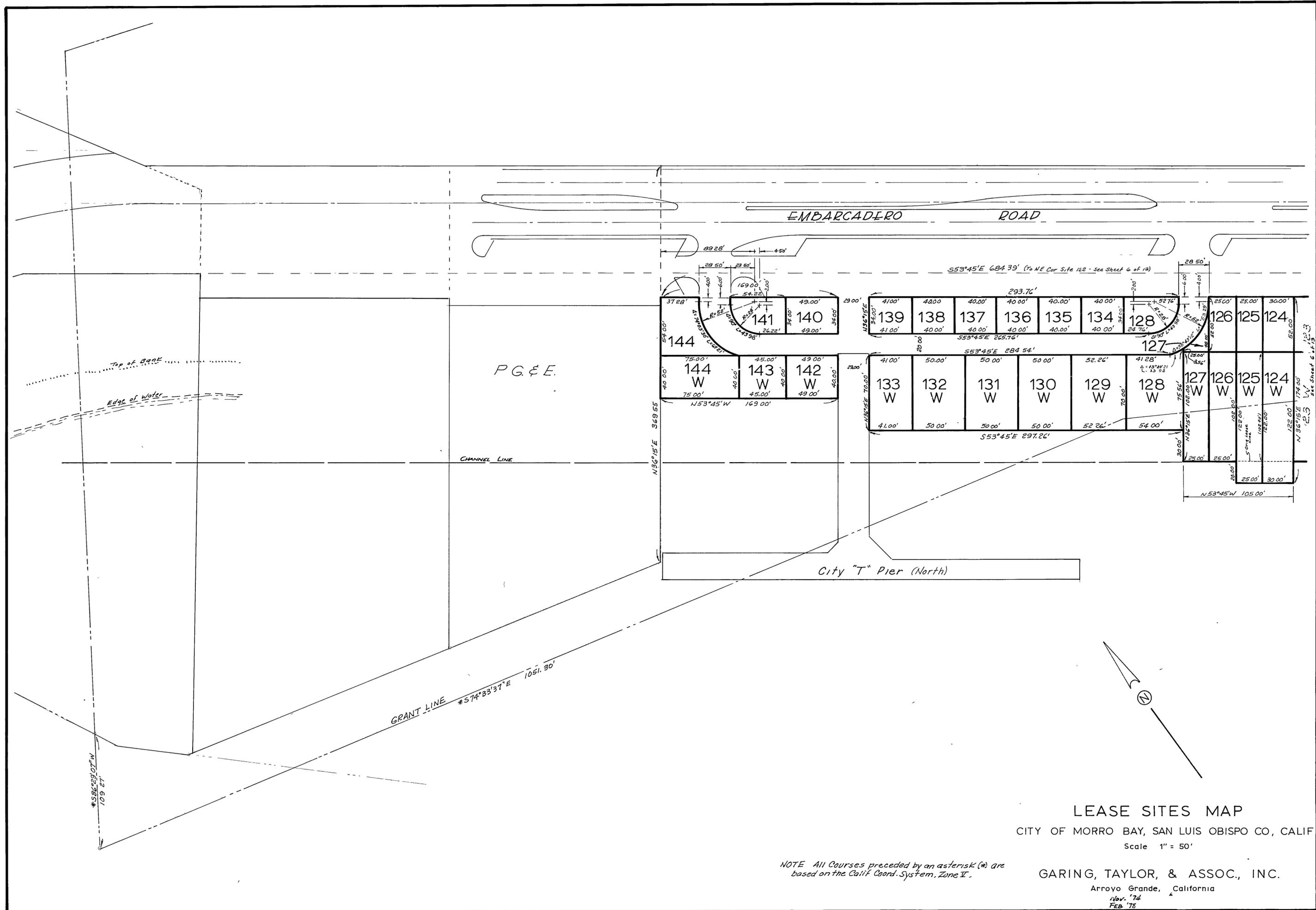
## CONSENT TO ENCUMBER APPROVAL - Flow Chart (Loan)



C. Maps/Surveys ~~(TBD)~~

(immediately following this page)

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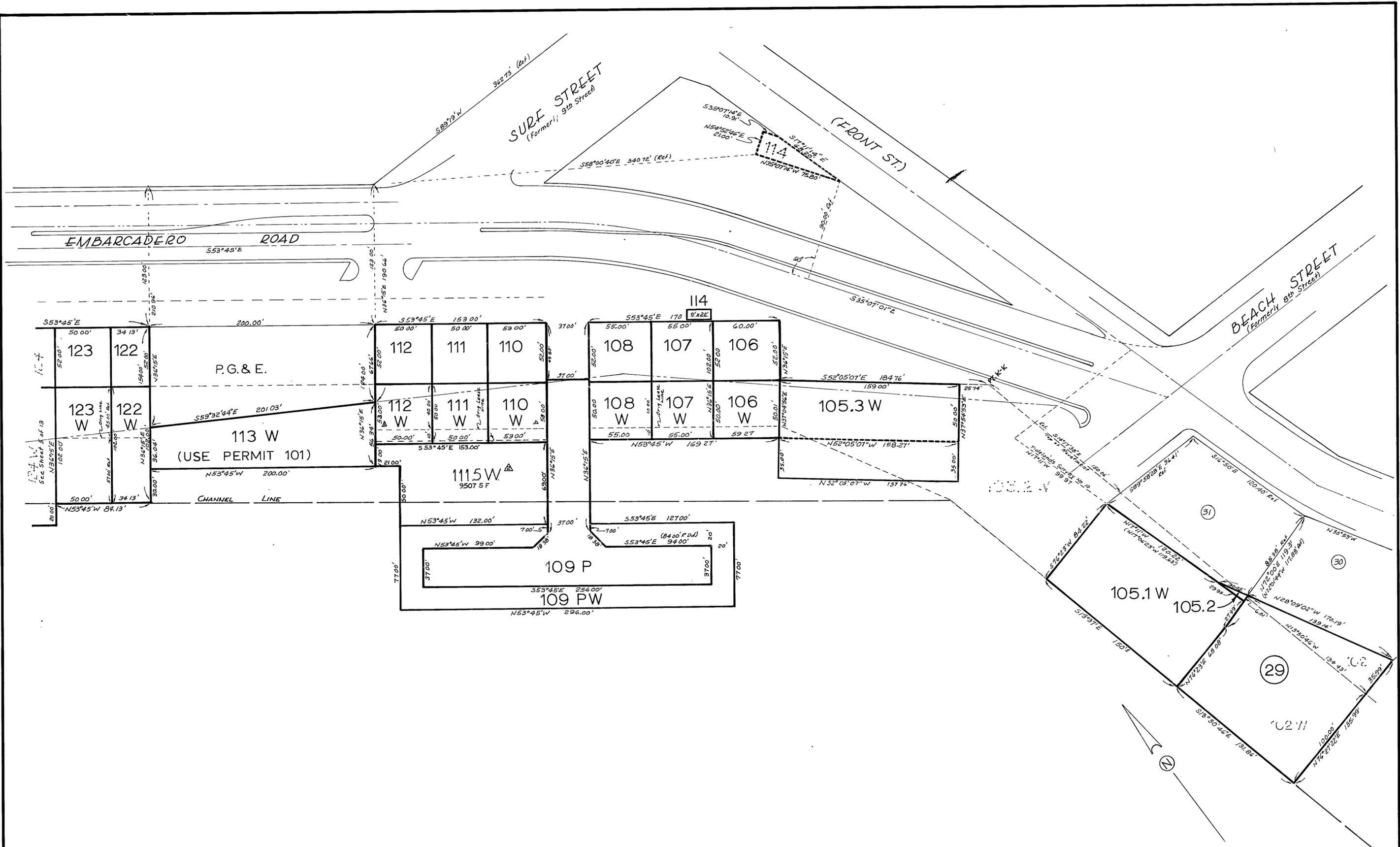
LEASE SITES MAP  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF  
 Scale 1" = 50'

NOTE All Courses preceded by an asterisk (\*) are based on the Calif Coord. System, Zone II.

GARING, TAYLOR, & ASSOC., INC.  
 Arroyo Grande, California  
 Nov. '74  
 FEB. '76

See Sheet 5 of 13

See Sheet 7 of 13



### LEASE SITES MAP

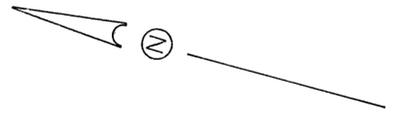
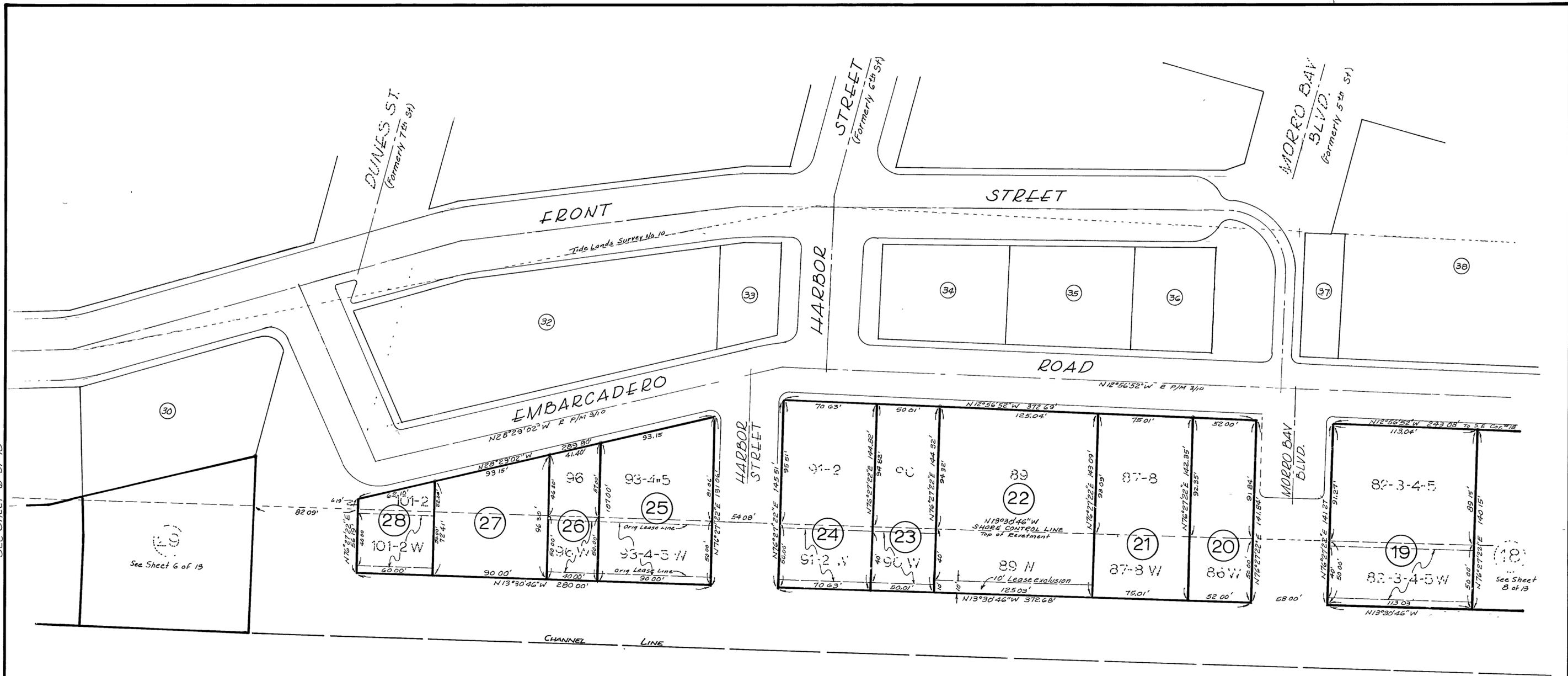
CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.  
Scale: 1" = 50'

GARING, TAYLOR, & ASSOC., INC.  
Arroyo Grande, California  
Nov. '74  
File '73

Revisions			
No	Date	Description	Authority
9-19-77		Add Lease Site 1115W	City Council
129-75		Extend Lane line 3' from shore line	City Council

See Sheet 6 of 13

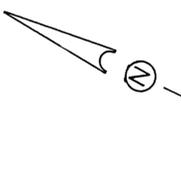
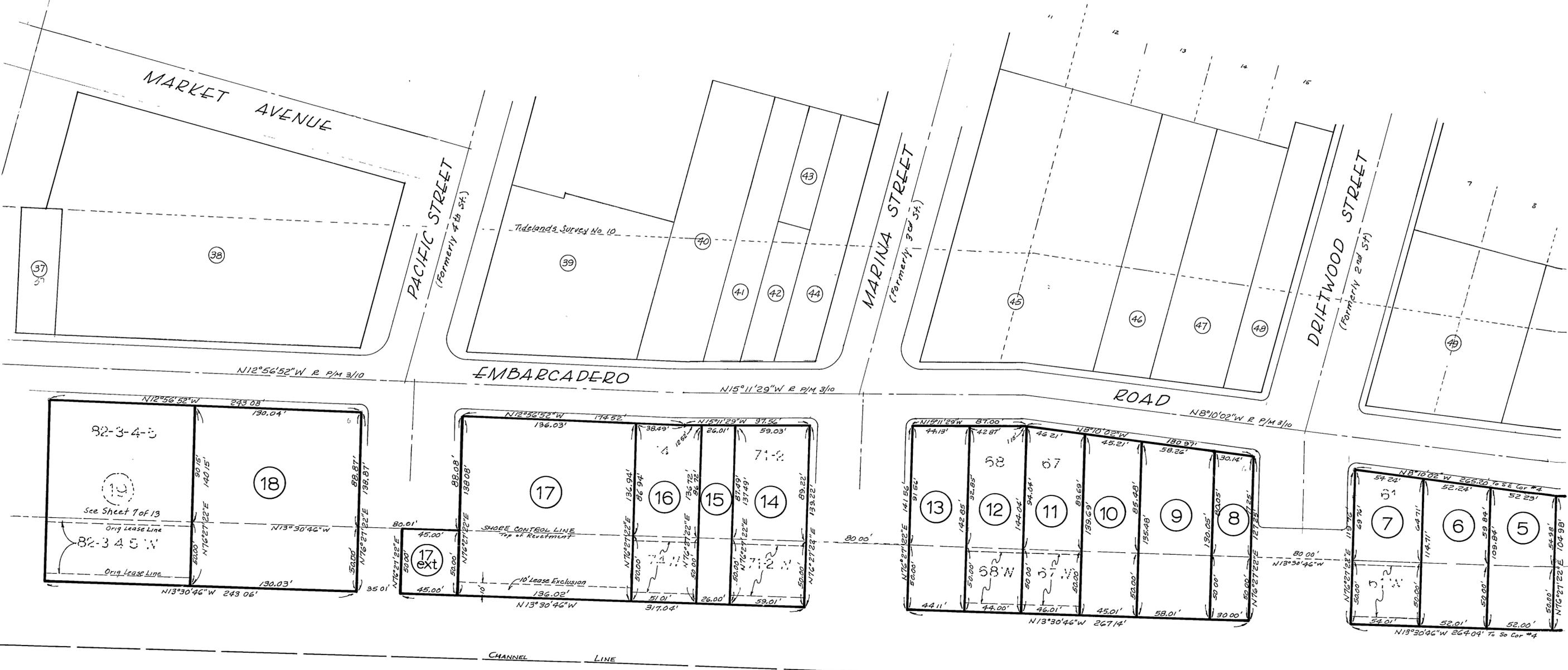
See Sheet 8 of 13



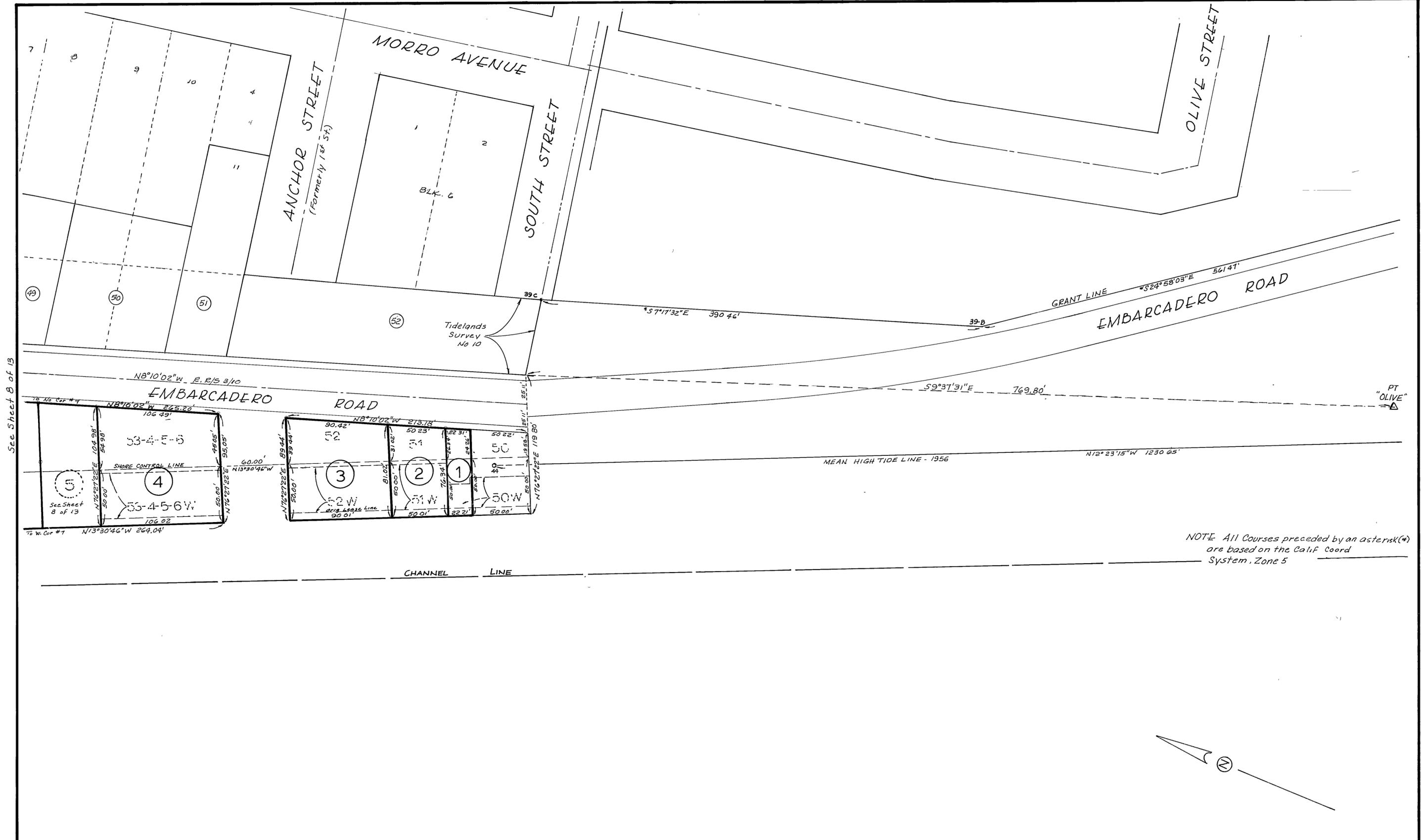
**LEASE SITES MAP**  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.  
 Scale 1" = 50'  
**GARING, TAYLOR, & ASSOC., INC.**  
 Arroyo Grande, California  
 Nov. 74  
 Feb. 75

See Sheet 7 of 13

See Sheet 9 of 13



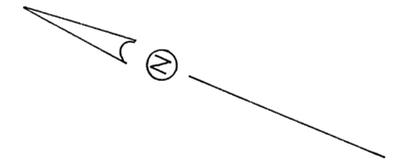
LEASE SITES MAP  
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 Scale 1" = 50'  
 GARING, TAYLOR, & ASSOC., INC.  
 Arroyo Grande, California  
 Nov. '72  
 Feb. '78



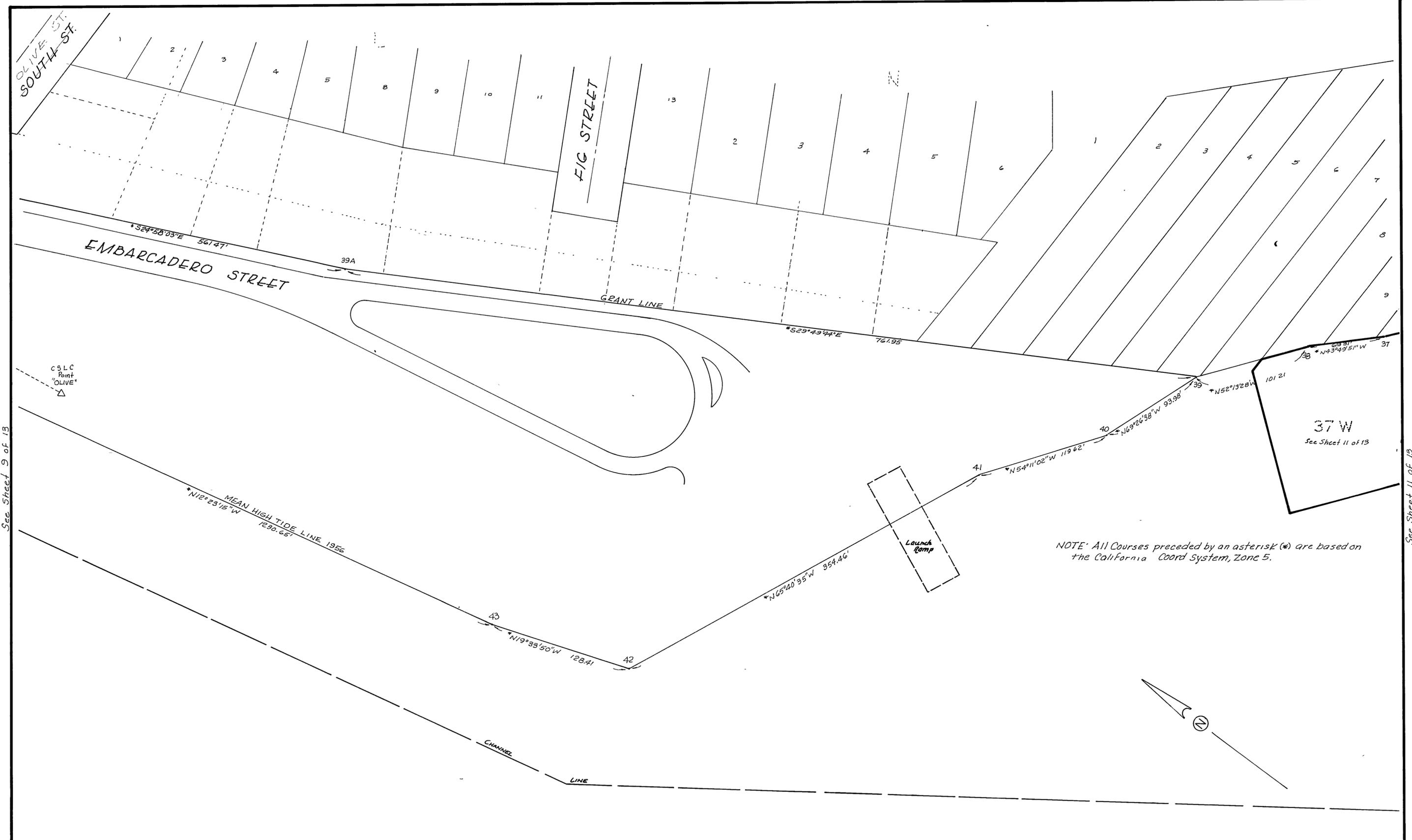
See Sheet 8 of 13

See Sheet 10 of 13

NOTE: All Courses preceded by an asterisk(\*) are based on the Calif. Coord. System, Zone 5



LEASE SITES MAP  
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 Scale 1" = 50'  
 GARING, TAYLOR, & ASSOC., INC.  
 Arroyo Grande, California  
 Nov. '76  
 Feb. '78



See Sheet 9 of 13

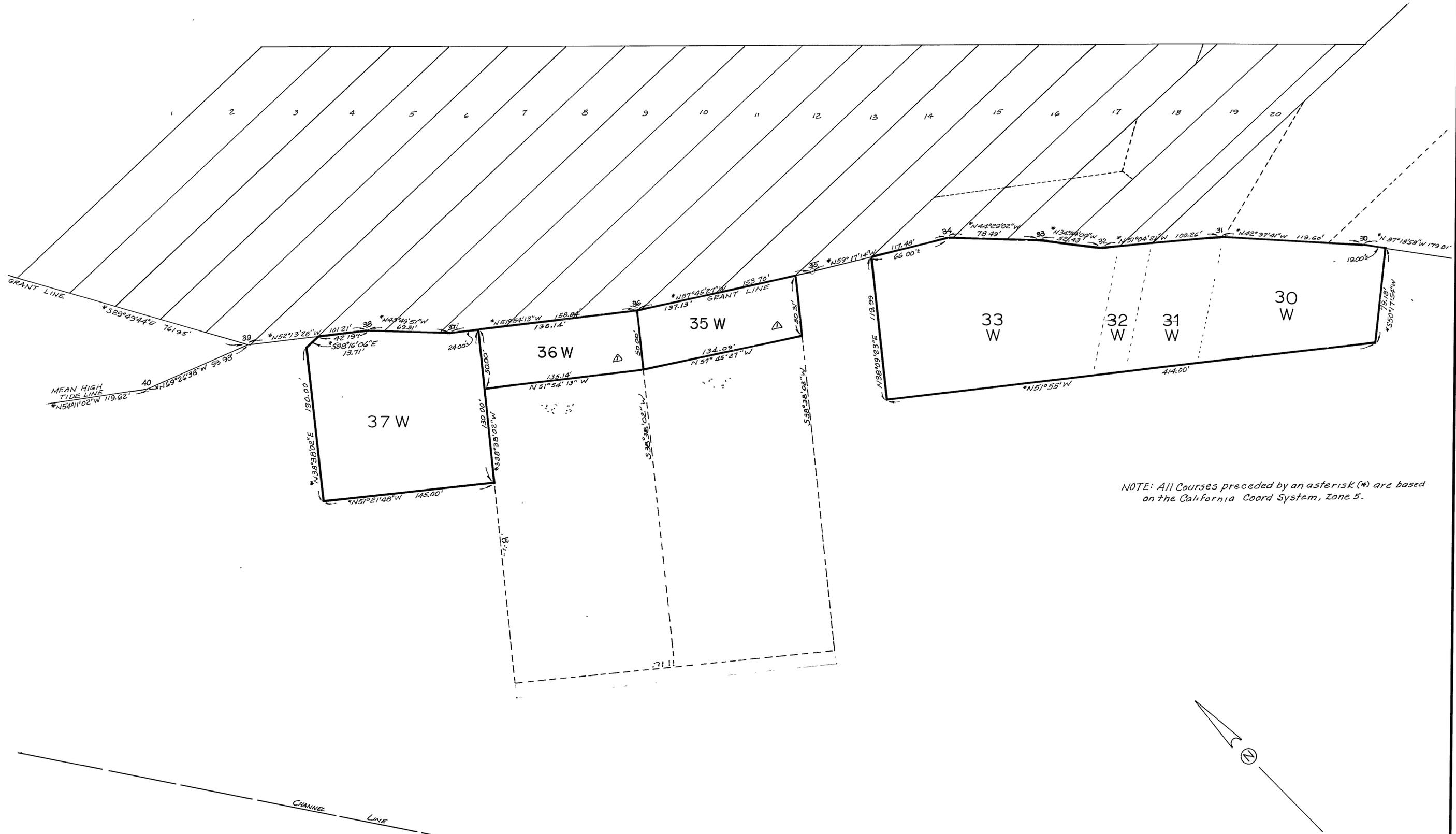
See Sheet 11 of 13

NOTE: All Courses preceded by an asterisk (\*) are based on the California Coord System, Zone 5.

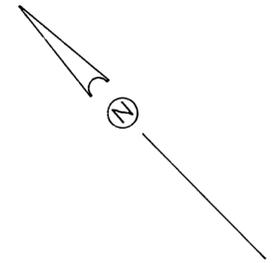
**LEASE SITES MAP**  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF.  
 Scale 1" = 50'  
**GARING, TAYLOR, & ASSOC., INC.**  
 Arroyo Grande, California  
 Nov '74  
 FEB '78

See Sheet 10 of 13

See Sheet 12 of 13

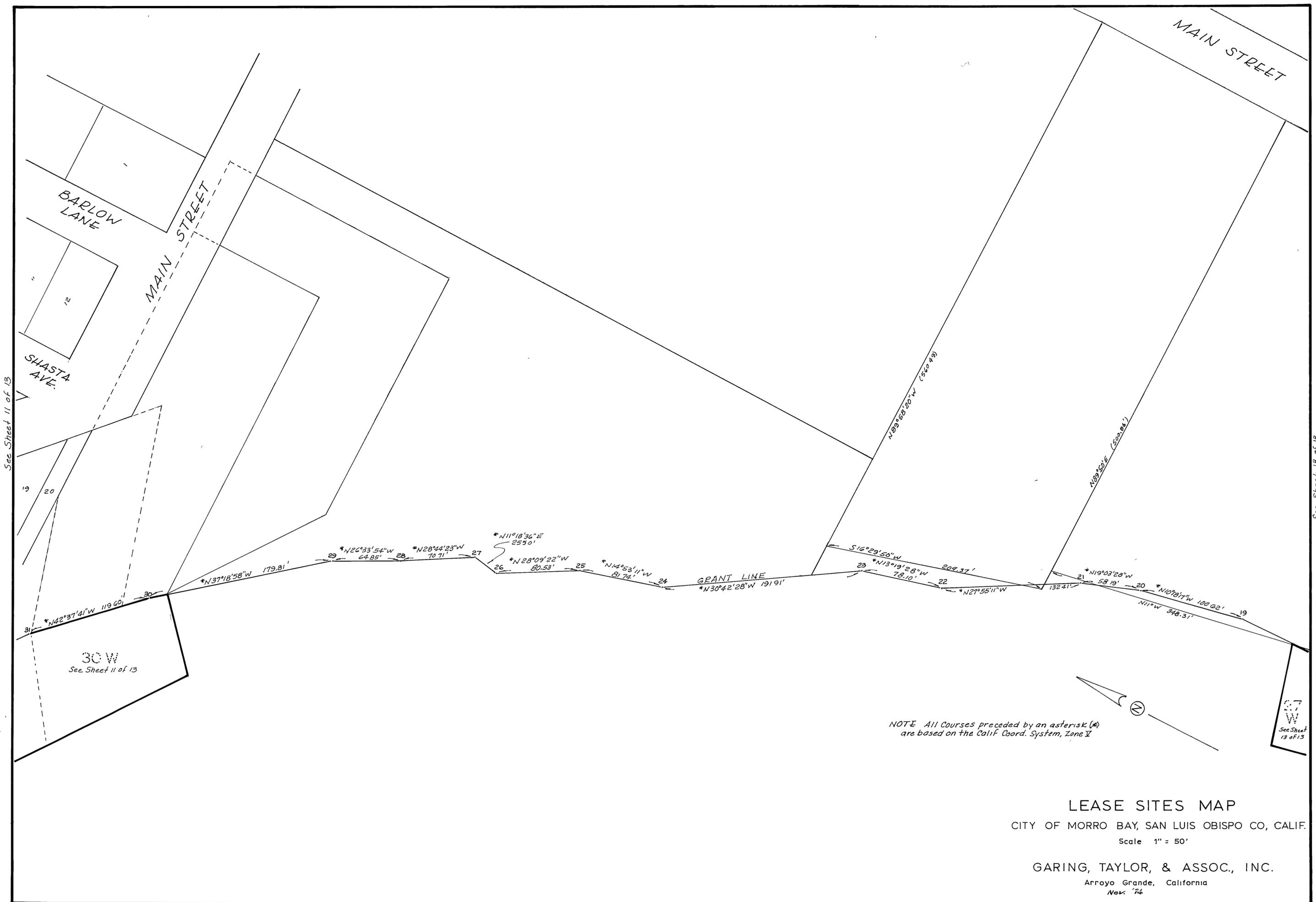


NOTE: All Courses preceded by an asterisk (\*) are based on the California Coord System, Zone 5.



LEASE SITES MAP  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.  
 Scale 1" = 50'  
 GARING, TAYLOR, & ASSOC, INC.  
 Arroyo Grande, California  
 Nov. '72

Revisions			
No	Date	Description	Authority
2	2-7-79	ADD CHANNEL LINE	CITY ENGINEER
1	2-6-75	Delinate L.S. 36W & 35W	City Council



See Sheet 11 of 13

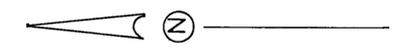
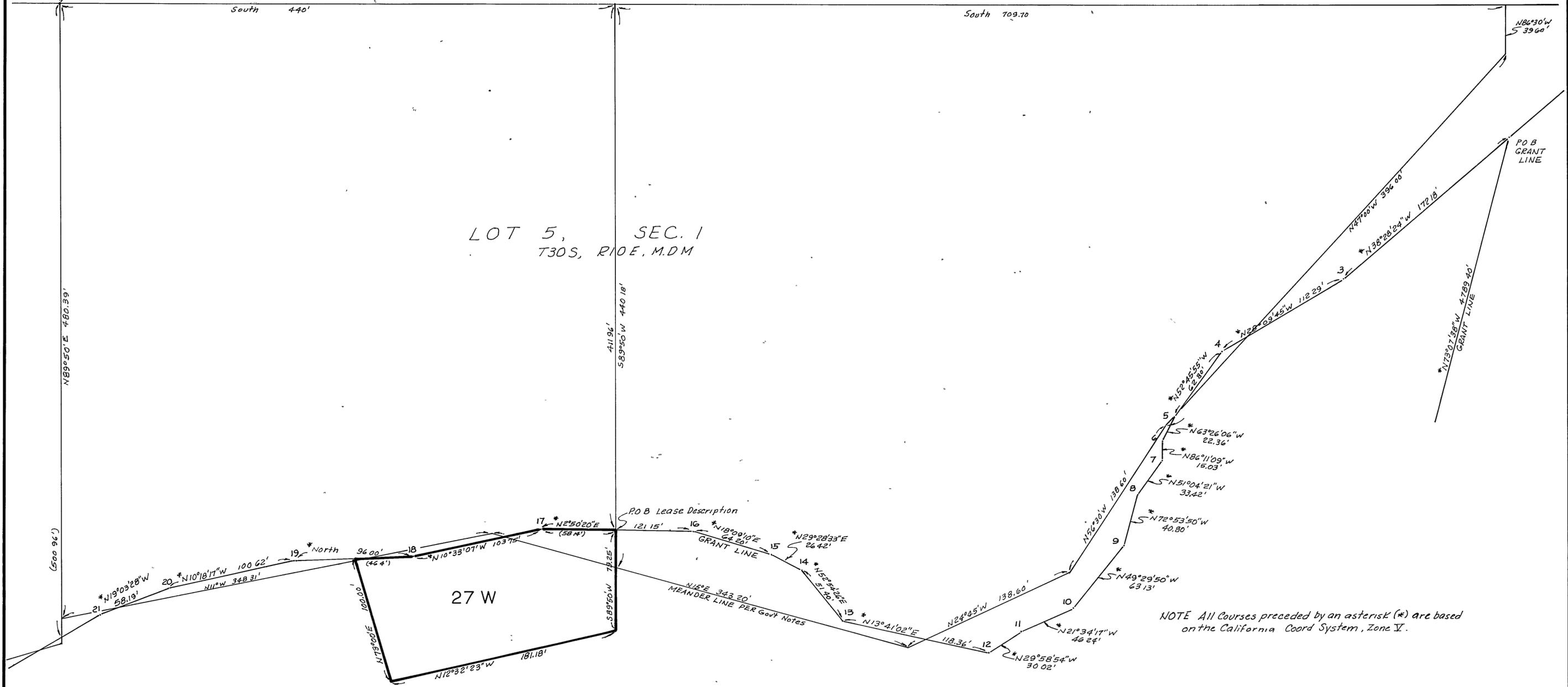
See Sheet 13 of 13

NOTE: All Courses preceded by an asterisk (\*) are based on the Calif. Coord. System, Zone V

LEASE SITES MAP  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF.  
 Scale 1" = 50'  
 GARING, TAYLOR, & ASSOC., INC.  
 Arroyo Grande, California  
 Nov. '74

SEC 6, T30S, R11E, M.D.M

NW Cor Sec 6, T30S, R11E MDM  
NE Cor Lot 5, Sec 1, T30S, R10E MDM



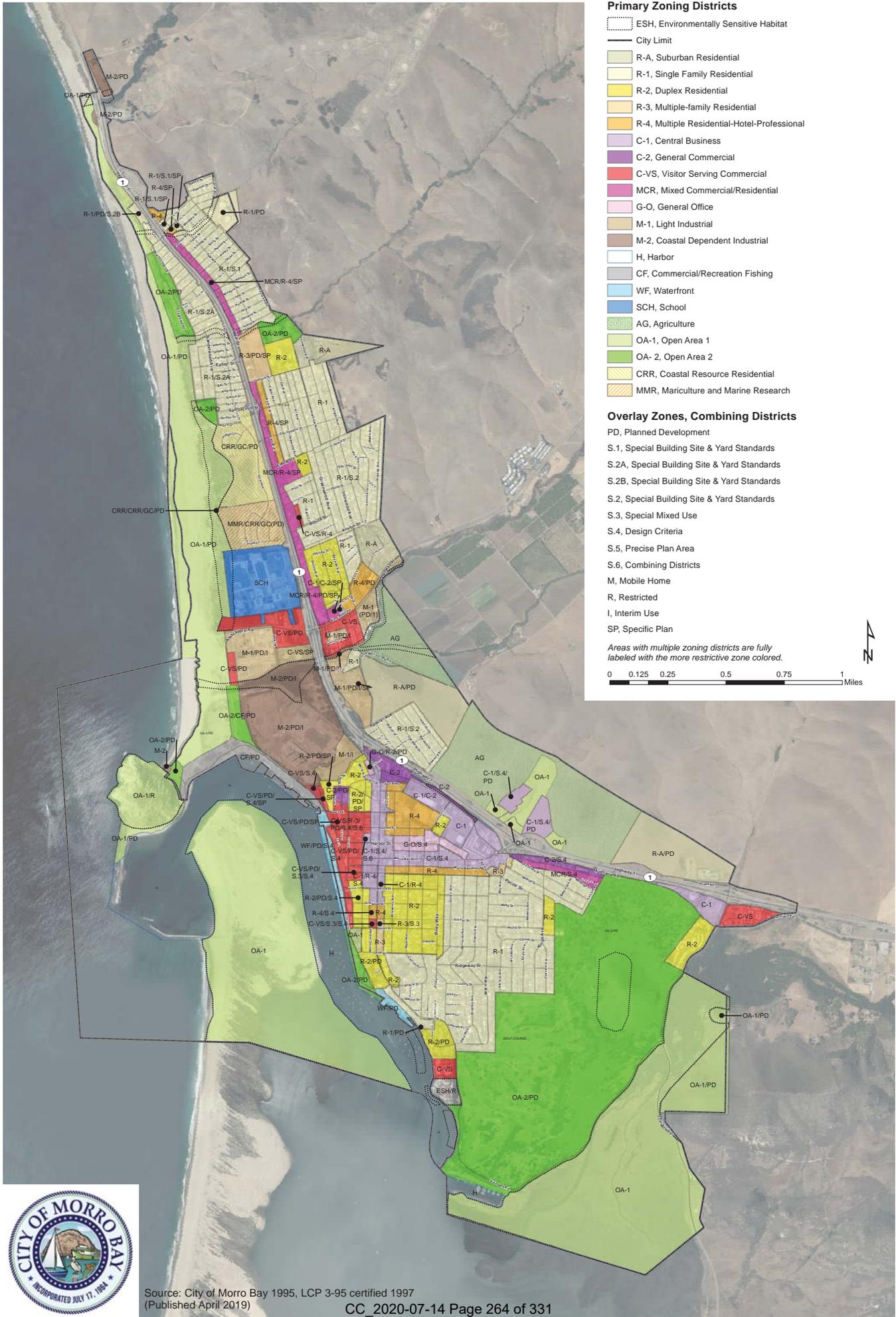
LEASE SITES MAP  
CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF  
Scale 1" = 50'  
GARING, TAYLOR, & ASSOC, INC.  
Arroyo Grande, California  
Nov '74

D. City of Morro Bay Zoning MapChart (TBD)

(immediately following this page)

DRAFT

# CITY OF MORRO BAY ZONING



- Primary Zoning Districts**
- ESH, Environmentally Sensitive Habitat
  - City Limit
  - R-A, Suburban Residential
  - R-1, Single Family Residential
  - R-2, Duplex Residential
  - R-3, Multiple-family Residential
  - R-4, Multiple Residential-Hotel-Professional
  - C-1, Central Business
  - C-2, General Commercial
  - C-VS, Visitor Serving Commercial
  - MCR, Mixed Commercial/Residential
  - G-O, General Office
  - M-1, Light Industrial
  - M-2, Coastal Dependent Industrial
  - H, Harbor
  - CF, Commercial/Recreation Fishing
  - WF, Waterfront
  - SCH, School
  - AG, Agriculture
  - OA-1, Open Area 1
  - OA-2, Open Area 2
  - CRR, Coastal Resource Residential
  - MMR, Mariculture and Marine Research
- Overlay Zones, Combining Districts**
- PD, Planned Development
  - S.1, Special Building Site & Yard Standards
  - S.2A, Special Building Site & Yard Standards
  - S.2B, Special Building Site & Yard Standards
  - S.2, Special Building Site & Yard Standards
  - S.3, Special Mixed Use
  - S.4, Design Criteria
  - S.5, Precise Plan Area
  - S.6, Combining Districts
  - M, Mobile Home
  - R, Restricted
  - I, Interim Use
  - SP, Specific Plan
- Areas with multiple zoning districts are fully labeled with the more restrictive zone colored.
- 0 0.125 0.25 0.5 0.75 1 Miles



E. Percent of Gross Sales Rent Schedules A & B

**SCHEDULE A**

**PERCENTAGE RENT FOR GROUND LEASES**

<b>SALES</b>		<b>% GROSS</b>
FOOD SERVICE:	Restaurant, Dining Room	<u>3-5</u>
	Snack Bar, Delicatessen,	5
	Fast Food, Convenience Food	5
	Bar/Lounge, Beer & Wine Sales	<u>105</u>
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.
<u>HOTEL/MOTEL:</u>		<u>5-9</u>
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

SALES		% GROSS
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.
<u>HOTEL/MOTEL:</u>		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.

F. Master Lease Template ~~(TBD)~~

(immediately following this page)

DRAFT

**L E A S E**

by and between

the CITY OF MORRO BAY

("CITY")

and

*[insert tenant name here]*

("TENANT")

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## **L E A S E**

This LEASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and \_\_\_\_\_, herein called TENANT. (CITY and TENANT, at times, are referred to herein individually as Party and collectively as Parties)

### **WITNESSETH**

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties; and

WHEREAS, the Parties hereto recognize and agree, on July 17, 1964, CITY succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of City of Morro Bay, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to CITY upon the date of its incorporation as a city on the 17th day of July, 1964; and

WHEREAS, TENANT accepts the within Lease with full knowledge there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in the CITY of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Lease Site \_\_\_\_\_

This Premises is delineated on Parcel Map of the CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

## Article 1 FIXED TERM

### Section 1.01 Term.

The term of this Lease is a period of \_\_\_ years, commencing \_\_\_\_\_, 20\_\_ (the "Commencement Date"). The term of this Lease will terminate without notice on \_\_\_\_\_, 20\_\_, unless sooner terminated as herein provided.

### Section 1.02 No Extensions.

The term of this Lease will not be extended nor will this Lease be renewed. Requests for continued use of the Premises will be treated as an application for a new lease and will require appropriate application to the CITY with all required supporting information and documents, CITY Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

### Section 1.03 Hold Over.

If TENANT holds the Premises after the expiration of the term of this Lease with the consent of the CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) will be deemed to create a tenancy from month-to-month, terminable on 30-days' written notice from either Party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

**Section 1.04 Replacement.**

Subject to the next paragraph, as of the Commencement Date, this Lease will extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises, which is not granted pursuant to this Lease, will be extinguished as of the Commencement Date of this Lease.

*(Note: the following paragraph to be included only if the lease is associated with a development/redevelopment project on the site)*

If on or before \_\_\_\_\_, 20\_\_, TENANT does not provide satisfactory evidence, as approved by CITY'S Harbor Director and City Attorney, TENANT has obtained all the financing necessary to commence and complete the Project (as defined in Section 13.\_\_), then (i) this Lease will automatically terminate, without any notice to TENANT, and be of no force and effect and (ii) the lease between CITY and TENANT for the Premises that was in effect prior to this Lease, if any, will be automatically reinstated and remain in full force and effect subject to all of that lease's terms and conditions.

**Article 2 RENT**

**Section 2.01 Annual Minimum Rent.**

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$\_\_\_\_\_ per year (the "Minimum Rent"), payable in advance and at the option of TENANT either in equal semiannual installments or equal monthly instalments. If paid in equal semiannual installments, then such installments must be on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT must pay, on the Commencement Date, the proportionate amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of Minimum Rent must be proportionate to the time remaining in the term. If paid in equal monthly installments, then each\ monthly installment must be paid no later than the tenth day of each applicable month. All Rent, including the Minimum Rent and the Percentage Rent, must be paid in lawful money of the United States of America, without offset or deduction and must be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

**Section 2.02 CPI Adjustment to Annual Minimum Rent.**

(1) The Parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the annual Minimum Rent will be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 20\_\_, which is hereby agreed to be \_\_\_\_\_ (Base Index). The percentage adjustment for any given year will be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach – Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent will be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

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

**Section 2.03 Calculation of New Minimum Rent.**

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

A. The Minimum Rent will be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, will retain an independent qualified appraiser for determination of the fair market value of the Premises. Not more than nine months prior to each Appraisal Adjustment Date, CITY will provide written notice to TENANT of the pending appraisal and the appraiser selected by the CITY to determine the fair market value of the Premises, excluding fixtures and improvements, unless such are expressly included in the

description of the leasehold interest created by this Lease. If TENANT does not reject CITY's appraiser in writing and within thirty days after CITY's notice of its determination, then the Minimum Rent for the Subsequent Rental Period will be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within 30 days following CITY's notice to TENANT, then within 15 days after such 30-day period, each Party, at its own cost, will select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a Party does not appoint an appraiser within 15 days after the other Party has given notice of the name of its appraiser, then the single appraiser appointed will be the sole appraiser. Each appraiser will conduct an independent appraisal within 30 days after appointment. If the Parties are unable to agree on the Minimum Rent for the Subsequent Rental Period within 30 days after receiving the appraisal(s), then each Party will select one member of a three-member committee. The two so selected members will select the third member, and this committee will, by majority vote, select one or the other of the appraisals. The Minimum Rent determined on the basis of the selected appraisal will be final and binding and all costs associated with the three-member committee will be paid equally by CITY and TENANT.

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

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

D. The new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date will be eight percent of the fair market value of the Premises (as established in paragraph A. above.) The new Minimum Rent will be divided by two to determine the semiannual payments and will be paid by TENANT to CITY on the first of each January and July thereafter, or paid monthly at the option of TENANT. This new Minimum Rent will be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The Base Index will be adjusted upon each Calculation of new Minimum Rent as set out in this section so the Base Index for CPI adjustment will be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

**Section 2.04 Percentage Rent.**

A. In addition to the Minimum Rent, TENANT agrees to pay to CITY, at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to the following for all TENANT'S Gross Sales as hereinafter defined: \_\_\_\_\_, less the amount of the Minimum Rent paid pursuant to this Lease (the "Percentage Rent").

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

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

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

D. TENANT ,must keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT must keep said records and books of account within San Luis Obispo County and will notify CITY in advance of their location at all times. Furthermore, TENANT must, at the time of sale and in the presence of the customer, cause the full selling price of each piece of

merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Said records, books of account and cash register tapes, including any sales tax reports or income tax returns TENANT may be required to furnish any government or governmental agency, and income and bank statements must, at all reasonable times, be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY, if necessary. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

E. By July 31 of each year, TENANT must furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which must set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous 12 calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT must pay to CITY the amount of the Percentage Rent, which is due to CITY as shown thereby. If TENANT, at any time, causes an audit of sales of TENANT'S business to be made by a public accountant, then TENANT must furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a certified public accountant or CITY personnel of CITY'S own selection. TENANT must, upon receiving written notice of CITY'S desire for such an audit, deliver and make available all such books, records and cash register tapes to the certified public accountant or CITY personnel selected by CITY. Furthermore, TENANT must promptly, on demand, reimburse CITY for the full cost and expense of said audit, if the audit discloses the questioned statement or statements understated Gross Sales by 5 percent or more but less than ten percent. In the event an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than 5 percent, the cost of such audit will be paid by CITY. In the event any audit or other review of records discloses the amounts reported as Gross Sales were understated by TENANT by 10 percent or more, CITY will not only be entitled to recover from TENANT all costs of audit and review, but will also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses that Gross Sales were understated by any amount, TENANT must immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

F. CITY will be entitled at any time within five years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT must, for said period of five years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes, income tax returns and income and bank statements and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom as shown by any such statements and must, upon request, make the same available to CITY for examination.

**Section 2.05 Reimbursements.**

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

**Section 2.06 Penalty and Interest.**

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

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

### **Article 3 USE OF PREMISES**

**Section 3.01 Permitted Uses.**

The Premises must, during the term of this Lease, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with, Conditional Use Permit No. \_\_\_\_\_, or any other use permits approved by CITY in its governmental capacity, as they may be amended from time to time, and for no other purpose. At the Commencement Date, such uses include \_\_\_\_\_.

**Section 3.02 Unauthorized Use.**

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

**Section 3.03 Operation of Business - Hours of Operation.**

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease and may, at the option of CITY, terminate this Lease.

(1) TENANT must, during the term of this Lease, conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year, except one day each week and legal holidays. This provision does not apply if the Premises is closed and the business of TENANT is temporarily shut down for a period not to exceed 14 calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision does not apply if the Premises is closed and the business of TENANT is temporarily shut down as authorized or required by the City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT must operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services, which may be produced from TENANT'S business; and TENANT at all times must carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

**Section 3.04 Competition.**

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

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

**Section 3.05 Environmental Considerations and Hazardous Materials.**

(1) TENANT must, at all times, comply with applicable environmental regulations, including, where applicable and practical, government- and industry-adopted environmental best management practices and programs.

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

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

(4) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, TENANT must immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT must reimburse CITY for all costs thereof within ten days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT must immediately take such remedial action, as CITY directs. TENANT must, properly and in compliance with applicable laws, clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT fails to comply with the provisions of this Section within five days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but is not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

**Section 3.06 Tidelands Trust.**

In addition to the obligations set forth in this Article, TENANT must use and occupy the Premises in strict compliance with the Tidelands Trust purposes, as established by law or interpretation of the California State Lands Commission.

**Section 3.07 Compliance with Law.**

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

**Section 3.08 Waste or Nuisance.**

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

**Section 3.09 Use by CITY.**

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

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

**Article 4 CONSTRUCTION, ALTERATION AND REPAIRS**

**Section 4.01 Construction Approval.**

(1) TENANT must not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof exceeds Ten Thousand Dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) must be requested from the Harbor Director, or the City's designee, for CITY. If the Harbor Director or any future successor to the duties of the City's Harbor Director, or the City's designee, gives such consent to proceed, then it is understood such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable land use entitlement processes.

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

**Section 4.02 Construction Bond.**

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars (\$100,000), TENANT must file, with CITY'S City Clerk, a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to CITY'S City Engineer for approval. TENANT must file with the City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of 100% of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

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

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

**Section 4.03 Mechanics' Liens.**

At all times during the term of this Lease, TENANT must keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to, at all times, save CITY free and harmless and indemnify and defend CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the Premises to be released from such liens or claim of liens within 10 days after the filing of such lien or levy, then TENANT must, upon written notification, immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond must be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument, which instrument is on record with CITY, must have the right to file a claim for

payment from such a bond on behalf of TENANT. CITY has the right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT must give CITY notice at least 20 days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

**Section 4.04 Ownership of Improvements.**

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty days prior to the termination of this Lease, of its decision to require such improvements be removed. The Parties agree, if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT will have sixty days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty days after the termination of this Lease, then CITY has the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property vests in CITY and TENANT must not remove same.

**Article 5 LEASEHOLD MORTGAGES**

Tenant must not mortgage, securitize or hypothecate the leasehold interest created by this Lease, in whole or any part, without the prior written approval of CITY, as evidenced by a resolution of the City Council of CITY.

CITY will not approve financing related to or using that leasehold interest created by this Lease as collateral, unless such financing is (i) to install or construct capital improvements on the Premises, (ii) to install or construct CITY-requested public improvements or provide other benefits in the Tidelands Trust area, the latter as approved by the Harbor Director or (iii) to reduce the interest rate of existing, approved debt secured by leasehold interest created by this Lease without redeeming any equity in the leasehold interest.

## **Article 6 REPAIRS, MAINTENANCE AND RESTORATION**

### **Section 6.01 Maintenance by TENANT.**

At all times during the term of this Lease, TENANT must, at TENANT'S own cost and expense, keep and maintain, in good order and repair and in a safe and "broom clean" condition, all improvements now or hereafter on the Premises, including any public spaces, common areas, rights-of-way, sidewalks and other areas or spaces, even if not on the Premises but utilized as part of TENANT'S business operations. Furthermore, TENANT must, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises and other areas utilized for TENANT'S business operations as described above in a clean, sanitary, neat and orderly "broom clean" condition. CITY may, at the sole option of CITY, but not obligation,, clean, clear, maintain or repair the Premises, any improvements thereon or areas used by TENANT, as described above, at TENANT'S cost and expense, in the event TENANT fails to clean, clear maintain or make repairs, in accordance with this Section to the satisfaction of CITY, after 15-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

### **Section 6.02 Seawalls and Revetment.**

At all times during the term of this Lease, TENANT must, at TENANT'S own cost and expense, repair, maintain, replace and rebuild, as necessary, the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT must, at TENANT'S own cost and expense, conduct maintenance and structural inspections, evaluations or surveys, by a qualified individual or firm, at reasonable intervals not to exceed ten years, to locate and determine needed maintenance, repairs or replacements of these improvements.

### **Section 6.03 Legal Requirements.**

At all times during the term of this Lease, TENANT, at no cost to CITY, must:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above);
- (2) Observe and comply with all Legal Requirements respecting the Premises or the improvements or facilities located thereon;
- (3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify, defend and hold harmless CITY and the property of CITY, including the Premises, from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

**Section 6.04 Failure to Repair.**

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

**Section 6.05 Inspection by CITY.**

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease or in its governmental capacity.

**Section 6.06 TENANT'S Duty to Restore Premises.**

(1) Except as provided in Section 6.07 below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease will continue in full force and effect and TENANT, at TENANT'S own cost and expense, must repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefor as are approved in writing by CITY. The work of permitting, repair and restoration must be (i) commenced by TENANT within 180 days after the damage or destruction occurs, (ii) pursued with due diligence, and (iii) completed not later than 12 full calendar months after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration must be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease.

Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 constitutes a material default under this Lease.

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

**Section 6.07 Termination of Lease for Destruction.**

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT has the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the last 15 years of the term of this Lease, any improvement now or hereafter on the Premises are so damaged or destroyed by the elements or any cause, not the fault of TENANT or CITY, the improvement cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding 35 percent of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last 10 years of the term of this Lease, any improvement now or hereafter on the Premises are so damaged or destroyed by the elements or any cause, not the fault of TENANT or CITY, the improvement cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding 15 percent) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within 180 days following damage or destruction as described herein. Such termination is effective on the last day of the calendar month following the month in which TENANT provides its notice.

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

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

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Minimum Rent for the remainder of the Term; then

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

**Section 6.08 Destruction Due to Risk Not Covered by Insurance.**

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT has the right to terminate this Lease, at any time, if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds 50 percent of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

## **Article 7 INDEMNITY AND INSURANCE**

**Section 7.01 Indemnity Agreement.**

(1) TENANT hereby agrees to indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, resulting from TENANT'S occupation and use of the Premises or any negligent act or omission of the TENANT or any of its officers, subtenants, employees, contractors, invitees or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or

property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the insistence or request of TENANT or any person or entity acting for or on behalf of TENANT;

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless do not extend to any liability, claim, loss, damage or expense arising from CITY'S active negligence or willful misconduct.

**Section 7.02 Liability Insurance.**

During the term of this Lease, TENANT must maintain at its cost Commercial General Liability insurance with coverages as described in CITY'S HARBOR DEPARTMENT LEASE MANAGEMENT POLICY, as may be updated or changed from time to time at the sole discretion of the CITY. Such coverages must insure against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance must afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage; provided, that if insurance with a general aggregate limit is used, then either the general aggregate limit will apply separately to the Premises or the general aggregate limit will be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder will name CITY, its officers, officials, employees and volunteers as additional insureds, and be primary insurance with respect to such additional insureds. TENANT must include all its subtenants as insureds under TENANT's liability policies or furnish separate certificates and endorsements for each subtenant. All coverages for subtenants must comply with all requirements of this Article Seven.

**Section 7.03 Worker's Compensation.**

TENANT must maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance must contain a waiver of subrogation rights against CITY. TENANT must also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

**Section 7.04 Property Insurance.**

TENANT must, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for 100 percent) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss coverage under such insurance must be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance approved pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds must be used and applied in the manner required by Article 6 of this Lease.

**Section 7.05 Additional Coverage.**

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

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

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

(3) TENANT must obtain and maintain any additional insurance coverages CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance or builder's risk

insurance. TENANT, however, is not required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

**Section 7.06 General Requirements.**

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

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

(2) CITY may, at any time, require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase must be reasonable under the circumstances.

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

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

(5) Each insurance policy required by this Lease must be endorsed to state coverage will not be cancelled or reduced, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT must furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements must be on forms provided by CITY or on other than CITY's forms; provided, that those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right, at any time, to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage must be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by

CITY, its officers, officials, employees, or volunteers will be excess of TENANT'S insurance and will not contribute with it.

**Section 7.07 No Subrogation.**

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

**Section 7.08 TENANT'S Waiver.**

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

**Section 7.09 Insurance Not a Limit.**

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

## **Article 8 TAXES AND FEES**

**Section 8.01 TENANT to Pay Taxes.**

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

**Section 8.02 TENANT to Pay License and Permit Fees.**

TENANT must pay any fees imposed by Legal Requirements for licenses or permits for any business or activities including construction by TENANT upon the Premises.

**Section 8.03 Utilities.**

TENANT must (i) pay, or cause to be paid and (ii) hold harmless CITY and the property of CITY, including the Premises, from all charges for the furnishing of gas, water, electricity, telecommunication service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

## **Article 9 CONDEMNATION**

**Section 9.01 Total Condemnation.**

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

**Section 9.02 Condemnation Award.**

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain will be allocated between CITY and TENANT as follows:

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

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business will be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not

terminate this Lease, will be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, will be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired will belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired will belong to and be the sole property of CITY.

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

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

**Section 9.03 Termination for Partial Taking.**

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within 90 days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease will terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease, pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease will also terminate and the Premises must be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT

will be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

**Section 9.04 Rent Abatement for Partial Taking.**

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease will terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease will, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided however, that TENANT will make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

**Section 9.05 Conveyance in Lieu of Eminent Domain.**

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings will be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

**Section 9.06 Temporary Taking.**

If the possession of the Premises or any portion thereof are taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease will not terminate (except as provided in this Section 9.06) and TENANT must continue to perform all its obligations hereunder, except only to the extent TENANT is prevented from performing such obligations by reason of such taking. TENANT will be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than 36 months, then TENANT will have the right to terminate this Lease, and TENANT will be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that

is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

## **Article 10 ASSIGNMENT AND SUBLEASING**

### **Section 10.01 No Assignment Without CITY'S Consent.**

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

### **Section 10.02 Change of Ownership as Assignment.**

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a 12-month period, of 25 percent or more of the partners or members or 25 percent or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a 12-month period, of more than an aggregate of 25 percent of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

**Section 10.03 Application for Assignment.**

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

**Section 10.04 Probate Transfer of Assignment.**

If TENANT is an individual, nothing herein contained will prevent the transfer of this Lease by trust, will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by a City Council resolution, first had and obtained.

**Section 10.05 No Sublease Without CITY'S Consent.**

TENANT must not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY's Harbor Director, or any future successor to the duties of the City's Harbor Director. The process for obtaining that consent will not begin until TENANT has filed an application to sublease and paid a reasonable fee, as determined by CITY, associated with the cost of processing the application. A consent to

one subletting, occupation, licensing or use will not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent is void, and may, at CITY'S option, terminate this Lease. CITY will not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing will be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," are not to be construed or interpreted to mean or include the temporary, short-term renting or leasing of boat slips, motel, hotel, or apartment accommodations, if any, on the Premises.

**Section 10.06 Subtenant Subject to Lease Terms.**

Any and all subleases must be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event will the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term also terminates any and all subleases. A breach of the terms of this Lease by a subtenant constitutes a breach on the part of TENANT and subjects both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant constitutes a breach of this Lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

**Section 10.07 Consent to Sublease Agreement.**

Prior to any consent by CITY to any sublease hereof, TENANT, CITY and any subtenant must have executed the CITY'S Consent to Sublease Agreement making CITY a third party beneficiary, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease will be a violations by TENANT of this Lease and all remedies of CITY for such violation, including termination of this Lease, may immediately be enforceable by CITY against TENANT. TENANT must apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

**Section 10.08 TENANT and Guarantor Remain Liable.**

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

for any obligation owed to CITY by the subtenant. If this Lease is guaranteed, then neither the sublease nor CITY'S approval thereof will release the guarantor from its obligations pursuant to the guaranty.

**Section 10.09 Nondisturbance.**

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

## **Article 11 DEFAULT AND TERMINATION**

**Section 11.01 Abandonment by TENANT.**

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

**Section 11.02 Termination for Breach by TENANT.**

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within 30 days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT will have no further rights hereunder and TENANT must thereupon forthwith remove from the Premises and will have no further right or claim thereto and CITY will immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.03 Termination for Failure to Pay Rent.**

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three days after written notice thereof is served on the TENANT, then CITY will have the option to immediately terminate this Lease; and in the event of such termination, TENANT will have no further right or claim thereto and CITY will immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.04 Lender May Cure Default.**

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

**Section 11.05 Damages for Breach.**

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid Rent, which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 11.06 Cumulative Remedies.**

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

**Section 11.07 Waiver of Breach.**

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

**Section 11.08 Surrender of Premises.**

On expiration or sooner termination of this Lease, TENANT must surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

## **Article 12 MISCELLANEOUS**

**Section 12.01 Notices.**

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, must be in writing. They must be served either personally, or by registered or certified mail. Any notice or demand to CITY must be given to:

Harbor Director  
1275 Embarcadero  
Morro Bay, CA 93442

with a copy to:

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

Any notice or demand to TENANT must be given at:

*[insert tenant information here]*

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

**Section 12.02 Governing Law and Jurisdiction.**

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

**Section 12.03 Binding on Successors.**

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

**Section 12.04 Partial Invalidity.**

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

**Section 12.05 Sole and Only Agreement.**

**Subject to the provisions of the second paragraph of Section 1.04** (*used only if second paragraph of that section is used*), (i) this Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT and (ii) any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease.[NOTE: See 12.07]

**Section 12.06 Modification.**

This Lease can only be modified, amended or altered pursuant to a written amendment executed by the Mayor and attested to by City Clerk, pursuant to prior City Council approval.

Notwithstanding City Council approval, no amendment will become effective until it is in fact executed by the Mayor and attested to by City Clerk and approved as to form by the City Attorney (or designee). TENANT understands this Lease cannot be modified, amended or altered by oral statements by any person representing CITY, including the Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this Section. If the title of any person authorized to act for CITY under this Lease is changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY will have the authority to act for CITY under this Lease.

**Section 12.07 Time of Essence.**

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

**Section 12.08 Memorandum of Lease for Recording.**

CITY and TENANT agree, at the request of either at any time during the term of this Lease, to execute a Memorandum of Lease or "short form" of this Lease, which shall describe the Parties, set forth a description of the Premises, specify the term of this Lease, and incorporate this Lease by reference.

**Section 12.09 Force Majeure.**

If either Party hereto is delayed or hindered in or prevented from the performance of any act required hereunder by reason of a strike, lock-out, labor trouble, inability to procure materials, failure of power, governmental moratorium, riot, insurrection, war, pandemic or other reason of a like nature not the fault of the Party delaying in performing work or doing any act required under the terms of this Lease, then performance and doing of such act will be excused for the period of such delay. The Parties understand and agree, the foregoing will not extend any period of time for the payment of Rent or other sums payable by either Party or any period of time for the written exercise of an option or right by either Party.

**Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE**

The following provisions apply to this Lease site only:

**Section 13.01 [reserved]**

EXECUTED on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ County, California.

CITY OF MORRO BAY

TENANT

\_\_\_\_\_  
, MAYOR

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
, CITY ATTORNEY

EXHIBIT A  
COPY OF PARCEL MAP

G. Forms (TBD)

- I. Subleasing Approval Application
- II. Consent to Sublease Agreement
- III. Assignment and Assumption Approval Application
- IV. Consent to Encumber Insurance Requirements
- V. Lease Amendment Application
- VI. Master Lease Application
- VII. Insurance Requirements

(immediately following this page)

DRAFT

# Exhibit G



## City of Morro Bay

Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Phone: 805-772-6254  
Fax: 805-772-6258

Fee: Check #: Date:
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### APPLICATION

FOR **SUBLEASE** APPROVAL TO A LEASE SITE.

To be completed and returned to the Harbor Office for processing. Please print or type.

**Lease Site Number**

**Physical Address with Sublease Suite #**

**Proposed Sublease Date**

Current Master Tenant Name

Subtenant Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Current Master Tenant Name

Subtenant Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

Subtenant's Signature

Date

Subtenant's Signature

Date

**SEE REVERSE**



## CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as TENANT, and \_\_\_\_\_, dba, \_\_\_\_\_ hereinafter referred to as SUBTENANT and approved by the City of Morro Bay, California, hereinafter referred to as CITY.

### RECITALS

WHEREAS, a Master Lease was executed on \_\_\_\_\_ for the premises known as Lease Site \_\_\_\_\_ and;

WHEREAS, TENANT desires to sublease a portion of the premises to SUBTENANT, and:

WHEREAS, the Master Lease requires CITY consent of any sublease in the following form of agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. TENANT and SUBTENANT jointly and severally guaranty TENANT will pay to City all of the sums required of TENANT and any sums due by reason of SUBTENANT's activities under the terms of the Master Lease dated \_\_\_\_\_ hereinafter known as "Master Lease". In the event TENANT fails to make such payment, SUBTENANT agrees to promptly make such payment to CITY for TENANT. Failure to pay the rent shall constitute a violation of the Master Lease and CITY shall, after three (3) days written notice to TENANT, have the following options:

(a) CITY may elect to pursue all legal remedies against TENANT alone or against both TENANT and SUBTENANT or against SUBTENANT alone. CITY'S election to pursue one instead of both of the parties shall not preclude a later action against the other party to recover any amounts not paid and both TENANT and SUBTENANT agree that they are to be jointly and severally liable for any breach by the SUBTENANT.

(b) CITY shall have all other legal remedies provided for in the lease and allowed by law, including the right to bring an action for unlawful detainer against SUBTENANT, TENANT or both for non-payment of rent by TENANT of SUBTENANT'S portion of rent due to CITY.

2. SUBTENANT acknowledges receipt of a complete copy of the Master Lease and all amendments thereto and specifically agrees to comply with each and all of the terms and conditions of the Master Lease. TENANT guarantees SUBTENANT's compliance with each and all of the terms and conditions of the Master Lease, as each pertains to the portion of the Lease Site subject to the subject sublease (attached as Exhibit A hereto) (the "Sublease"), and all of the parties agree a violation by SUBTENANT of the terms of the Master Lease, as each pertains to the portion of the Lease Site subject to the sublease, shall constitute a violation of the Master Lease by TENANT. TENANT agrees to take whatever action is required to secure SUBTENANT's compliance with each and all of the terms of the Master Lease, and agrees to indemnify CITY, as Landlord, from any and all claims, loss, cost or expense resulting from SUBTENANT's failure to comply with the terms of the Master Lease.

3. The initial term of the Sublease shall be \_\_\_\_\_ years, commencing upon execution of the Sublease; provided, that TENANT may extend the term of the Sublease with the SUBTENANT without obtaining a new Consent to Sublease Agreement from CITY's City Council under the following conditions: (1) Tenant receives prior written authorization from the Harbor Director to extend the term of the Sublease, (2) the extended term of the Sublease does not exceed the term of the Master Lease, (3) the extended Sublease shall not modify any other terms of the Master lease or the Sublease, except its term, (4) TENANT provides CITY with a fully executed copy of the extended Sublease within five business days after the extended Sublease has been fully executed. The extended Sublease shall be added to Exhibit "A" of this Consent to Sublease Agreement. The Harbor Director's authorization of any extension in the term of the Sublease does not serve to waive any rights of CITY set forth in the Master Lease or in this Consent to Sublease Agreement, including any claims for breach of the Master Lease or of this Consent to Sublease Agreement. The Sublease shall, in all events, terminate upon termination of the Master Lease for any reason, including, but not limited to, a termination which occurs as a result of court judgment.

4. Pursuant to the provision in the Master Lease requiring TENANT to pay rental based on percentage of gross sales, SUBTENANT agrees to and shall keep full, complete, and accurate records, and books of account in accordance with accepted accounting practices as showing the total amount of gross sales, as defined in the Master Lease, made each calendar month in, on or from the subleased premises. SUBTENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Said records, books of account and all cash register tapes, including any sales tax reports that SUBTENANT may be required to furnish any government or governmental agency, including but not limited to those items listed in Exhibit B attached hereto and incorporated herein, shall at all reasonable times be open to the inspection of TENANT, CITY, CITY'S auditor, or other authorized representative or agent of TENANT or CITY.

5. The proposed use by SUBTENANT is as follows:

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Percentage of Gross Rental Applicable to Permitted Use: \_\_\_\_\_

Said designated use shall not be changed without the prior written consent of CITY. SUBTENANT acknowledges that the percentage of gross payment required for the proposed use under the terms of the Master Lease is as set forth hereinabove. SUBTENANT agrees that any use by SUBTENANT of the subleased premises for a purpose other than that specified in this paragraph, whether or not permitted under the terms of the Master Lease, shall constitute an unauthorized use subject to those penalties set forth in the Master Lease. The location and size of the proposed use shall not be altered without the prior written consent of the CITY. Specifically, and in addition to any other terms and provisions of the lease, all parties agree that if SUBTENANT makes a use of the subleased premises which is not included within or permitted under the terms of the Master Lease, TENANT shall be liable for and shall pay to CITY, 10% of the gross revenue from such unpermitted use.

6. SUBTENANT shall not alter or improve the premises or any part thereof without first obtaining the prior written consent of CITY.

7. SUBTENANT agrees to submit a statement of previous business experience and agrees to submit current personal and business financial statements upon request and further agrees too submit such documents as part of the CITY's consideration of the consent to Sublease Agreement. SUBTENANT shall not assign, mortgage, or encumber the subleased premises in whole or in part without the prior written consent of CITY.

8. Unless SUBTENANT is included as an additional insured under the terms of TENANT's liability insurance, SUBTENANT agrees to maintain adequate liability insurance in the manner and form required under the Master Lease in an amount of not less than \$1,000,000 per occurrence and agrees to name the CITY OF MORRO BAY as an additional primary insured without offset against the CITY's insurance. SUBTENANT agrees to provide the certificates of insurance and copies of the actual insurance policies to the CITY as required under the Master Lease and otherwise comply with the insurance requirements set forth in the Master Lease. CITY reserves the right to require reasonable increases in the liability insurance coverage from time to time.

9. SUBTENANT and TENANT agree to indemnify and save CITY free and harmless from and against any and all claims, including reasonable attorney's fees and court costs arising from SUBTENANT's failure to comply with any of the terms of this Consent and Sublease Agreement.

10. This Agreement cannot be modified except by a written document mutually approved by the parties hereto. A waiver of any of the conditions or terms of this Consent or of the Master Lease shall not constitute a waiver of any future breach of any terms or conditions of this Consent or the Master Lease.

11. To the extent that the terms of the proposed Sublease are inconsistent with the terms of this Agreement or Master Lease with the CITY OF MORRO BAY, this Agreement or Master Lease shall supersede and be the controlling document. To the extent that this Consent to Sublease Agreement is inconsistent with the terms of the Master Lease, the Master Lease shall supersede and be the controlling document.

IN WITNESS WHEREOF, the parties hereto have executed this Consent to Sublease Agreement as of the day and year first above written at Morro Bay, California.

TENANT:

SUBTENANT:

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

CITY OF MORRO BAY:

\_\_\_\_\_  
Eric Endersby, Harbor Director

**EXHIBIT "B"**

**CONSENT TO SUBLEASE AGREEMENT**

At a minimum, certain books and records shall be kept by TENANT and SUBTENANT such as:

1. Pre-numbered and dated guest checks;
2. Pre-numbered sales invoices or daily cash register tapes;
3. Bank Statements;
4. Sales Tax Returns;
5. Sales Journals;
6. Cash Disbursement Journals; and
7. General Ledger

# Exhibit G

## City of Morro Bay

Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Phone: 805-772-6254  
Fax: 805-772-6258



Fee:  
Check #:  
Date:

### APPLICATION

FOR ASSIGNMENT OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

**Lease Site Number**

**Physical Address**

**Proposed Assignment Date**

Current Master Tenant Name

Assignee Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Current Master Tenant Name

Assignee Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

Assignee's Signature

Date

Assignee's Signature

Date

**SEE REVERSE**



# Exhibit G



## City of Morro Bay

Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Phone: 805-772-6254  
Fax: 805-772-6258

Fee:  
Check #:  
Date:

### APPLICATION

FOR CONSENT TO ENCUMBER OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Amendment Date

Current Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Lender

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Loan Amount

Master Tenant/Representative Signature

Date

**SEE REVERSE**





# City of Morro Bay

Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Phone: 805-772-6254  
Fax: 805-772-6258

Fee: Check #: Date:
---------------------------

## APPLICATION

FOR ADMENDMENT OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

---

Lease Site Number

Physical Address

Proposed Amendment Date

---

Current Master Tenant Name

---

Business/Corporation Name

---

Mailing Address

---

City, State Zip

---

Telephone / Email Address

---

Current Master Tenant Name

---

Business/Corporation Name

---

Mailing Address

---

City, State Zip

---

Telephone / Email Address

---

Master Tenant/Representative Signature

---

Date

---

Master Tenant/Representative Signature

---

Date

**SEE REVERSE**



# Exhibit G



## City of Morro Bay

Harbor Department  
1275 Embarcadero  
Morro Bay, CA 93442  
Phone: 805-772-6254  
Fax: 805-772-6258

Fee:  
Check #:  
Date:

### APPLICATION

FOR A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Lease Date

Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

**SEE REVERSE**



## CITY OF MORRO BAY

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

### INSURANCE REQUIREMENTS FOR LESSEES

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

#### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

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

#### *Minimum Limits of Insurance*

Lessee shall maintain limits no less than:

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

#### *Deductibles and Self-Insured Retentions*

Updated: 1/6/17  
Spec C

City of Morro Bay  
Insurance Requirements for Lessees

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

***Other Insurance Provisions***

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

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

***Acceptability of Insurers***

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

***Verification of Coverage***

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

***Sub-lessee***

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



# Exhibit H

## LEASE SITE INSPECTION CHECKLISTS

### Annual

#### Building and Site Exteriors

General building condition, cleanliness.  
Condition and cleanliness of walkways, curbs, hardscaping, features.  
Landscaping trimmed, cleaned and weeded.  
Walkways clear with no obstructions, including trip, slip and fall hazards.  
Trash, storage areas neat, clean and secured.  
Informational and warning signage in-place, current and legible.  
Address and building identification clear.  
Lighting operation.  
Condition and presence of cover plates, grates, mechanical protection.  
Condition of stairs, railings and handrails.  
Proper implementation of needed pest control measures.  
Access to electrical panels, service centers.  
Condition of under-wharf/pier plumbing and electrical.

#### Building Interiors

Suites/Units clearly identified.  
Condition of tenant finish items, walls, floors, ceilings.  
Pathways clear with no obstructions, including trip, slip and fall hazards.  
Restrooms clean and stocked.  
Lighting operation.  
Adequate housekeeping and trash removal.  
Presence of fire extinguishers, current inspection tags.  
Exit signs in place.  
Access to circuit breaker and electrical panels.  
Elevators and lifts serviceable, currently inspected.

#### Slips/Docks/Piers/Wharves

General condition of gangways, head floats, fenders, decking.  
Docks clear with no obstructions and minimally-stored items.  
No hazardous materials present.  
No open flame devices allowed on slips, docks, piers or wharves at any time.  
Power pedestals and shore power cords adequate and legal.  
Cleats, pile rings, dock hardware adequate and serviceable.  
Vessel tie-up lines adequate and serviceable.  
Lighting operation.

#### Administrative

Site/Operation in compliance with applicable Conditional Use, Minor Use, Temporary Use and Coastal Development permits.  
Site in compliance with applicable sign permit.

# Exhibit H

## Every Five Years

### Building and Site Exteriors

Annual inspection items, in addition to:  
Evidence of termites, rain leakage.  
Check roof and rain gutters.  
Operation and integrity of irrigation systems.  
Condition, integrity of roof vents, appurtenances.

### Building Interiors

Annual inspection items, in addition to:  
Check attic, basement areas.  
Inspect circuit breaker and electrical panels for condition, issues.  
Condition, operation of HVAC systems, filter replacement.  
Water heater and exposed plumbing for condition, leakage.  
Janitor, electrical and service closets clean and free of clutter.  
Operation of exit/emergency signs and lighting.

### Slips/Docks/Piers/Wharves

Annual inspection items, in addition to:  
Operation, integrity and code-compliance of electrical systems

### Administrative

Annual inspection items, in addition to:  
Current Health Department certificate for food service establishments.  
Current ABC licenses for alcohol-serving establishments.  
Evidence of periodic grease trap servicing.  
Evidence of structural inspection, evaluation or survey of seawalls, revetments, piers, pilings, slips, docks, wharves, structures and other water lease improvements

In-House vs. Contract Lease Management  
Coastal Comparison Contacts Made - June/July 2020

Column1	Column2	Column3	Column4	Column5
<b>Harbor Lease Management Process Comparison</b>				
<b>Location/Name</b>	<b>Contact Name</b>	<b>Internal Staff Or External Contract</b>	<b>Name of External Company or internal Staff Department</b>	<b>Management Process and/or comments received.</b>
<b>Avila Beach - Port San Luis Harbor</b>	Andrea Lueker	Internal Staff	Harbor Master	Internal Staff 12 lease sites.
<b>Catalina Island - Harbor Patrol - Avalon Harbor Department</b>	JJ Poindexter, Harbor Master jpoindexter@cityofavalon.com Cheryl Allison Avalon Harbor Administrative Assistant	Internal	City Managers Office	The Avalon Harbor Department manages water-based leases and permits. All land-based leases of City of Avalon properties, including the leased on the piers and wharf, are managed by the City of Avalon's City Manager's office.
<b>Los Angeles - Ports of</b>	From Web Site	Internal	Port of Los Angeles, Harbor Department - Real Estate Division	Real Estate at the Port of Los Angeles The Port of Los Angeles is a landlord port that manages over 7,500 acres of land and water properties with 43 miles of waterfront. As a landlord port, the Port's main source of revenues are the 24 cargo terminals leased to cargo operators that bring in over \$270 billion of import cargo and over \$33 billion of exports annually. Along with terminal facilities, the Port of Los Angeles also leases various other industrial and commercial facilities that support port operations as well as serve the surrounding communities. As opportunities for leasing such properties become available they are posted under Available Properties or are listed on commercial market sites such as LoopNet.com.

In-House vs. Contract Lease Management  
Coastal Comparison Contacts Made - June/July 2020

<b>Mare Island - City of Vallejo</b> <a href="mailto:marina@cityofvallejo.net">marina@cityofvallejo.net</a>				
<b>Marina</b>				No Response
Marina Del Rey				
<b>Oakland - Port of Oakland</b>	Rina Narcisse, Commercial Real Estate	Internal Real Estate Division		The Port manages some of the most desirable waterfront properties along the Oakland Estuary and elsewhere including Jack London Square, Embarcadero Cove and several properties in the Oakland Airport Business Park.
<b>City of Oakland Down Town District</b>	Internet Search	<b>EXTERNAL</b>	In Selection Process	<a href="#">RFP For Property Management of FOX Theatre</a>
Oxnard				
<b>Redwood City - Port of Redwood City Marina</b>	Kristine A. Zortman, Executive Director, Port of Redwood City	Internal Staff	Unique Set up see comments	The Port of RWC does all of our own property management and leasing of Port property. That being said, several tenants do their own leasing for sub tenancies. While we have an external harbor master, we still manage/own and approve all tenancies in our marina.
<b>San Diego</b>				
<b>San Francisco</b>		Internal Staff	Non Harbor Department Real Estate Division	City of San Francisco Real Estate Division
<b>Santa Barbara - Waterfront Division</b>	Patrick Henry Senior Property Management Specialist	Internal Staff	Department Real Estate Division	The Waterfront Department for the City of Santa Barbara, manages the businesses in the Waterfront District, collect rents and maintains the properties as landlord. We handle over 64 leases in our department. When we have a vacancy, we advertise a Request for Proposal (RFP) for the space.
<b>Ventura</b>				No Response

**RESOLUTION NO. 72-20**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A NEW HARBOR DEPARTMENT  
LEASE MANAGEMENT POLICY THAT INCLUDES  
A NEW MASTER LEASE FORMAT,  
AND RESCINDING RESOLUTIONS 66-01 THAT  
APPROVED THE ORIGINAL LEASE MANAGEMENT POLICY  
AND 31-02 THAT APPROVED A NEW MASTER LEASE FORMAT**

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

**WHEREAS**, the City of Morro Bay assumed trusteeship of the Morro Bay State Tidelands grant properties in 1964 from the County of San Luis Obispo and the State of California; and

**WHEREAS**, the City of Morro Bay has a public trust duty to manage those granted tidelands, which include the City's commercial leasing waterfront, in accordance with the granting statutes; and

**WHEREAS**, in 1987 the City of Morro Bay adopted a general lease negotiation policy and master lease format to address specific lease negotiation issues; and

**WHEREAS**, in 2001 a new Harbor Department Lease Management Policy was adopted to increase public understanding and to equitably administer all the granted tidelands leases which the City is responsible for; and

**WHEREAS**, in 2002 a new master lease format was adopted; and

**WHEREAS**, since 2001 various aspects and issues of the overall lease administration and management have been identified.

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

Section 1. Resolutions No. 66-01 and No. 31-02 that adopted the current lease management policy and master lease format, respectively, are hereby rescinded in their entirety.

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Section 2. The attached new Harbor Department Lease Management Policy, which includes a new master lease format template, is hereby adopted.

**PASSED AND ADOPTED** by the City Council, City of Morro Bay at a regular meeting thereof held on the 14<sup>th</sup> day of July 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JOHN HEADDING, Mayor

ATTEST:

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DANA SWANSON, City Clerk