



Board of Harbor Commissioners

Virginia Chang Kiraly, President
Nancy Reyering, Vice President
Nancy Reyering, Secretary
Tom Mattusch, Treasurer
Sabrina Brennan, Commissioner
Edmundo Larenas, Commissioner
John Moren, Interim General Manager
Trisha Ortiz, District Counsel

San Mateo County Harbor District Board of Harbor Commissioners

“To assure the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas.”

SPECIAL MEETING AGENDA

**November 20, 2019
5:00 PM**

San Mateo County Harbor District
Conference Room
504 Avenue Alhambra, Ste. 200
El Granada, CA 94018

Persons requiring special accommodation with respect to disability are directed to make such requests per the Americans With Disabilities Act to the Deputy Secretary to the Board at 650-583-4400, 24 hours in advance.

A) ROLL CALL

B) PUBLIC COMMENT

C) CLOSED SESSION

1) TITLE: CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Government Code Section 54956.9(d)(1))

Name of Case: Brennan v. San Mateo County Harbor District (DFEH No. 201807-03053228; EEOC No. 37A-2019-00873-C)

2) TITLE: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Government Code Section 54956.9(d)(1))

Name of Case: John Schulz v. San Mateo County Harbor District, et al.;
(U.S. District Court No. C 19-992 JSC)

D) OPEN SESSION

Consider appointment of Ad Hoc Committee for the matter of John Schulz v. San Mateo County Harbor District, et al.

E) ADJOURN

The next regular meeting will be held on December 18, 2019 at the San Mateo County Harbor District Office, 504 Avenue Alhambra, Ste. 200, El Granada, CA 94018 at 6:30 PM.

Agenda posted as required by:

November 15, 2019 at 4:00 PM

Debbie Gehret
Deputy Secretary



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REGULAR MEETING AGENDA

November 20, 2019

6:30 PM

San Mateo County Harbor District
Conference Room
504 Avenue Alhambra, Ste. 200
El Granada, CA 94018

All Harbor District Commission regular meetings are recorded and posted at www.PacificCoast.tv within 48 hours of the meeting. Pacifica residents can tune into Comcast Channel 26 and residents from Montara through Pescadero can tune into Comcast Channel 27. Copies of the meetings can also be purchased from PCT and mailed for \$18.

Persons requiring special accommodation with respect to disability are directed to make such requests per the Americans With Disabilities Act to the Deputy Secretary to the Board at 650-583-4400, 48 hours in advance.

A) Roll Call

B) Staff Introduction/Recognition

- Mike “Willie” Williams – PPH Assistant Harbormaster (Retired)
- Owen Moore – Deputy Harbormaster A
- Lizzie Zuroski – Communications Analyst

C) 1. Public Comments/Questions

The Public may directly address the Board of Harbor Commissioners for a limit of three (3) minutes, unless a request is granted for more time, on any item of public interest within the subject matter jurisdiction of the San Mateo County Harbor District, that is not on the Regular Agenda. If a member of the public wishes to address the Board on an agenda item, it is requested that a speaker card be completed and given to the Deputy Secretary. The Chair will call your name at the appropriate time. Agenda material may be reviewed at the administration offices of the District, 504 Avenue Alhambra, Ste. 200, El Granada, CA 94018 or online at www.smharbor.com.

2. Commissioner Comments

Commissioners may make public statements limited to five (5) minutes.

3. Committee Updates

Standing Committees

- Climate Change Resilience
- Finance
- Oyster Point Liaison
- Social Media/Public Outreach
- Wildlife Protection

Ad Hoc Committees

- General Manager Search
- Strategic Plan
- Office Design

D) Consent

All items on Consent are approved by one motion unless a Commissioner requests at the beginning of the meeting that an item be withdrawn or transferred to Discussion. Any item on Discussion may be transferred to Consent.

ITEMS PULLED FROM CONSENT WILL BE HEARD AFTER DISCUSSION ITEMS.

1. **[Bills and Claims \(van Hoff\)](#)**
Recommendation: Review Pre-Approved Bills and Claims in the amount of \$447,880.40. Pre-Approve \$500,000 in Bills and Claims until next meeting.
2. **[Minutes – Regular Meeting October 16, 2019 \(Gehret\)](#)**
Recommendation: Approve Minutes of the Regular Meeting of October 16, 2019.
3. **[Minutes – Special Meeting October 18, 2019 \(Gehret\)](#)**
Recommendation: Approve Minutes of the Special Meeting of October 18, 2019.
4. **[First Quarter 2019/20 Financial Report Spending Authority \(Q1\) \(van Hoff\)](#)**
Receive and file.
5. **[First Quarter – Fiscal Year 2019/20 \(Q1-20\) Rent Report \(van Hoff\)](#)**
Receive and file.
6. **[Monthly Capital Projects Update \(Moren\)](#)**
Receive and file.
7. **[Finalization of the Emergency Repair to the Pillar Point Harbor Launch Ramp Drain in Accordance with Public Contract Code 22050 \(Moren\)](#)**
Information only.

E) Discussion

8. **Pillar Point Harbor West Trail Erosion Protection Project Update; Presentation (Moren)**
Information only.
9. **Appointment of James Pruett as General Manager; Adopt Resolution No. 19-15; Approve Employment Agreement and Authorize Board President to Execute (General Manager Search Ad Hoc Committee)**
Recommendation: Appointment of James Pruett as General Manager; adopt Resolution No.19-15; approve employment agreement and authorize Board President to execute.
10. **Policy 6.2.5 'Sexual & Unlawful Harassment Policy' (Governance & Policy Committee)**
Recommendation: Eliminate current Policy 6.2.5 'Harassment, Discrimination and Retaliation Prevention.' Adopt and replace current Policy with Policy 6.2.5 Sexual & Unlawful Harassment Policy.
11. **Review District's Current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy and Newly Drafted 'Commissioner Reimbursement' Policy (van Hoff)**
Recommendation: Approve replacement of current policy with newly drafted policy 4.2.4 'Commissioner Reimbursement' (including any proposed revisions, if applicable); or take no action and keep the current Policy
12. **Policy 1.1.1 'San Mateo County Harbor District Code of Ethics and Values' (Governance & Policy Committee)**
Recommendation: Review and comment on draft policy. Approve Policy 1.1.1 'San Mateo County Harbor District Ethics and Values' (including any proposed revisions, if applicable).
13. **Policy for Board Meeting Agenda (Governance & Policy Committee)**
Recommendation: Adopt Policy 3.3 'Board Meeting Agenda.'
14. **Policy 3.5 'District Counsels & Board Relationship' (Governance & Policy Committee)**
Recommendation: Approve Policy 3.5 'District Counsels & Board Relationship' (including any proposed revisions, if applicable).
15. **Deputy Board Secretary Position Description (van Hoff)**
Recommendation: Approve Deputy Board Secretary position description.

16. Design, Engineering, Permitting Consultant Moffatt & Nichol Professional Services Agreement Change Order Consideration for the Pillar Point Harbor Fishing Pier Rehabilitation Project (Moren)

Recommendation: Authorize the Interim General Manager to implement a Change Order to the previously approved Pillar Point Harbor Fishing Pier Rehabilitation Project Professional Services Agreement with consultant Moffatt & Nichol, increasing the design, engineering, permitting and construction support total by \$13,300 and approve an increase in Capital Project Appropriations by the same amount.

17. Board Direction to Staff Regarding an Amendment to the San Mateo County Harbor District Ordinance Code Section 3.35.020 -Marina/ Harbor Parking Ordinance (Moren)

Recommendation: Direct staff to publish notice in a newspaper of general circulation within the District, for not less than 20 days prior to Ordinance Code amendment adoption, and place the Resolution to amend the District Parking Ordinance Code Section 3.35.020 for consideration on the agenda for the December 18, 2019 District Board Meeting.

18. Direction to Staff Regarding New District Administration Office (Moren)

Recommendation: Direct staff on how the Board desires to move forward with the architectural design, engineering, permitting and construction support for constructing a District administration office building on the newly purchased District owned Portola Avenue property.

19. Pillar Point Harbor KN RV Lot and New Public Restroom Coastal Development Permit Compliance, Conditions of Approval and RFP Response Selection for Architectural Design, Engineering, Permitting and Construction Support (Moren)

Recommendation: District Board appoint an Ad Hoc Committee comprised of two Harbor Board Commissioners to; i) review KN lease terms, ii) review California Coastal Commission/City of Half Moon Bay Coastal Development Permit Conditions of Approval, and iii) review responses to an RFP for architectural design, engineering, permitting and construction support for a new public restroom, green space and increased ADA parking at the Pillar Point Harbor KN RV Park.

F) Discussion/Action on Pulled Consent Items (if any)

G) Future Agenda Items

H) October Activity Reports: Interim General Manager/Operations, Administration

Information only.

I) Adjourn

The next Regular meeting will be held on December 18, 2019 at the San Mateo County Harbor District Office, 504 Avenue Alhambra, Ste. 200, El Granada, CA 94018 at 6:30 PM.

Agenda posted as required:
November 15, 2019 at 4:00 PM


Debbie Gehret
Deputy Secretary



Staff Report

TO: Board of Harbor Commissioners

FROM: Kin Yip Chan, Accounting Technician

DATE: November 20, 2019

SUBJECT: Review Bills and Claims in the Amount of \$447,880.40

Total Disbursements being submitted for your review: **\$447,880.40**

Dept. Code	Description	Amount
103	Administration & Commissioners	\$ 98,325.66
201	Pillar Point Harbor	\$ 190,212.37
301	Oyster Point Marina	\$ 38,895.82
	Employee Deductions	\$ 22,218.24
	Payroll / Benefits	\$ 98,228.31
Total Bills & Claims for Review:		\$ 447,880.40

Pre-Approved Payroll Notes:

Payroll Paydate 10/4/19	\$ 135,785.11
Payroll Paydate 10/18/19	\$ 140,500.65
Total Payroll for Period:	\$ 276,285.76

Background: The Board pre-approved Bills and Claims up to \$500,000 for this month and all payroll related claims. Actual Bills and Claims paid for the period are \$447,880.40.

Staff reported on the 10/16/19 Bills and Claims that a board approved payment of \$29,018.19 was paid to California Speed-Sports for a new patrol vehicle; this payment was voided in October due to the vendor not meeting our requirements for the vehicle. Since then, Harbor staff have selected an alternate vendor to purchase the vehicle and payment was made in November. As such, this new disbursement will be reported on 12/18/19 Bills and Claims.

Recommended Motion:

- 1) Accept Bills and Claims in the amount of \$447,880.40.
- 2) Pre-Approve \$750,000 in Bills and Claims and payroll related claims for December (there are 3 Accounts Payable runs in December).

Attachments:

[Bills and Claims/Cal Card Top 5](#)
[Legal Fees](#)

BILLS AND CLAIMS FOR 11/20/19 BOARD MEETING			PAYROLL EMPLOYEES	PAYROLL BENEFITS	ADMIN & COMM	PILLAR POINT	OYSTER POINT	TOTAL ALL
VENDOR	DESCRIPTION	AMOUNT	DEDUCTION	RELATED	103	201	301	DEPTS
		-	-	-	-	-	-	-
SUB-TOTAL OF PAYMENTS TO BE PROCESSED 11/20/2019								
8x8 INC	TELEPHONE/COMMUNICATIONS	1,016.39			649.01		367.38	1,016.39
ADP, LLC	PAYROLL PROCESSING	885.33			272.41	363.21	249.71	885.33
AIRGAS USA, LLC	OPERATING SUPPLIES	123.55				123.55		123.55
AMAZON CAPITAL SERVICES, INC	REPAIRS & MAINTENANCE	1,723.79			1,482.01	241.78		1,723.79
AMERICAN DEBRIS BOX SERVICE, INC	CONTRACTUAL SERVICES	2,440.84				2,440.84		2,440.84
ARAMARK UNIFORM SERVICES LLC	UNIFORM SERVICES	1,454.47					1,454.47	1,454.47
ASSOCIATION OF MARINA INDUSTRIES	MEMBERSHIPS & SUBSCRIPTIONS	100.00				50.00	50.00	100.00
AT&T	TELEPHONE/COMMUNICATIONS	264.15				264.15		264.15
BIG ED'S CRANE SERVICE INC	REPAIRS & MAINTENANCE	1,078.00				1,078.00		1,078.00
BISHOP DIVING & SALVAGE	VESSEL DESTRUCTION	35,690.00				35,690.00		35,690.00
CAHMPC	ADVERTISING EXPENSES	50.00				50.00		50.00
CALIFORNIA WATER SERVICE CO	UTILITIES	4,258.18					4,258.18	4,258.18
CALPERS	PAYROLL DEDUCTION PAYABLE	35,929.04		35,929.04				35,929.04
CALPERS SUPPLEMENTAL INCOME 457 PLAN	PAYROLL DEDUCTION PAYABLE	18,202.50	14,337.50	3,865.00				18,202.50
CASPIAN IT GROUP	CONTRACTUAL SERVICES-IT	10,707.20			1,972.71	4,399.58	4,334.91	10,707.20
CINTAS CORPORATION	SAFETY EQUIPMENTS/TRAININGS	1,151.16				1,151.16		1,151.16
CITY OF FOSTER CITY	RECRUITING EXPENSES	500.00				250.00	250.00	500.00
CLARK PEST CONTROL	CONTRACTUAL SERVICES	82.00					82.00	82.00
COASTSIDE COUNTY WATER DISTRICT	UTILITIES	10,560.39				10,560.39		10,560.39
COASTSIDE.NET	WIFI EXPENSES	359.10				359.10		359.10
COLEMAN SECURITY INDUSTRIES, INC	CONTRACTUAL SERVICES	5,902.96					5,902.96	5,902.96
COMCAST	INTERNET EXPENSES	640.52			193.42	83.42	363.68	640.52
CONEXWEST	STORAGE CONTAINER	4,881.19				4,881.19		4,881.19
COTCHETT, PITRE & MCCARTHY LLP	LEGAL SERVICES	2,280.00				2,280.00		2,280.00
COUNTY OF SAN MATEO PUBLIC SAFETY COMMUNICATIONS	TELEPHONE/COMMUNICATIONS	151.65				151.65		151.65
CPS HR CONSULTING	CONTRACTUAL SERVICES	7,608.17			7,608.17			7,608.17
DEMSEY, FILLIGER & ASSOCIATES LLC	CONTRACTUAL SERVICES	750.00				750.00		750.00
DEPARTMENT OF JUSTICE	RECRUITING EXPENSES	32.00			32.00			32.00
DIGITAL DEPLOYMENT, INC/ STREAMLINE	CONTRACTUAL SERVICES-IT	200.00			200.00			200.00
EATON CORPORTION	REPAIRS & MAINTENANCE	3,599.68				3,599.68		3,599.68
ENVIRONMENTAL SCIENCE ASSOCIATES	CONTRACTUAL SERVICES	7,291.86				7,291.86		7,291.86
FASTENAL COMPANY	REPAIRS & MAINTENANCE	3.30					3.30	3.30
GAETANI REAL ESTATE	ADMIN OFFICE RENT	8,200.00			8,200.00			8,200.00
GARDA, CL WEST, INC	CONTRACTUAL SERVICES	272.72				136.36	136.36	272.72
GARNISHMENT	PAYROLL DEDUCTION PAYABLE	1,411.06	1,411.06					1,411.06
GHD, INC	CONTRACTUAL SERVICES	11,479.00				11,479.00		11,479.00
GRAINGER	REPAIRS & MAINTENANCE	305.10				74.38	230.72	305.10
HALF MOON BAY REVIEW	ADVERTISING EXPENSES	973.50			208.00	503.00	262.50	973.50
HASSETT HARDWARE/ BLUETRAP CREDIT SERVICES	REPAIRS & MAINTENANCE	1,371.83			101.64	1,270.19		1,371.83
HENDERSON MARINE SUPPLY, INC	REPAIRS & MAINTENANCE	820.98				820.98		820.98
HIRSCHFELD YACHT LLC dba H & M MARINE	REPAIRS & MAINTENANCE-PATROL VESSEL	81.56				81.56		81.56
HOLMAN PROFESSIONAL COUNSELING CENTERS	EMPLOYEE ASSISTANCE PROGRAM SERVICES	289.00			98.88	102.67	87.45	289.00
INGRAHAM JEWELERS INC DBA INGRAHAM TROPHIES	PERSONAL ADMINISTRATION	89.50				89.50		89.50
IRON MOUNTAIN, INC	CONTRACTUAL SERVICES	149.00			149.00			149.00
KDT ENTERPRISES, INC DBA THE SKI CLINIC	REPAIRS & MAINTENANCE	602.73				602.73		602.73
KONICA MINOLTA	REPAIRS & MAINTENANCE	447.35			300.07	147.28		447.35
LAURETTA PRINTING COMPANY	OFFICE SUPPLIES	227.85			113.93	113.92		227.85
LENACO CORPORATION/BLUE RIBBON SUPPLY COMPANY	JANITORIAL SUPPLIES	3,487.52				2,562.64	924.88	3,487.52
LIGHTHOUSE PUBLIC AFFAIRS LLC	CONTRACTUAL SERVICES	5,137.44			5,137.44			5,137.44
MAZE & ASSOCIATES CO.	DISTRICT AUDIT	13,554.00			13,554.00			13,554.00

BILLS AND CLAIMS FOR 11/20/19 BOARD MEETING			PAYROLL EMPLOYEES	PAYROLL BENEFITS	ADMIN & COMM	PILLAR POINT	OYSTER POINT	TOTAL ALL
VENDOR	DESCRIPTION	AMOUNT	DEDUCTION	RELATED	103	201	301	DEPTS
MISSION LINEN & UNIFORM SUPPLY	UNIFORM SERVICES	1,466.90				1,466.90		1,466.90
MOFFATT & NICHOL ENGINEERS, INC	CONTRACTUAL SERVICES	1,684.75				1,684.75		1,684.75
MOTION INDUSTRIES INC (MOSS RUBBER AND EQUIPMENT CORP)	REPAIRS & MAINTENANCE	137.52					137.52	137.52
MRC SMART TECHNOLOGY SOLUTIONS	REPAIRS & MAINTENANCE	612.02					612.02	612.02
NAVIA BENEFIT SOLUTIONS	PAYROLL DEDUCTION PAYABLE	257.68	207.68		50.00			257.68
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.	LEGAL SERVICES	7,086.00			7,086.00			7,086.00
OPERATING ENGINEERS TRUST	HEALTH INSURANCE PREMIUMS	43,189.00		43,189.00				43,189.00
OPERATING ENGINEERS UNION LOCAL 3	PAYROLL DEDUCTION PAYABLE	1,472.00	1,472.00					1,472.00
ORKIN SERVICES OF CALIFORNIA, INC	CONTRACTUAL SERVICES	144.45					144.45	144.45
PACIFICA COMMUNITY TELEVISION	CONFERENCES & MEETINGS	900.00			900.00			900.00
PENINSULA PUMP & EQUIPMENT	REPAIRS & MAINTENANCE	12,226.85				12,226.85		12,226.85
PG&E	UTILITIES	11,465.92				11,465.92		11,465.92
PHONDINI PARTNERS LLC	CONTRACTUAL SERVICES	3,900.00			3,900.00			3,900.00
PINA, JOHN DBA GOPHER BUSTERS	CONTRACTUAL SERVICES	495.00				495.00		495.00
PITNEY BOWES, INC/ PURCHASE POWER	POSTAGE SUPPLY	1,635.25			545.09	545.08	545.08	1,635.25
PRINCETON FISHING GEAR	SAFETY EQUIPMENTS	513.91				513.91		513.91
QUILL CORPORATION	OFFICE SUPPLIES	426.76				426.76		426.76
READY REFRESH BY NESTLE	OFFICE SUPPLIES	232.18					232.18	232.18
RECOLOGY OF THE COAST	GARBAGE SERVICES	10,360.37				10,360.37		10,360.37
REGIONAL GOVERNMENT SERVICES	CONTRACTUAL SERVICES	44.00			44.00			44.00
RICHARDS, WATSON & GERSHON	LEGAL SERVICES	3,792.99			3,792.99			3,792.99
ROBERT HALF INTERNATIONAL, INC	CONTRACTUAL SERVICES	30,375.92			30,375.92			30,375.92
ROBERTSON, JOSEPH	REIMB UNIFORM EXPENSES	147.48					147.48	147.48
SAFETY KLEEN SYSTEMS, INC	USED OIL PICK UP EXPENSES	220.50				220.50		220.50
SAN DIEGO BOAT MOVERS	VESSEL DESTRUCTION	10,600.00					10,600.00	10,600.00
SAN MATEO COUNTY AIRPORTS	SAND STOCKPILE MONTHLY RENT	4,500.00				4,500.00		4,500.00
SAN MATEO DAILY JOURNAL	ADVERTISING EXPENSES	880.00				880.00		880.00
SANDIE ARNOTT- SAN MATEO COUNTY TAX COLLECTOR	PARCEL SEWER FEES	40,253.54				40,253.54		40,253.54
SCHWAAB, INC	OFFICE SUPPLIES	84.83			84.83			84.83
SOUTH SAN FRANCISCO SCAVENGER CO	GARBAGE SERVICES	2,583.60					2,583.60	2,583.60
SPECIAL DIST RISK MANAGEMENT AUTHORITY	HEALTH INSURANCE PREMIUMS	8,354.82		8,354.82				8,354.82
SPRINT/NEXTEL COMMUNICATIONS	TELEPHONE/COMMUNICATIONS	182.68					182.68	182.68
STAPLES ADVANTAGE	OFFICE SUPPLIES	875.86			84.02	231.84	560.00	875.86
TEAMSTERS LOCAL 856- HEALTH & WELFARE FUND	HEALTH INSURANCE PREMIUMS	6,282.09		6,282.09				6,282.09
TEAMSTERS UNION LOCAL 856	PAYROLL DEDUCTION PAYABLE	540.00	540.00					540.00
TECHNOLOGY, ENGINEERING & CONSTRUCTION, INC	REPAIRS & MAINTENANCE	450.00					450.00	450.00
THE HERTZ CORPORATION	RENTAL CAR SERVICES	118.10			118.10			118.10
TURBO DATA SYSTEMS, INC	CITATION PROCESSING	93.68				82.72	10.96	93.68
U.S. BANK-CAL CARD	CAL-CARD EMPLOYEE PURCHASES	9,539.22			1,271.52	6,475.84	1,791.86	9,539.22
VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTION PAYABLE	4,858.36	4,250.00	608.36				4,858.36
WEST MARINE PRO	REPAIRS & MAINTENANCE	2,516.44				2,422.12	94.32	2,516.44
WITTWER PARKIN LLP	LEGAL SERVICES	10,490.00			9,050.50	1,439.50		10,490.00
BOWERS, HEATHER	REFUND DEPOSIT	476.67					476.67	476.67
EISSA, FARHAT	REFUND DEPOSIT	487.00				487.00		487.00
EWING, AREN	REFUND DEPOSIT	169.50					169.50	169.50
FORSYTHE, ADAM	REFUND DEPOSIT	308.00					308.00	308.00
KAZARIAN, LEON	REFUND DEPOSIT	319.00					319.00	319.00
LASKER, PAUL	REFUND DEPOSIT	241.40					241.40	241.40
MEDARIS, JASON	REFUND DEPOSIT	330.60					330.60	330.60
SOUSA, EVA	REFUND DEPOSIT	370.00				370.00		370.00
TORIUMI, DAVID	REFUND DEPOSIT	370.00				370.00		370.00
TOTAL HANDCHECKS		447,880.40	22,218.24	98,228.31	98,325.66	190,212.37	38,895.82	447,880.40

Legal Fees - Fiscal Years 2011 to 2020

Sum of Total Spent	Column Labels										Grand Total
	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20 YTD	
AARONSON, DICKERSON, COHN & COX, WOOTON, LERNER, GRIFFIN, FRANK/LYNN S.	\$ 46,880.38	\$ 84,627.99	\$ 105,733.63	\$ 88,761.42	\$ 340.75	\$ 29,949.79	\$ 3,682.03				\$ 326,344.17
HANSON BRIDGETT LLP					\$ 287,596.29	\$ 301,540.13	\$ 317,484.72	\$ 290,308.67	\$ 361,423.88		\$ 1,558,353.69
JAY RESENDEZ, ATTORNEY AT LAW			\$ 735.00			\$ 3,325.00					\$ 4,060.00
KOTZEBUE/ MARGARET					\$ 26,364.00						\$ 26,364.00
KRAMER/ KAREN				\$ 13,803.00							\$ 13,803.00
LIEBERT, CASSIDY & WHITMORE///	\$ 34,050.00	\$ 5,674.20	\$ 7,097.00	\$ 83,662.55	\$ 92,751.48	\$ 133,292.43	\$ 97,191.79	\$ 18,150.00	\$ 8,259.50		\$ 480,128.95
MCGRATH INVESTIGATIONS						\$ 15,445.00					\$ 15,445.00
OPPENHEIMER/ AMY				\$ 24,381.00							\$ 24,381.00
RICHARDS, WATSON & GERSHON	\$ 11,803.75	\$ 1,770.00							\$ 6,032.21	\$ 3,792.99	\$ 23,398.95
TOPLIFF/ MARY L.//								\$ 25,000.00			\$ 25,000.00
GOYETTE/ GRIFFITHS//									\$ 50,429.75		\$ 50,429.75
WITTWER PARKIN LLP									\$ 47,635.43	\$ 39,181.40	\$ 86,816.83
OGLETREE, DEAKINS, NASH, SMOAK									\$ 1,739.50	\$ 15,726.50	\$ 17,466.00
COTCHETT, PITRE & MCCARTHY LLP										\$ 5,580.00	\$ 5,580.00
Grand Total	\$ 92,734.13	\$ 92,072.19	\$ 113,565.63	\$ 221,464.95	\$ 416,195.54	\$ 488,052.35	\$ 418,358.54	\$ 333,458.67	\$ 475,520.27	\$ 64,280.89	\$ 2,715,703.16

*19-20 YTD is invoices received thru September 2019



Board of Harbor Commissioners

Virginia Chang Kiraly, President
Nancy Reyerling, Vice President
Nancy Reyerling, Secretary
Tom Mattusch, Treasurer
Sabrina Brennan, Commissioner
Edmundo Larenas, Commissioner

John Moren, Interim General Manager
William Parkin, District Counsel

San Mateo County Harbor District Board of Harbor Commissioners

“To assure the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas.”

REGULAR MEETING MINUTES

October 16, 2019

6:30 PM

Oyster Point Yacht Club
911 Marina Blvd.
South San Francisco, CA 94080

- A) Roll Call** 6:30 PM - Commissioners Chang Kiraly, Larenas, Mattusch, Reyerling present.
- Commissioner Brennan absent.

B) 1. Public Comments/Questions

- **Chris DeGrande** – He along with Roger Martinez operate Dominic’s at Oyster Point Yacht Club (OPYC); appreciate the help provided by the Harbor District; offer to help the Harbor District in any way.
- **John Sims** – Commodore of the (OPYC), tenant, familiar with the SMCHD harbor/marinas. Thanked Jim Merlo and OPM staff. Highlighted events held by the OPYC.
- **Kirby Combs** – Tenant and OPYC member. Appreciates this Board meeting being held at the OPYC in South San Francisco. Commented about budget relative to Oyster Point Marina.

2. Commissioner Comments

- Commissioners Mattusch and Chang Kiraly commented about their attendance at the CSDA Annual Conference in September. Both highly recommend the conference for all public officials; stated there are interesting, motivational topics and workshops/seminars including new laws and transparency. Commissioner Chang Kiraly noted that she received her Certificate of Completion for Sexual Harassment training while at the conference.

3. Committee Updates

Standing Committees

- Climate Change Resilience
- Finance
- Governance and Policy
- Oyster Point Liaison
- Social Media/Public Outreach
- Wildlife Protection

Ad Hoc Committees

- General Manager Search
-**Commissioner Mattusch** – General Manager search has been narrowed down to 6 candidates, (however one dropped out). Interviews Friday, 10/18.
- General Counsel Search
- Strategic Plan
- Office Design

C) Consent

- Commissioner Chang Kiraly pulled reimbursement claim for Commissioner Brennan in the amount of \$972.52 from Bills and Claims due to lack of reporting out as required for Commissioner reimbursements.

1. Bills and Claims (van Hoff)

Recommendation: Review Pre-Approved Bills and Claims in the amount of \$260,869.07. Pre-Approve \$500,000 in Bills and Claims until next meeting.

2. Minutes – Special Meeting September 25, 2019 (Gehret)

Recommendation: Approve Minutes of the Special Meeting of September 18, 2019.

3. Minutes – Special Meeting October 3, 2019 (Gehret)

Recommendation: Approve Minutes of the Special Meeting of October 3, 2019

4. Monthly Capital Projects Update (Moren)

Receive and file.

5. First Quarter – Fiscal Year 2020 (Q1-20) Investment Report (van Hoff)

Receive and file.

Motion: (Mattusch/Reyering) approve Consent Items 2-5 with a friendly amendment to Item 1, (removing the line item for Commissioner Brennan in the amount of \$972.52).

Ayes: All in favor

Motion passed.

D) Discussion

6. **Oyster Point Dragons Operations Update; Presentation (Moren)**

Information only.

7. **Commercial Activity Permit Application for Tideline Marine Group, Inc. to Operate as a Commuter Ferry Service out of Oyster Point Marina for the Remainder of 2019 (Moren)**

Public Comment

- **Danielle Weerth/Taylor Lewis** – Tideline Marine Group – Would like the Board to consider allowing Tideline Marine Group to add service using the Guest Dock during reverse commute times – actual schedules don't conflict with Prop SF or WETA; would yield right of way to these vessels.

No action taken.

8. **CalPERS Out-of-Class Appointment – John Moren (van Hoff)**

Information only.

9. **Discuss District General Counsel Hiring Process and Provide Direction to Staff, or Approve Appointment of District Counsel (van Hoff)**

Public Comment

- **John Ullom** – not in support of hiring District General Counsel with this process.

Motion: (Reyering/Chang Kiraly) Direct Interim General Manager to enter into an agreement with law firm of Richards Watson Gershon.

Ayes: Chang Kiraly, Reyering, Mattusch

Nay: Larenas

Motion passed.

13. **Policy on Standing Committees; Discuss Assignment of Public Members to Committees (van Hoff)**

Motion: (Chang Kiraly/Reyering) Revert back to Policy 3.0 'Policy on Standing Committees,' dated December 7, 2016.

Ayes: Chang Kiraly, Reyering, Mattusch

Nay: Larenas

Motion passed.

7:52 PM Motion: (Mattusch/Chang Kiraly) Adjourn meeting

Ayes: Chang Kiraly, Reyering, Mattusch

Nay: Larenas

Motion passed.

Items not heard.

10. San Mateo County Harbor District Code of Ethics and Values; Approve Policy 1.1.1 (van Hoff)

Recommendation: Approve Policy 1.1.1 San Mateo County Harbor District Code of Ethics and Values.

11. Policy for Board Meeting Agenda; Recommend Adoption (Governance & Policy Committee)

Recommendation: Review information from District Counsel and staff regarding current policies in other governmental entities. Adopt Policy 3.3 'Board Meeting Agenda.'

12. Sexual & Unlawful Harassment Policy; Recommend Adoption (van Hoff)

Recommendation: Eliminate current Policy 6.2.5 'Harassment, Discrimination and Retaliation Prevention.' Adopt and replace current Policy with Policy 6.2.5 Sexual & Unlawful Harassment Policy.

E) Discussion/Action on Pulled Consent Items (if any)

F) Future Agenda Items

G) September Activity Reports: Int. General Manager/Operations, Administration

Information only.

H) Adjourn

7:52 PM Motion: (Mattusch/Chang Kiraly) Adjourn meeting

Ayes: Chang Kiraly, Reyerling, Mattusch

Nay: Larenas

Motion passed.

Debbie Gehret
Deputy Secretary

Virginia Chang Kiraly
President



Board of Harbor Commissioners

Virginia Chang Kiraly, President
Nancy Reyerling, Vice President
Nancy Reyerling, Secretary
Tom Mattusch, Treasurer
Sabrina Brennan, Commissioner
Edmundo Larenas, Commissioner
John Moren, Interim General Manager
William Parkin, District Counsel

San Mateo County Harbor District Board of Harbor Commissioners

“To assure the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas.”

SPECIAL MEETING MINUTES

October 18, 2019

9:00 AM – 6:00 PM

San Mateo County Harbor District
Conference Room
504 Avenue Alhambra, Ste. 200
El Granada, CA 94018

- A) Roll Call** 9:02 AM - Commissioners Chang Kiraly, Larenas, Reyerling and Mattusch present.
- Commissioner Brennan absent.

President Chang Kiraly reordered the agenda, moving Closed Session Item D, Public Employment/General Manager first, and Discussion Item C after Item D.

B) Public Comment

- **April Vargas** – Regarding the discussion of Committees, in support of public members on advisory committees, allows for more public process. Asked to contact her when this item is ready to be heard after Closed Session.
- **April Vargas** – Regarding the hiring of new General Manager, should wait to make a decision since Commissioner Brennan is unavailable; in support of open process and include stakeholders in hiring process.
- **John Ullom** – Transparency is important. Brought own video camera to video tape the Discussion item at the end regarding committees. Commented on items not heard at previous Board meeting.
- **Commissioner Larenas** – Commented on majority of Board not hearing all items on previous agenda; wasting time. Outraged that the General Manager interviews are taking place without including Commissioner Brennan or stakeholders.

D) Closed Session 9:11 AM

**2. TITLE: Public Employment
General Manager**

9:14 AM – **Commissioner Larenas leaves, does not return.**

3:58 PM – **Adjourn Closed Session - Report out of Closed Session:
The Board directed hiring consultant to move forward with
employment offer to one applicant.**

All commissioners thanked consultant, Andrew Nelson of
CPS HR Consulting for all of the diligent work in helping the District find a
new General Manager.

C) Discussion

**1. Discussion and approval of changes to Board committees,
including dissolution or formation of committees and
appointments to committees.**

- **Motion:** (Mattusch/Reyering) Remove Governance and Policy Committee and repopulate the Oyster Point Liaison Committee with Commissioners Reyering and Chang Kiraly.
Ayes: Chang Kiraly, Mattusch, Reyering
Nay: None
Motion passed.

**E) Adjourn 4:07 PM Motion: (Reyering/Mattusch) Adjourn meeting.
All in favor.**

Debbie Gehret
Deputy Secretary

Virginia Chang Kiraly
President



Staff Report

TO: Board of Harbor Commissioners

FROM: Julie van Hoff, Director of Administrative Services
Boomer Henthorne, Accounting Manager

DATE: November 20, 2019

SUBJECT: First Quarter 2019/20 Financial Report Spending Authority

Recommendation/Motion:

Information only report.

Policy Implications:

The Budget Appropriation Policy (4.9.2) requires that this Commission receive a quarterly financial report to review and ensure that all expenditures are within the approved appropriations. Quarterly reports are presented at the consolidated level (includes Pillar Point Harbor, Oyster Point Marina, and Administration).

Fiscal Implications/Budget Status:

None

Alternatives Considered:

None

Background/Discussion:

The table below presents a comparison between the Board approved FY 2019/20 budget (with revisions) and the actuals for the fiscal year to date (July 1, 2019 to Sept 30, 2019).

Items to Highlight:

- All spending authority is under approved appropriations (Salaries and Benefits, Operating Expenses, and Capital Projects)
- The District ended the first quarter on target with the approved budget (staying within 25% of budgeted expenses)
- Total Capital Projects expenditures are \$461,612. Some of the projects the District worked on this quarter were: PPH Launch Ramp Dredging, PPH West

Trail Shoreline Protection, PPH Polaris vehicle (ATV) purchase, PPH Surfers Beach Restoration Project.

- The District received its first payment of \$8,045 from FEMA (thru the State CalOES office).

First Quarter 2019/20 Financial Report and Budget Category Summary

Revenues

Revenues	Budget	YTD Actual	% of Budget
Enterprise Revenue	\$ 4,441,000	\$ 1,119,943	25%
Other Operating Revenue	7,564,000	848,385	11%
Total Revenues	\$ 12,005,000	\$ 1,968,328	16%

Recurring Expenditures

Budget Category	Budget	YTD Actual	% of Budget
Salaries and Benefits	\$ (5,300,000)	\$ (1,240,331)	23%
Operating Expenses	\$ (3,050,000)	\$ (574,106)	19%
Total Expenditures	\$ (8,350,000)	\$ (1,814,437)	22%

One-time/biennial Sources (Uses)

Budget Category	Budget	YTD Actual	% of Budget
Capital Projects (CIP)	\$ (3,051,756)	\$ (461,612)	15%
FEMA Funding	\$ 376,779	\$ 8,045	2%
Total Non-Recurring Sources (Uses)	\$ (2,674,977)	\$ (453,567)	17%

Working Capital

	Budget	YTD Actual	% of Budget
Recurring Revenues	\$ 12,005,000	\$ 1,968,328	16%
Recurring Expenditures	(8,350,000)	(1,814,437)	22%
Subtotal	\$ 3,655,000	\$ 153,891	4%
Total Non-Recurring Sources (Uses)	(2,674,977)	(453,567)	17%
Increase (Decrease) Working Capital	\$ 980,023	\$ (299,676)	-31%



Staff Report

TO: Board of Harbor Commissioners

FROM: Julie van Hoff, Director of Administrative Services
Boomer Henthorne, Accounting Manager

DATE: November 20, 2019

SUBJECT: First Quarter – Fiscal Year 2019/20 (Q1-20) Rent Report

Recommendation/Motion:

Information only report

Policy Implications:

None

Fiscal Implications/Budget Status:

None

Alternatives Considered:

None

Background/Discussion:

This is the quarterly comparative report of lessee and commercial activity permit (CAP) revenue for the current fiscal year. All amounts shown are on an accrual basis, meaning these amounts are earned in the periods shown (Jul 2019 to Sept 2019), regardless of when the actual cash is collected. The first page of the report shows the results of Q1-20 (Jul to Sept 2019). The second page of the report shows the entire prior fiscal year activity (Jul 2018 to Jun 2019) to give a comprehensive perspective. It is updated to current, as we usually receive more information from our lease/CAP holders after the initial reporting to the Board.

Highlights to note on this report:

Several "percentage rent" reports have not been received yet. Percentage Rent reports from lessees were due to the District on October 31, 2019 and staff is following up with individual lessees to get their reports on a timelier basis.

Pillar Point Harbor – In May 2019, the District increased the passenger service fee (PSF) for Half Moon Bay Sportfishing so that they would pay the same rate as everyone else. As a result, we are seeing more fishing and tour charters submitting their PSFs directly to us instead of through Half Moon Bay Sportfishing. This also explains why Half Moon Bay Sportfishing percentage rents decreased.

Oyster Point Marina – In January 2019 the District restructured the lease with Oyster Point Yacht Club which increased base and percentage rents due to the District. Stephen Crevelli Sportfishing started in April 2019 as OPM's first fishing and tour charter CAP.

Summary/Recommendation:

No action is required. This is an Informational Item only.

Attachment:

1. [Q1-20 Rent Report](#)
2. [FY 2018-2019 Rent Report](#)



Staff Report

TO: Board of Harbor Commissioners
FROM: John Moren, Interim General Manager
DATE: November 20, 2019
SUBJECT: Monthly Capital Projects Update

Recommendation/Motion:

Receive Monthly Capital Projects update.

Fiscal Implications/Budget Status:

All Capital Projects are budgeted appropriately.

Capital Projects Update:

- **PPH Johnson Pier Reconfiguration, H-Dock and Fuel Dock Replacement Project: Initiated Jan. 2017**
 - H-Dock replacement meeting to gain input from public/tenants/stakeholders was held January 23, 2018 at the HMBYC.
 - Public input was addressed in a new drawing and sent with an additional questionnaire to all H-Dock tenants on March 21, 2018.
 - Addressed input gathered at first meeting and from questionnaire for H-Dock replacement. Second public meeting held May 15, 2018 at the HMBYC.
 - Terminus reconfiguration preliminary stakeholder/public meetings held on May 29, 2018 and July 17, 2018 to gather input/ideas on needed alterations.
 - Design/engineering consultant M&N provided a project update at the March 20, 2019 Board meeting, along with proposal to combine Johnson Pier Terminus Reconfiguration so that programmatic permitting can be made most cost efficient.
 - Consultant M&N working on D&E and permitting.
- **PPH Johnson Pier Timber Platform Piling Repair Project: Initiated Mar. 2019**
 - Project to be completed as soon as possible to stabilize the timber platform until the reconfiguration construction can take place.
 - Consultant M&N working on Design/Engineering/Permitting.
 - IFB advertised, Pre-Bid conference October 11, 2019.
 - Bids opened November 1, 2019; response being evaluated.

- **PPH Fishing Pier Repair and Access Walkway Rehabilitation: Initiated Mar. 2017**
 - Consultant M&N working on Design/Engineering/Permitting.
 - Initial drawings and technical memos submitted for review 2/22/18.
 - 65% submittals reviewed May 2nd, consultant working on revisions.
 - CDP, NWP, and NOI applications submitted on June 22, 2018.
 - CCC CDP waiver approved in October 2018.
 - 95% tech specs for ITB are being completed.
 - Design/engineering consultant M&N provided a project update at the March 20, 2019 Board meeting.
 - Invitation for Bid sent out 6/5/19.
 - Lowest qualified bid was accepted 8/21/19.
 - Contractor working to order materials and set construction start date.

- **PPH West Trail Shoreline Protection Project: Initiated May 2015**
 - Geotech testing, core sampling, took place 11/6/17. CCC issued an Incomplete Filing Status on 1/17/18. Consultant currently revising Project plans and addressing CCC concerns.
 - Met with GHD and their sub-consultant at West Trail on 2/15/18 to discuss soil nail wall construction methods for further submittals to CCC.
 - GHD provided update presentation to Public/Board at April 18, 2018 BoC Meeting.
 - Consultant GHD directed to re-look at beach nourishment alternatives with emphasis on Living Shoreline options per CCC Incomplete Filing Status notification letter. GHD working with Program Manager to apply for Coastal Conservancy Grant for funds assist.
 - Project consultants GHD/ESA provided a project update and proposal for Board consideration at the April 17, 2019 Board meeting. Proposal was approved, GHD/ESA Team working on design, engineering and permitting.
 - Draft Project site ecology memo from Dr. Peter Baye being reviewed by team. Can be shared with district. Rookery survey complete and memo being drafted by GHD. Eelgrass survey complete (no eelgrass within our site). Topo/Bathy survey undergoing QC by ESA team, should be available in next month. Evaluating DWR flood protection grant draft guidelines. Drainage options are being formulated and making our way towards a recommended solution.
 - GHD/ESA Team to give Project update presentation 11/20/19.

- **PPH Launch Ramp Dredge Project: Initiated May 2016**
 - Bid Docs 80% complete, awaiting final tech specs CDP submittal. Additional sediment testing was required for use of airport property.
 - Project approved for Disaster Relief Funding by FEMA/CalOES
 - FAA approved staging site within airport boundary.
 - Sediment removed will be beneficially re-used either at Surfers Beach or West Trail.
 - Airport ground lease for sediment staging has been approved.
 - Additional Wetlands Delineation study was found to be necessary, in progress.
 - Project Invitation for Bid advertised March 2019.

- Single bid received is being evaluated by design/engineering team.
 - Single bidder revised bid lower, being brought to Board for consideration 6/19/19.
 - Dredge operation completed, sediment staged at HMB Airport, remaining scope to monitor sediment and remove fencing will be ongoing until sediment beneficially re-used.
- **PPH RV Park Restroom Project: Initiated Nov. 2017**
 - Consultant working on survey and initial drawings. Met with City of Half Moon Bay and CCC on June 1st.
 - Discussed project with CCC on October 3, 2018.
 - HMB Study Session held Jan 8, 2019.
 - Met with City of Half Moon Bay and tenant on Jan 25, 2019, discussed public input from Study Session and potential preferred site location.
 - Met with John Mathews Architects April 1, 2019 to put together alternative drawings for later consultation w/ City of HMB.
 - Preferred alternative considered at 6/19/19 Board meeting.
 - CDP approved, RFP for D&E and permitting underway.
 - RFP for design engineering advertised, Pre-Bid Conference held Sept 20, 2019, Proposals due October 7, 2019.
 - RFP proposals being evaluated.
- **PPH Harbormaster's Office Alterations Project: Initiated Oct. 2017**
 - Project approved by Board at Dec '17 meeting. Tech Specs, Bid Docs and permitting in progress.
 - Preliminary construction drawings currently at 90% completion, CCC/CDP Waiver approved.
 - Consultant and staff working on construction Invitation for Bid docs.
 - IFB advertised 9/4/19. Bid opening September 30, 2019, bids being evaluated.
- **PPH West Trail Restroom and Pave Parking Lot: Initiated Mar. 2018**
 - Project was on hold due to conflicting adjacent parking lot repair project.
 - Project will progress at Board direction after Master Plan has been vetted.
- **PPH Parking Lot B, C2, C3 Repair Project: Initiated May 2018**
 - Slurry/stripe project schedule pushed out due to conflict with Sidewalk Expansion priority project.
 - Project planning will resume after policies for long term oversize vehicle use in lot have been vetted.
- **Surfers Beach Sand Replenishment Pilot Project: Initiated Oct. 2015**
 - Consultant working closely with Sanctuary staff to move forward, clarification request letters sent 11/7/17. Staff attended MBNMS Advisory Council meeting in Monterey December 15, 2017.
 - Staff and consultant hosted combined agency, meeting on site 2/26/18. USACE, Sanctuary, CCC, EPA reps in attendance.

- Consultant Damitz met with USACE, NOAA and GFNMS on 5/3/18 to discuss monitoring strategy.
- Consultant Damitz presented Project update at May 23, 2018 Board meeting.
- DBW Grant approved, Board approved Grant Agreement at May 23, 2018 meeting.
- Engineering and Sediment Sampling/Analysis RFP submissions opened on 8/14/18. Highest ranked respondents awarded contracts.
- Technical Advisory Group to meet November 8, 2018.
- Meeting with regulatory authorities to discuss permitting occurred January 31, 2019.
- Consultant Damitz provided Board update on April 2019. Tech Specs and permitting in progress.
- Project update scheduled for December 18, 2019.
- **PPH EV Parking Spaces Project: Initiated June 2019**
 - Two EV parking spaces included as requirement in RV Park Restroom CDP/RFP. Will be looking into additional EV sites.
- **PPH Habitat Restoration at West Trail Project: Initiated June 2019**
 - Initiated research into compiling an RFP for D&E and permitting.
- **PPH Coastal Trail Improvement Project: Initiated June 2019**
 - Initiated research into compiling an RFP for D&E and permitting.
- **OPM Dock 12 (13,14) / East Dock Replacement: Initiated March 2018**
 - Project design/engineering RFP has been completed. Project will proceed in accordance with Board direction and MOU terms.
- **New Admin Building: Initiated March 2019**
 - At Board direction, Portola property was purchased June 6, 2019.
 - June 19, 2019 Board appointed Ad-Hoc Committee for new Admin Building design/engineering RFP.
 - August 15, 2019 and Sept 30, 2019 District and GCSD Ad-Hoc committees met to discuss potential partnering, still unsure if feasible, as GCSD is considering several alternatives.
 - Project design/engineering RFP has been completed. Five respondent's bids opened September 27, 2019.
 - November 20, 2019 Board direction to staff on response evaluation.
- **Signage/Wayfinding Program Project: Initiated Jun. 2018**
 - Project will include a programmatic plan for new aesthetically pleasing interpretive signage/wayfinding consistent with ADA guidelines. Project will proceed at Board direction after Master Plan has been vetted.



Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager

DATE: November 20, 2019

SUBJECT: Finalization of the Emergency Repair to the Pillar Point Harbor Launch Ramp Drain in Accordance with Public Contract Code 22050

Recommendation/Motion:

Information only, no action required. Notice that the emergency repairs to the Pillar Point Harbor launch ramp drain was completed on October 30, 2019. Pursuant to the California Public Contract Code (PCC) Section 22050, the District reports out when the emergency Project has been completed.

Policy Implications:

Consistent with the San Mateo County Harbor District's (District) goal to provide the public with safe, well managed marinas. Consistent with PCC Section 22050 authorizing emergency repairs.

Fiscal Implications/Budget Status:

The 19/20 Budget allocates \$210,000 for repairs and maintenance at Pillar Point Harbor (PPH).

Background:

The PPH public launch ramp services hundreds of trailered vessel launches monthly. The launch ramp has a bisecting drainage strip which captures water draining off of vehicles and trailered vessels, directing the water to a filtration system before the water re-enters the outer Harbor waters. The drainage strip bisecting the launch ramps had been damaged and was in need of immediate replacement. It is important that the drain and filtration system function properly in order to protect the Harbor waters from possible pollutants/contamination. On September 25, 2019 the Board authorized the Interim General Manager to enter into an agreement with Andreini Bros. Inc. for an amount not to exceed \$42,761 to conduct emergency repairs to the PPH launch ramp drain. Pursuant

to the California PCC Section 22050 the District reports out when the emergency Project has been completed.

The Project was completed, as budgeted for, on October 30, 2019.

Summary/Recommendation:

Information only, no action required. Notice that the emergency repairs to the Pillar Point Harbor launch ramp drain was completed on October 30, 2019. Pursuant to the California Public Contract Code (PCC) Section 22050, the District reports out when the emergency Project has been completed.



West Trail Living Shoreline Project

Progress Update

**San Mateo County Harbor District
Board of Harbor Commissioners Meeting**

November 20, 2019



Stormwater Improvements

- Improve aesthetics and function
- Reduce maintenance needs

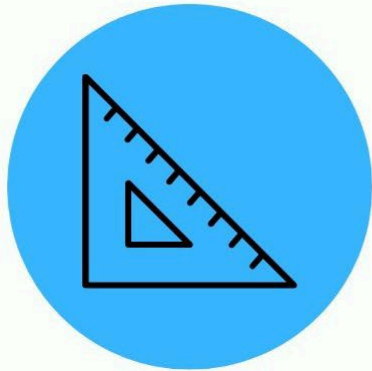
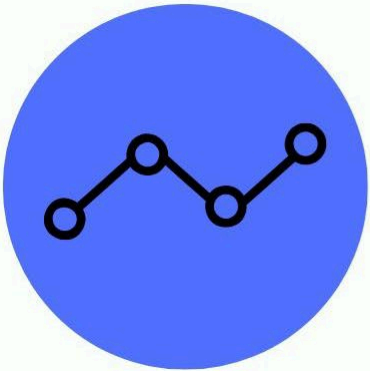


Shoreline Protection

- Protect trail from chronic erosion
- Use multi-benefit, nature-based techniques



Progress



**Data
Collection**

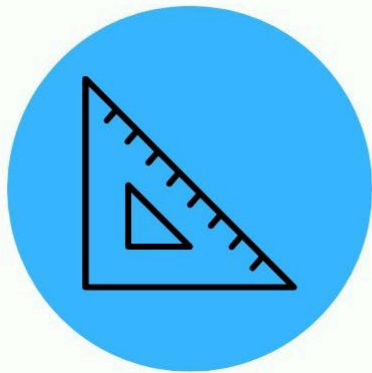
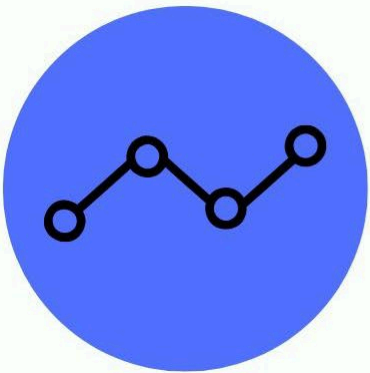
**Concept
Design**

Engineering

Permitting

Construction

Progress



**Data
Collection**

**Concept
Design**

Engineering

Permitting

Construction

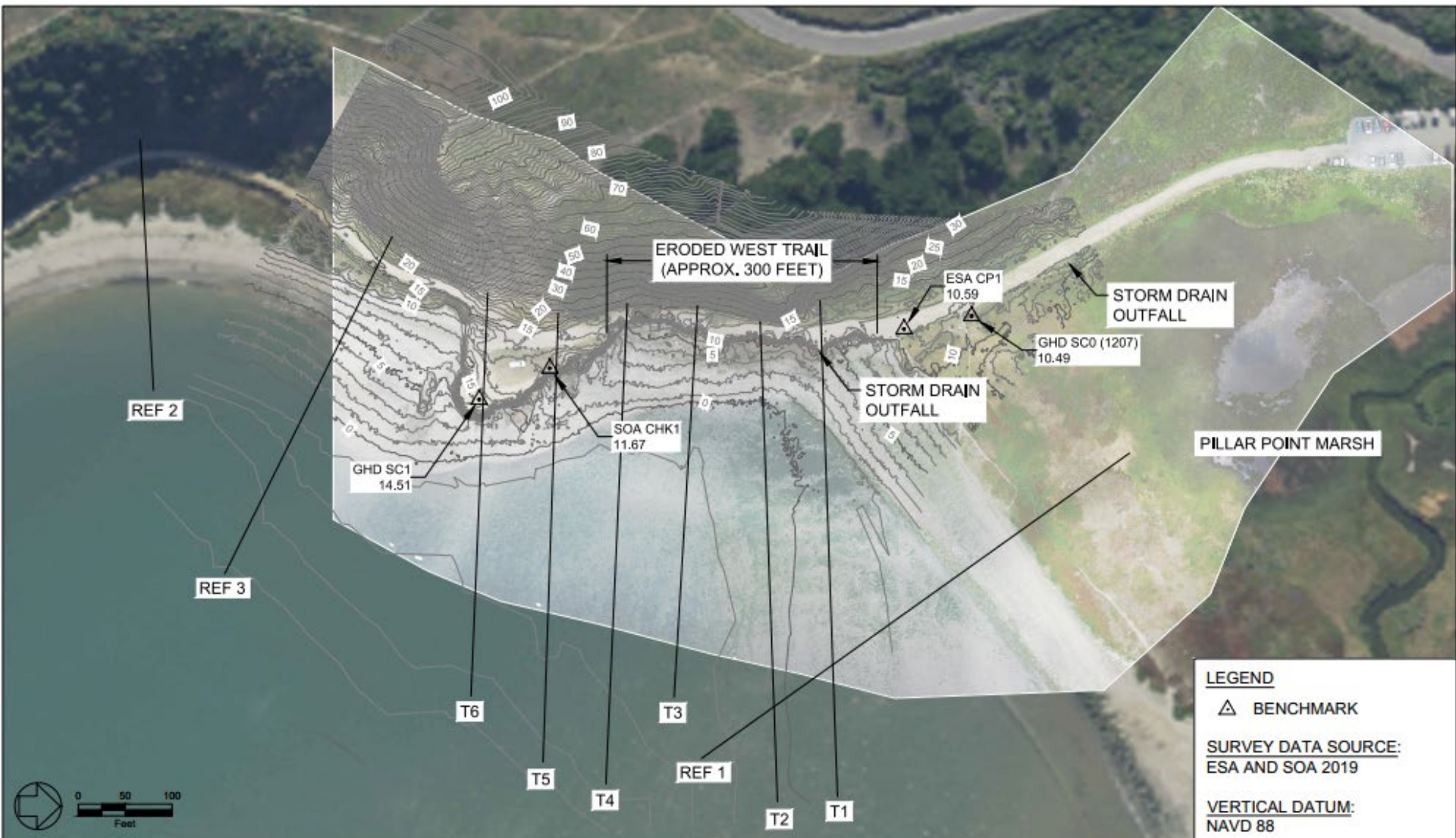
Topographic / Bathymetric Survey, Wave Data Collection,
Sediment Sampling, Biological Surveys



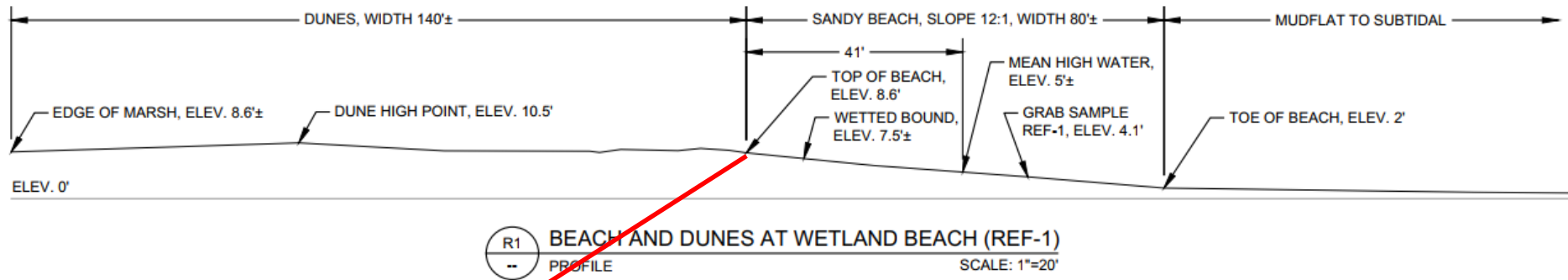
Topographic & Bathymetric Survey



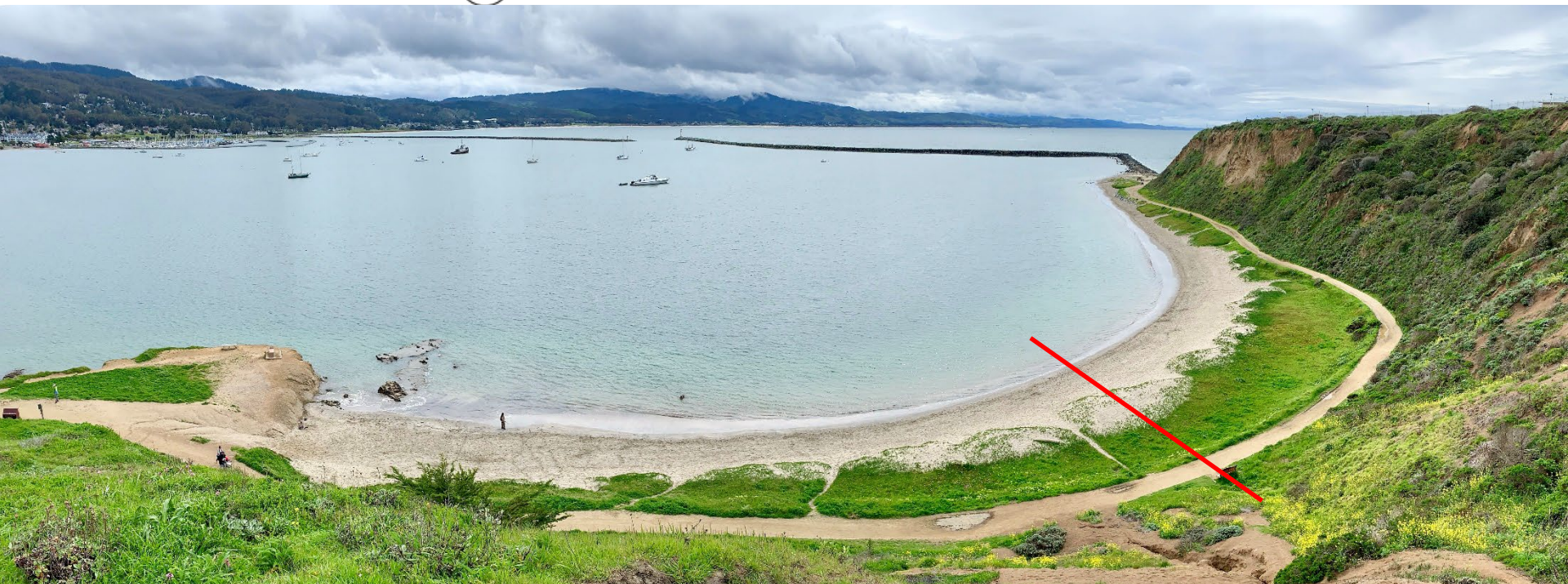
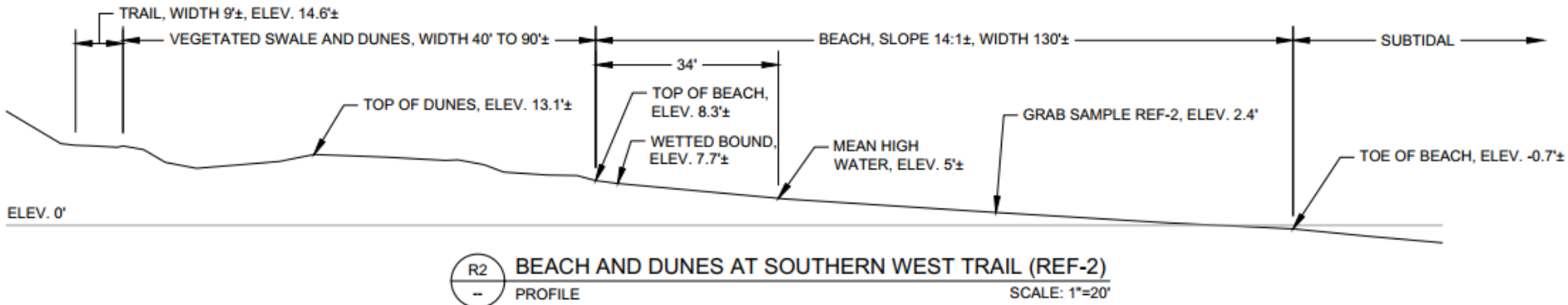
Topographic & Bathymetric Survey (Aerial Survey and Imagery by Sierra Overhead Analytics)



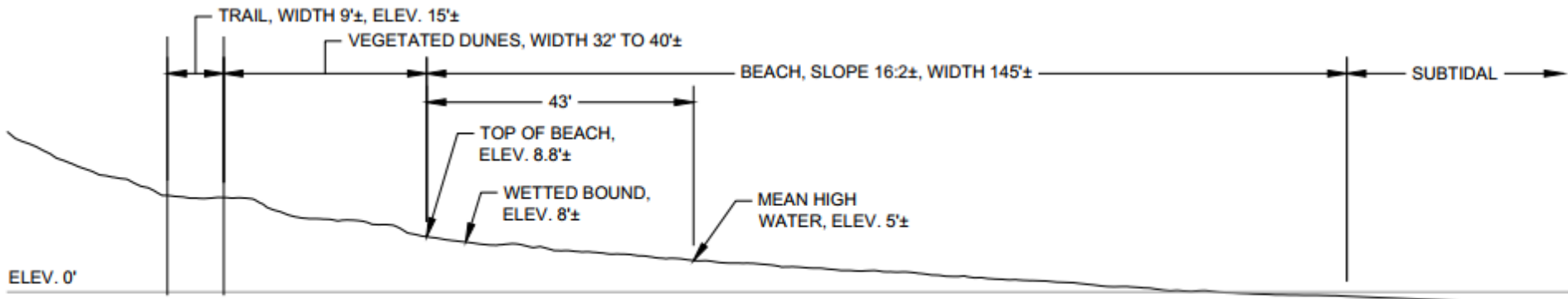
Reference Site Transect – Beach and Wetland to North



Reference Site Transect – Beach and Dunes to South (Wide Dune Condition)



Reference Site Transect – Beach and Dunes to South (Narrow Dune Condition)



BEACH AND DUNES AT SOUTHERN WEST TRAIL (REF-3)

REFERENCE PROFILE

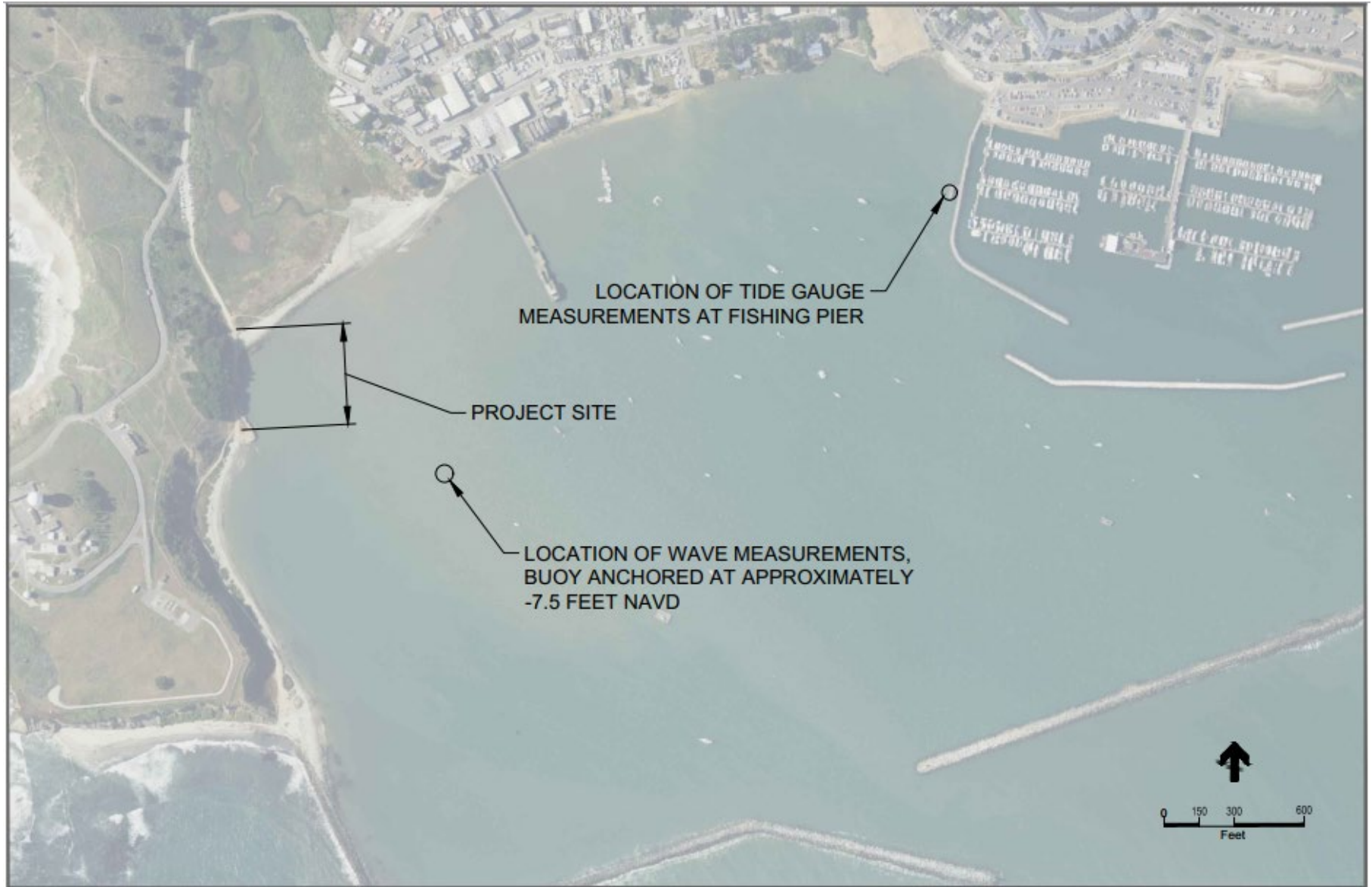
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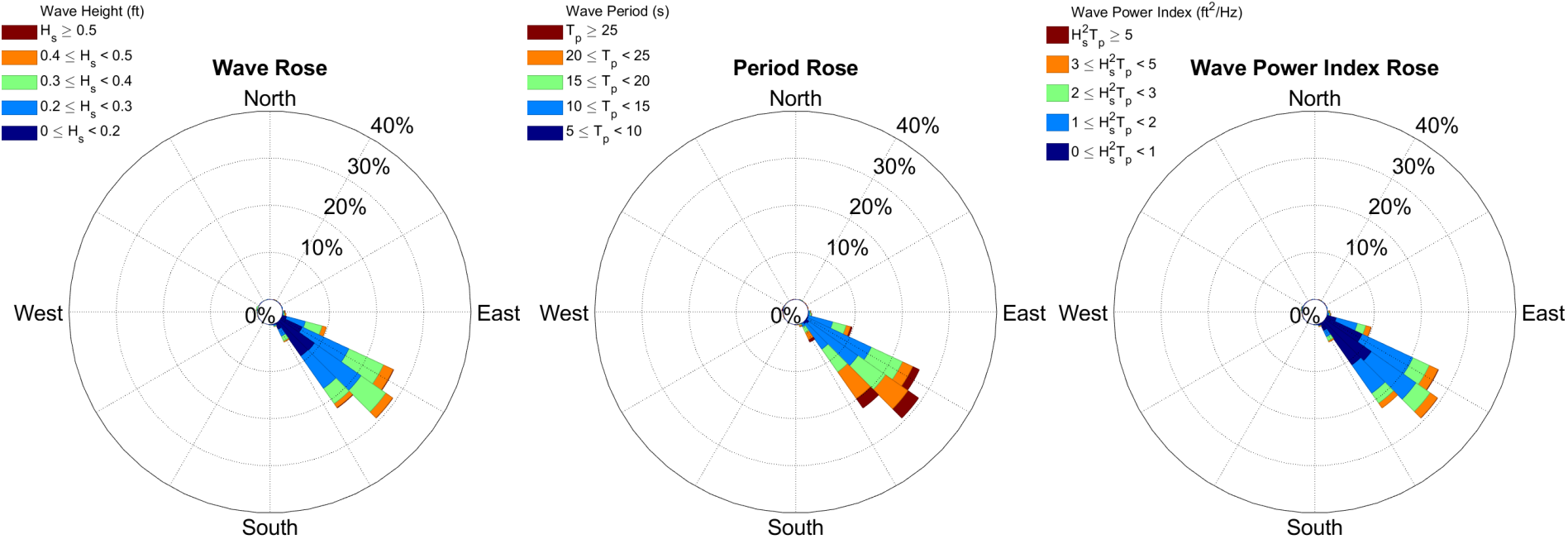
Wave & Water Level Data Collection



Wave Buoy & Water Level Gauge Locations

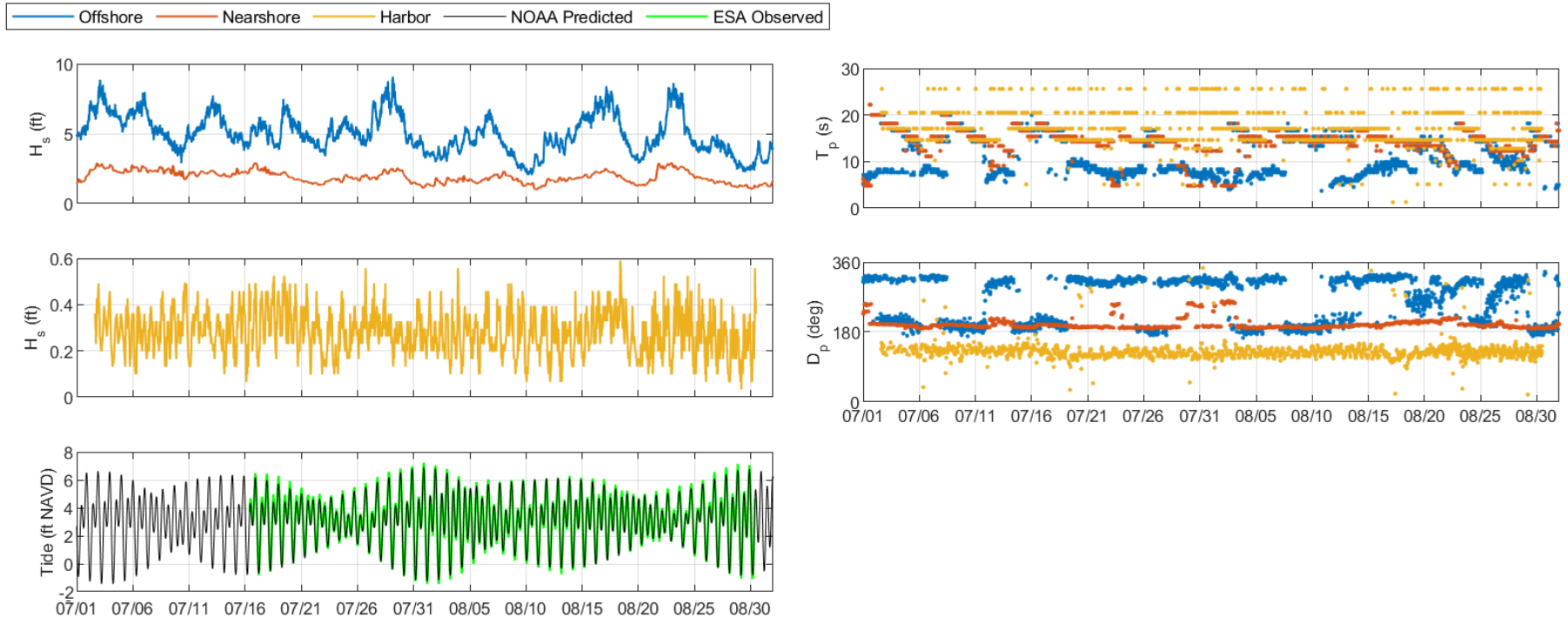


Preliminary Wave Findings



- Wave climate primarily calm, but intermittent periods of long period swell propagating through entrance / breakwater toward site.
- Long period waves on order of 0.5 feet at 17-20+ seconds
- Predominant angle consistent with wave diffraction through entrance

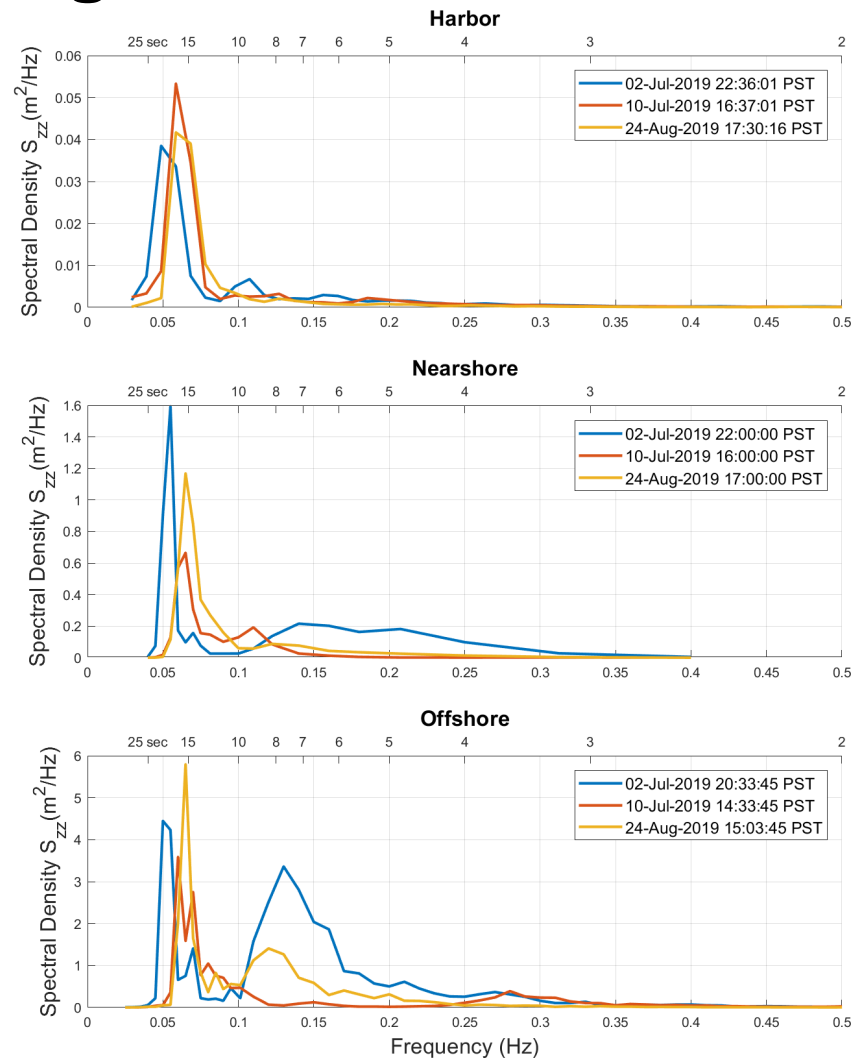
Preliminary Wave & Water Level Findings



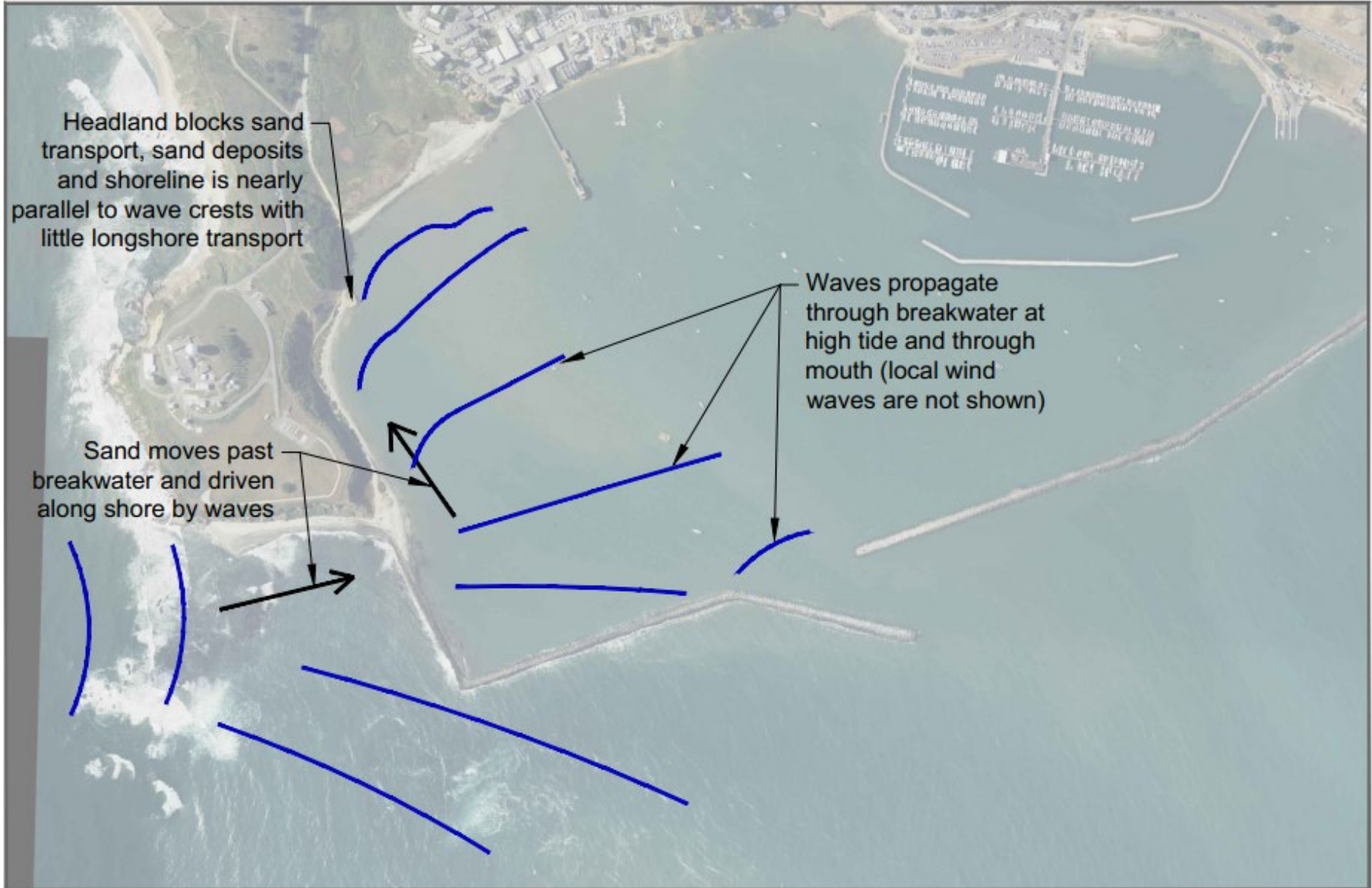
- Waves in harbor strongly influenced by tide: High tide transmission, low tide extreme damping
- Long-period energy in harbor consistent with offshore measurements
- Water levels: Measured tide range greater than predicted; high tides higher and low tides lower than predicted by NOAA

Preliminary Wave Findings

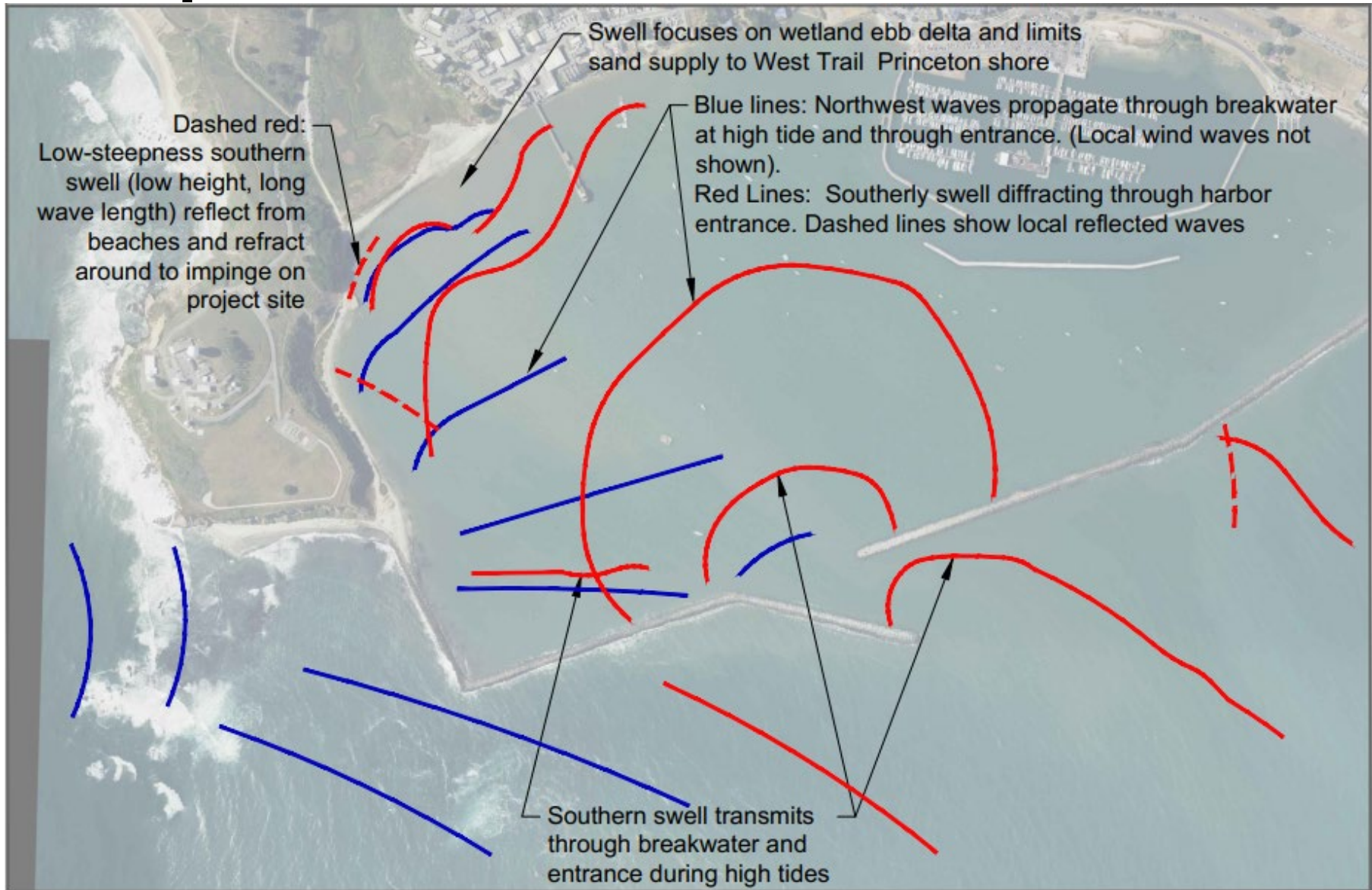
- Wave spectra of selected south swell events
- Long-period energy coherent from
 - Offshore at Monterey (bottom)
 - Nearshore, outside of harbor (middle)
 - Inside of harbor (top)
- Short period energy filtered out as comes toward shore



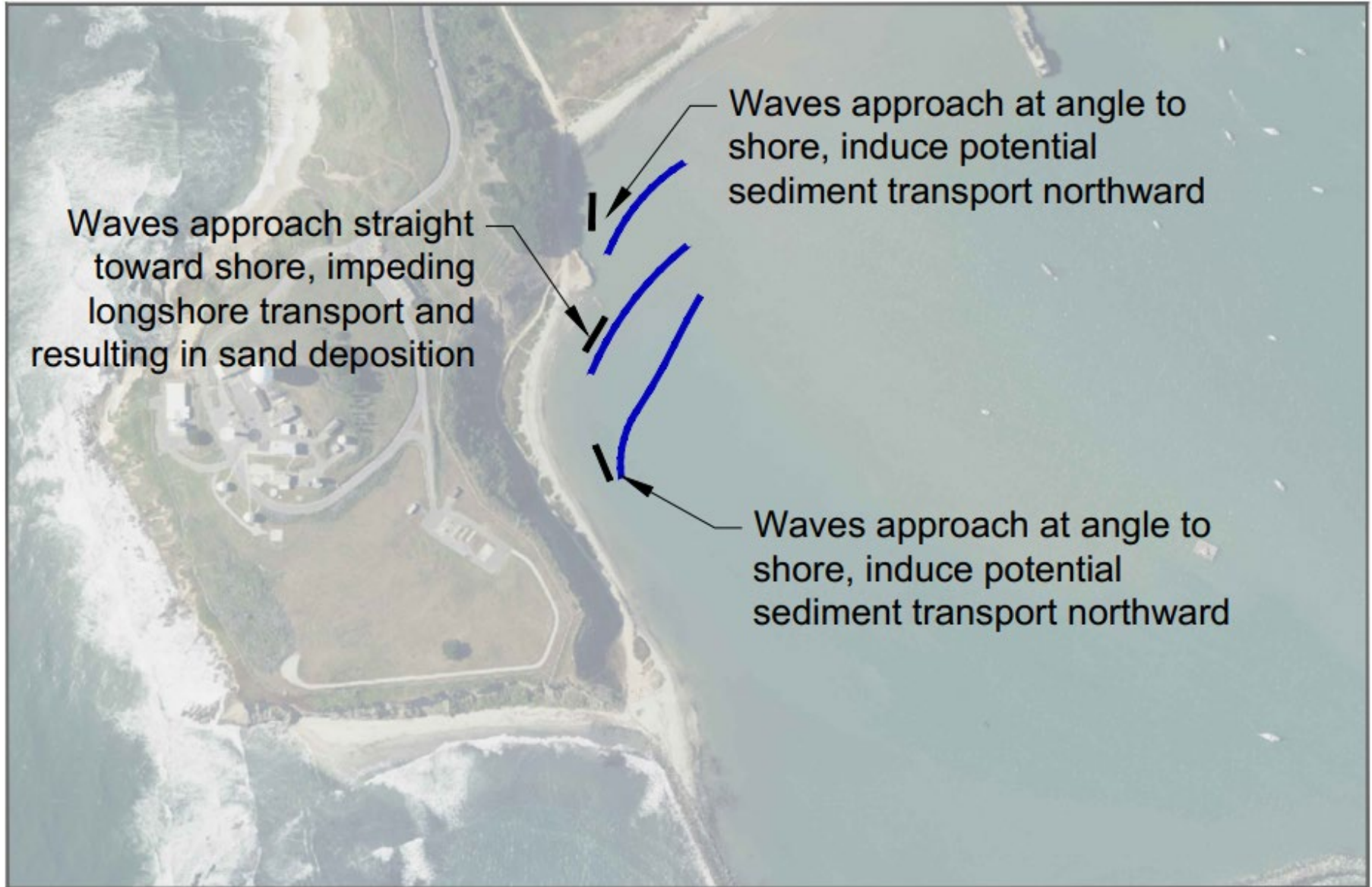
Wave and Sediment Transport Concept



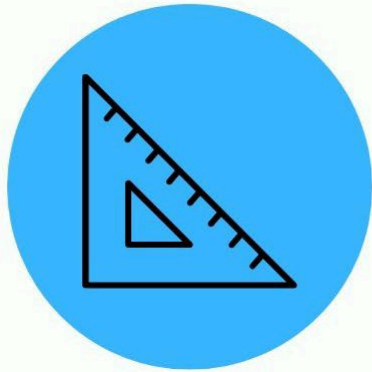
South Swell (Red) and North Swell (Blue) Conceptual Wave Patterns



Wave-Driven Sediment Transport Concept at Site



Progress



**Data
Collection**

**Concept
Design**

Engineering

Permitting

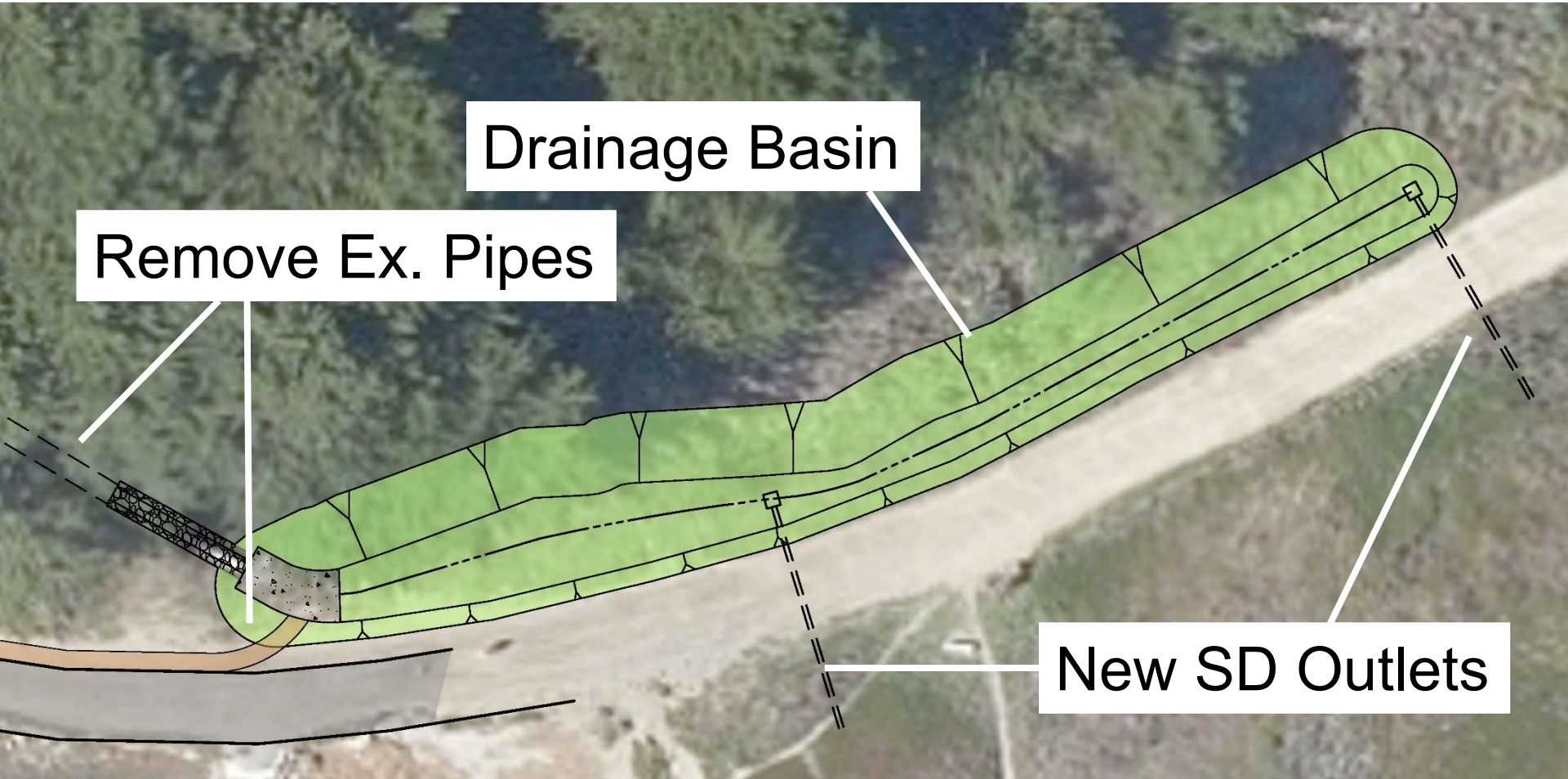
Construction

Stormwater Improvements
Living Shoreline & Trail

STORMWATER IMPROVEMENTS



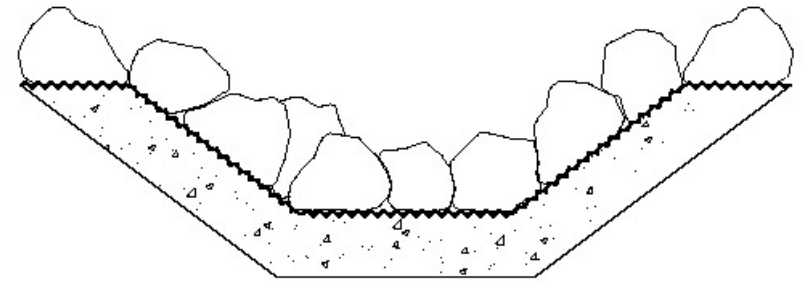




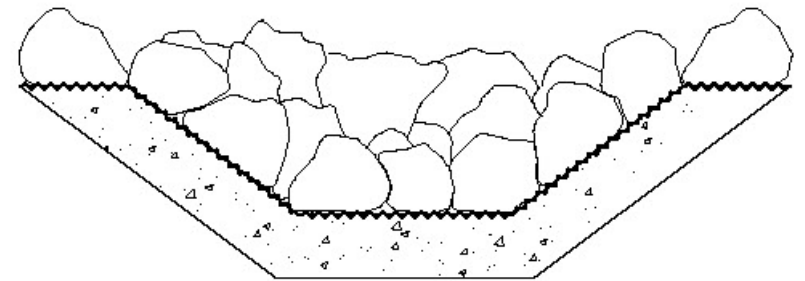
Drainage Basin

Remove Ex. Pipes

New SD Outlets



Rock-lined Channel



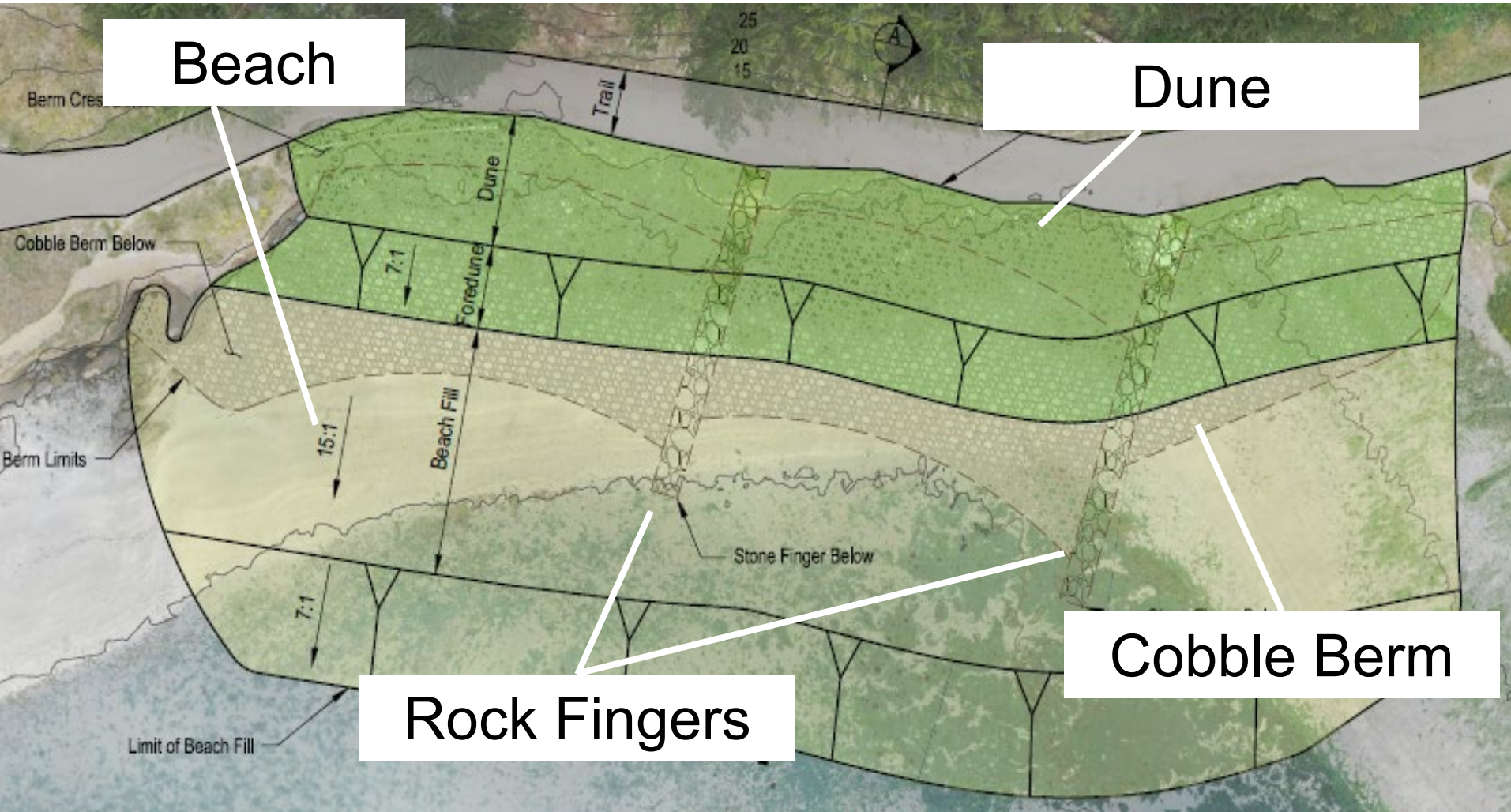
Check Dam

SHORELINE PROTECTION

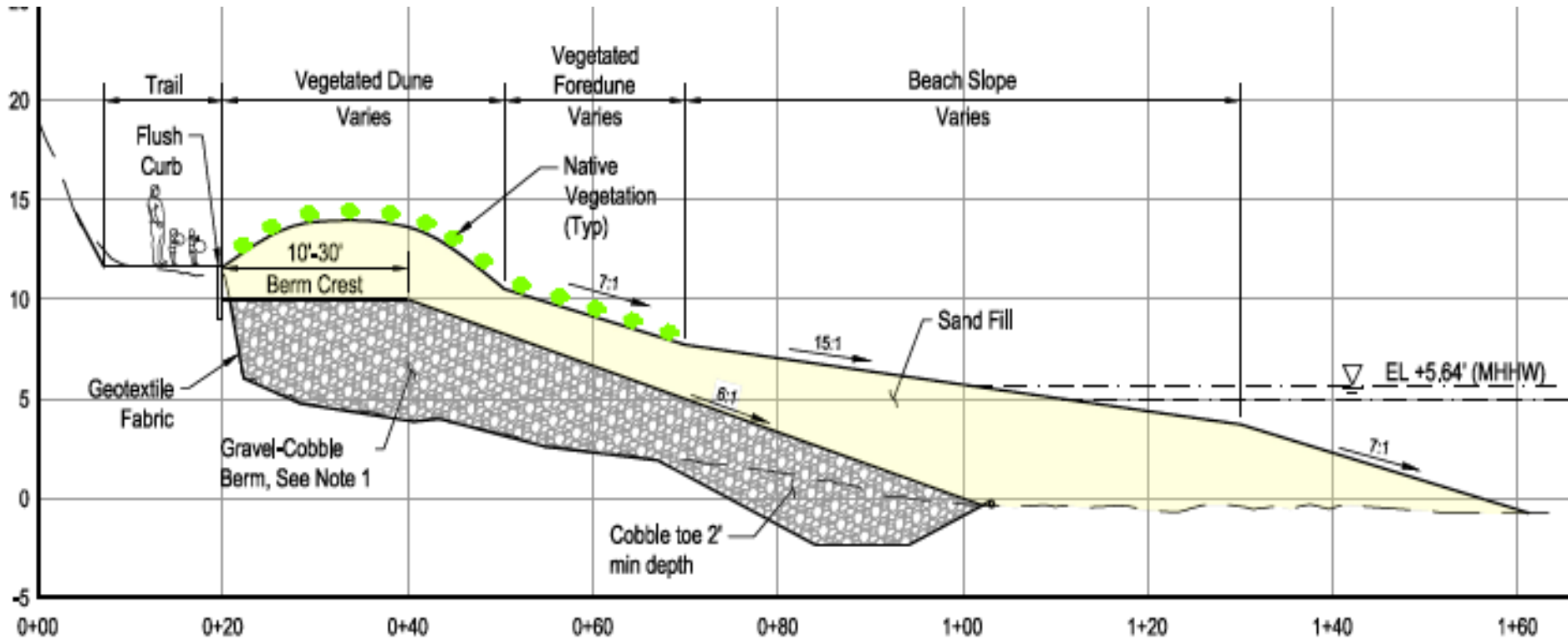




30% Design of Living Shoreline & Trail



30% Design of Living Shoreline & Trail



Mixed Sand / Cobble Beach

March 2016



November 2017



Surfer's Point, Ventura, CA

Permitting and Agency Consultation

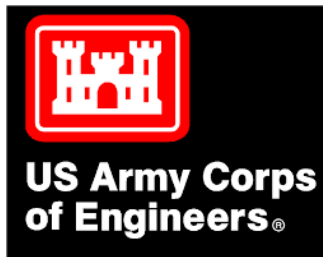


Permitting and Agency Consultation

Multiple Permits Required:

- *U.S. Army Corps of Engineers*—Individual Permit CWA Section 404; RHA Section 10.
- *Regional Water Quality Control Board*—Section 401 Water Quality Certification/Waste Discharge Requirement.
- *Coastal Commission/County*—Consolidated Coastal Development Permit.

Consultations: U.S. EPA; NOAA Fisheries (NMFS); Cal Department of Fish and Wildlife; Regional Water Quality Control Board 2.



Permitting and Agency Consultation Accomplishments

- Identified all necessary permits/consultations and required studies/surveys.
- Held initial meetings with agencies.
- Presented project at Army Corps Multi-Agency Meeting.
- Identified and addressed agency questions and concerns.
- Began preparation of permit applications.



Next Steps

- Wave and Water Level Data Collection (Redeployed 23rd October)
- Permitting (Ongoing, began in October)
- Final Engineering Design (Ongoing, 30% submittal 13th November)
- CEQA (18th November kick-off)
- Construction Documents out to Bid (late Summer 2020)
- Construction (planned Fall 2020)



Acknowledgements

- Peter Baye – coastal biologist
- Bradley Damitz – permitting specialist
- SOA – topographic survey
- Robert Mooney, MTS – eelgrass survey and EFH assessment



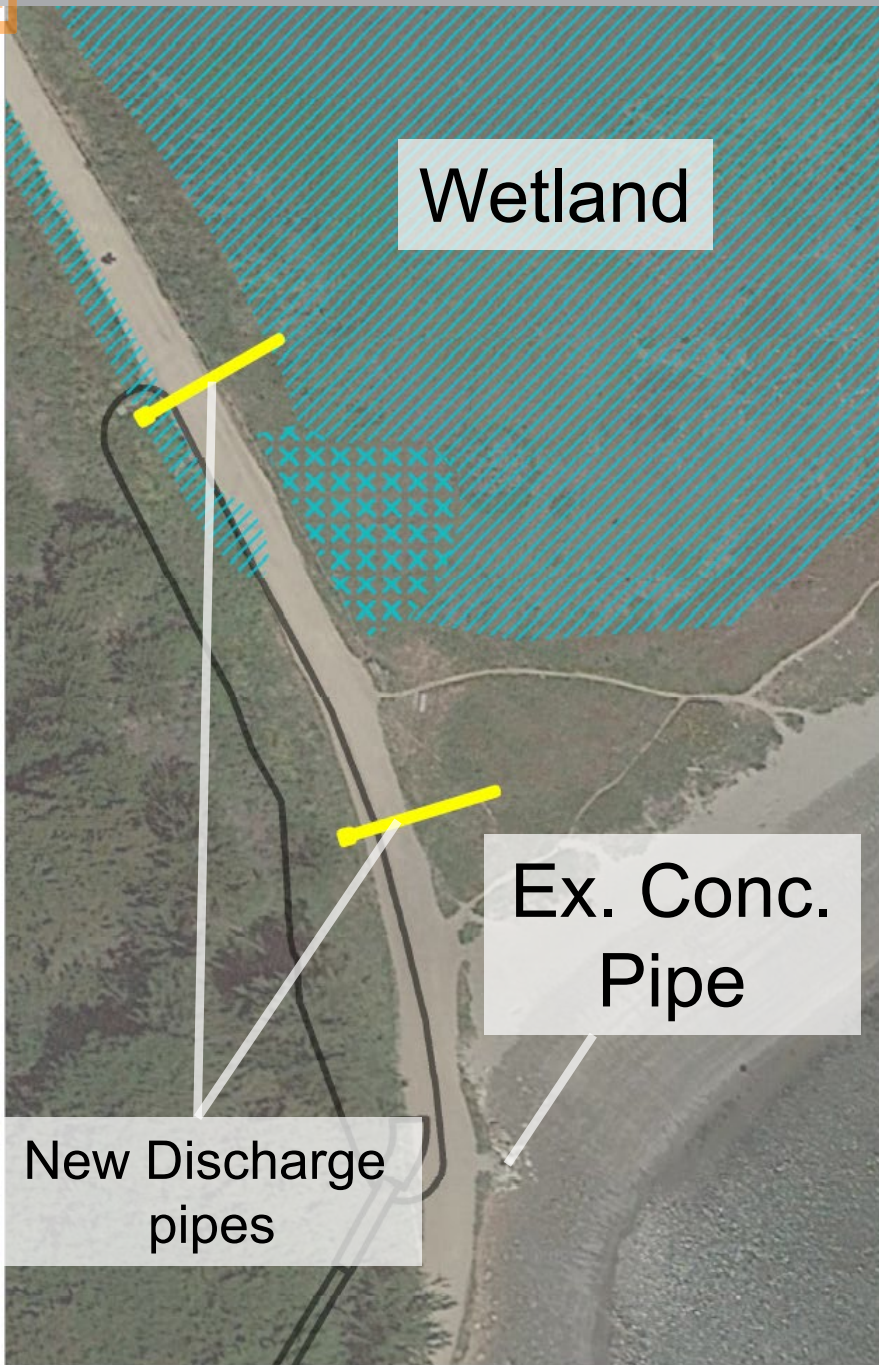




www.ghd.com

Supplemental Slides



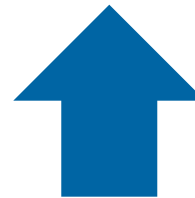


Wetland

Ex. Conc.
Pipe

New Discharge
pipes

Changes in Discharge Post- Construction



Flows - **0.14 CFS**



Volume - **12,096 CF**

Wave & Water Levels: Next Steps

- Continue measuring waves through February 2020 to understand North Pacific winter swell behavior
- Develop hindcast of waves to describe wave climate at site
- Estimate wave runup
- Continue measuring water levels to inform datums and calculations of wave runup, design components

Application of Natural Infrastructure Guidelines to Design a Living Shoreline for Project Site

TOWARD NATURAL SHORELINE INFRASTRUCTURE TO MANAGE COASTAL CHANGE IN CALIFORNIA

A Report for:

California's Fourth Climate Change Assessment

Prepared By:

Sarah Newkirk¹, Sam Veloz², Maya Hayden², Bob Battalio³,
Tiffany Cheng³, Jenna Judge⁴, Walter Heady¹, Kelly Leo¹,
Mary Small⁵

1 The Nature Conservancy

2 Point Blue Conservation Science

3 Environmental Science Associates

4 National Oceanic and Atmospheric Administration

5 California State Coastal Conservancy

Report link: energy.ca.gov/sites/default/files/2019-07/Oceans_CCCA4-CNRA-2018-011.pdf



Case Studies of Natural Shoreline Infrastructure in Coastal California

A COMPONENT OF IDENTIFICATION OF NATURAL
INFRASTRUCTURE OPTIONS FOR ADAPTING TO SEA LEVEL RISE

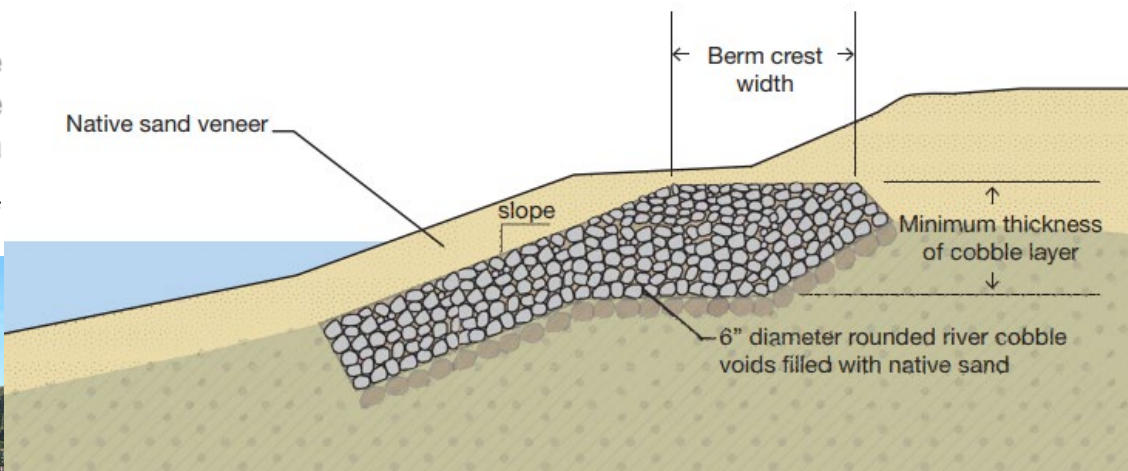


Report link: https://coastalresilience.org/wp-content/uploads/2017/11/tnc_Natural-Shoreline-Case-Study_hi.pdf

Cobble- gravel Berms for Shore Adaptation

- Dissipate wave energy and act as a “backstop,” limiting landward extent of shoreline erosion
- Can provide habitat equivalency for marine invertebrates and enhance natural aesthetics
- Traversable and friendly to recreational access

Source: Toward Natural Shoreline
Infrastructure to Manage Coastal Change
in California
energy.ca.gov/sites/default/files/2019-07/Oceans_CCCA4-CNRA-2018-011.pdf



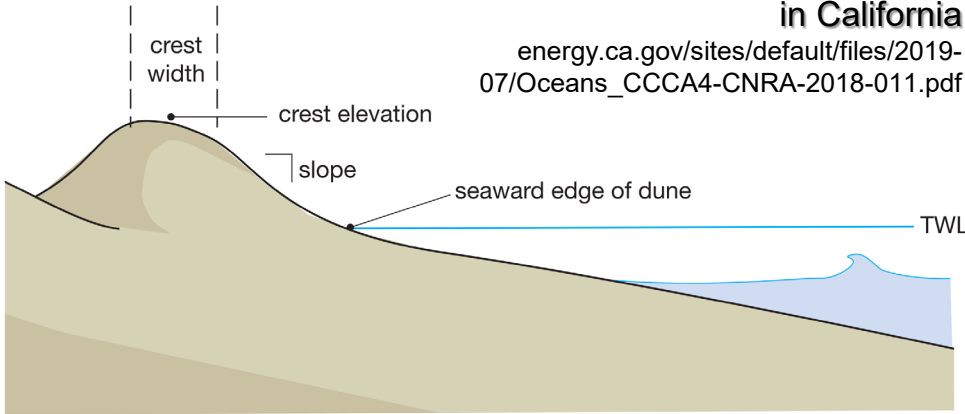
Pacifica State Beach Photos Peter Baye



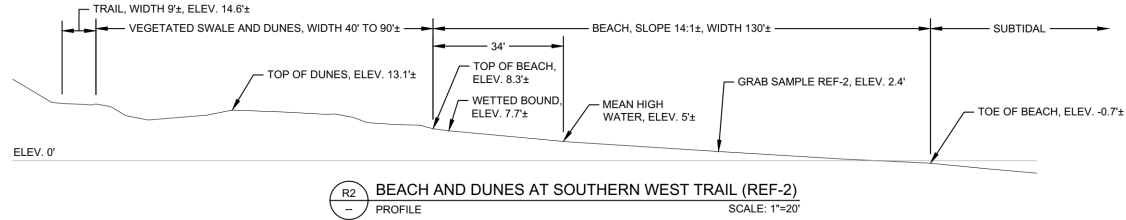
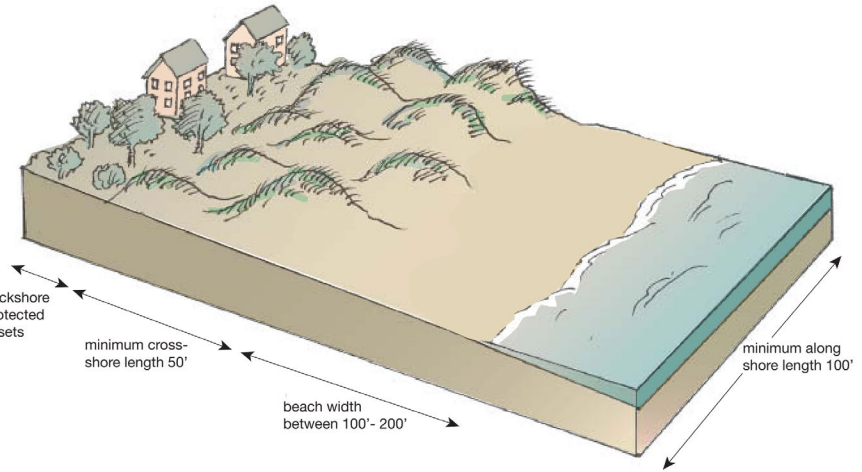
Dunes for Shore Adaptation

Source: Toward Natural Shoreline Infrastructure to Manage Coastal Change in California

energy.ca.gov/sites/default/files/2019-07/Oceans_CCCA4-CNRA-2018-011.pdf



available dune beach width



Source: ESA 2019, DRAFT Geomorphic Assessment and Conceptual Design of Beach and Dunes, memo to GHD October 25, 2019



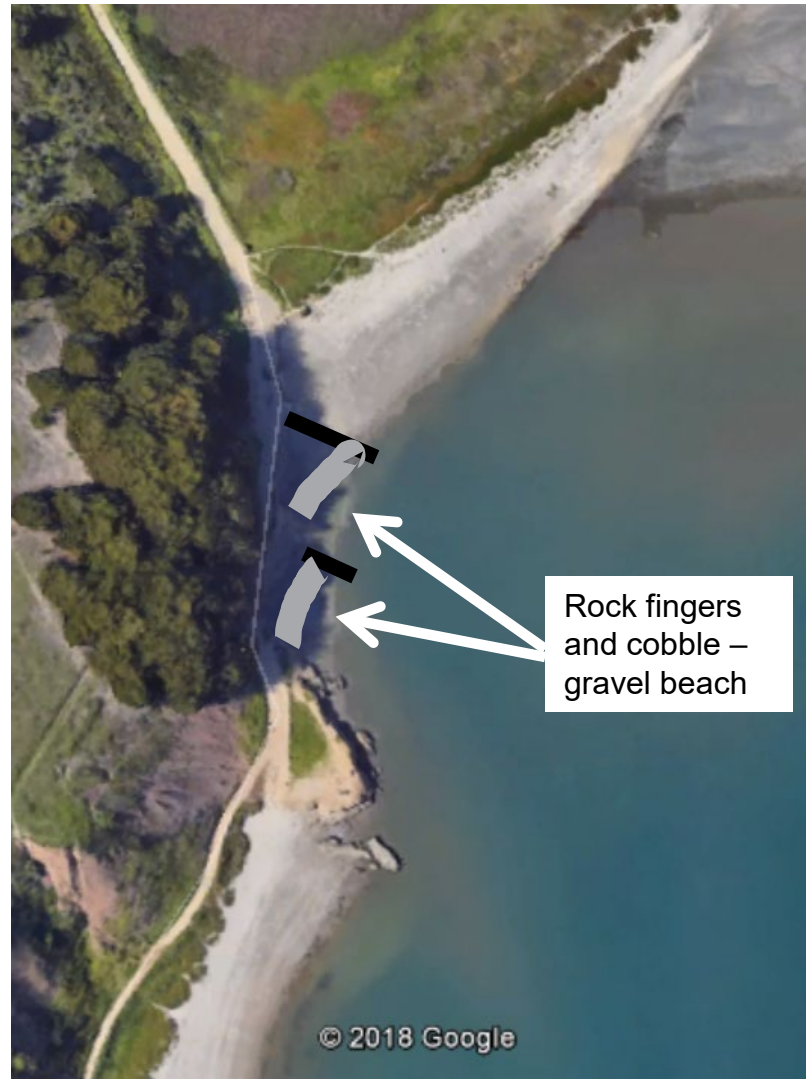
Geomorphic Design Criteria for Natural Infrastructure Components (DRAFT)

Source: ESA 2019, DRAFT Geomorphic Assessment and Conceptual Design of Beach and Dunes, memo to GHD October 25, 2019

Natural Infrastructure Component				
Parameter	Guidelines	Reference Sites	Analysis	Selected
Gravel-Cobble Beach and Berm				
Berm Crest Elevation	0.8x TWL 20 times per year	+4' to +8' NAVD		+8' NAVD
Minimum Berm Width	10 feet			10'
Slope of seaward face	5:1 to 10:1	7:1 to 10:1		6:1
Minimum Footprint	45 feet	30 to 140 feet		45 feet
Minimum Length	330 feet			300+ feet, with retention structures
Orientation relative to waves	Less than 20 degrees			Rotate shore 20 to 30 degrees to attain wave angles of 0 to 15 degrees
Minimum thickness	3 feet	Less than one foot		3 feet
Gravel - Cobble larger Size	6 to 24 Inches	1 to 4 Inches		6 Inches
Gravel - Cobble Shape	rounded	Rounded blocky		Rounded blocky
Sandy Beach and Dune				
Seaward Edge Elevation	0.8x TWL 10 times per year	+9' NAVD +/-		+9' NAVD
Seaward Edge Location	Behind dry sand beach	yes		yes
Dune Footprint (minimum)	50 feet	30 feet		30 feet
Fronting Beach Width (minimum)	100 feet	130 feet		120 feet
Total Footprint (minimum)	150 feet	160 feet		150 feet
Dune Crest Elevation		10.5 to 13 feet NAVD		+13' NAVD
Minimum Longshore Length	100 feet	500 feet		300 feet project length
Orientation relative to waves			Less than 15 degrees	TBD
Beach Elevation		+8'		
Beach Slope		12:1 to 15: 1	10:1 to 25:1	12:1 to 15:1
Beach Reference Size		0.2 to 0.4 mm		



Design Concept: Use “Rock Fingers” to Retain Coarse Sediment at Project Site

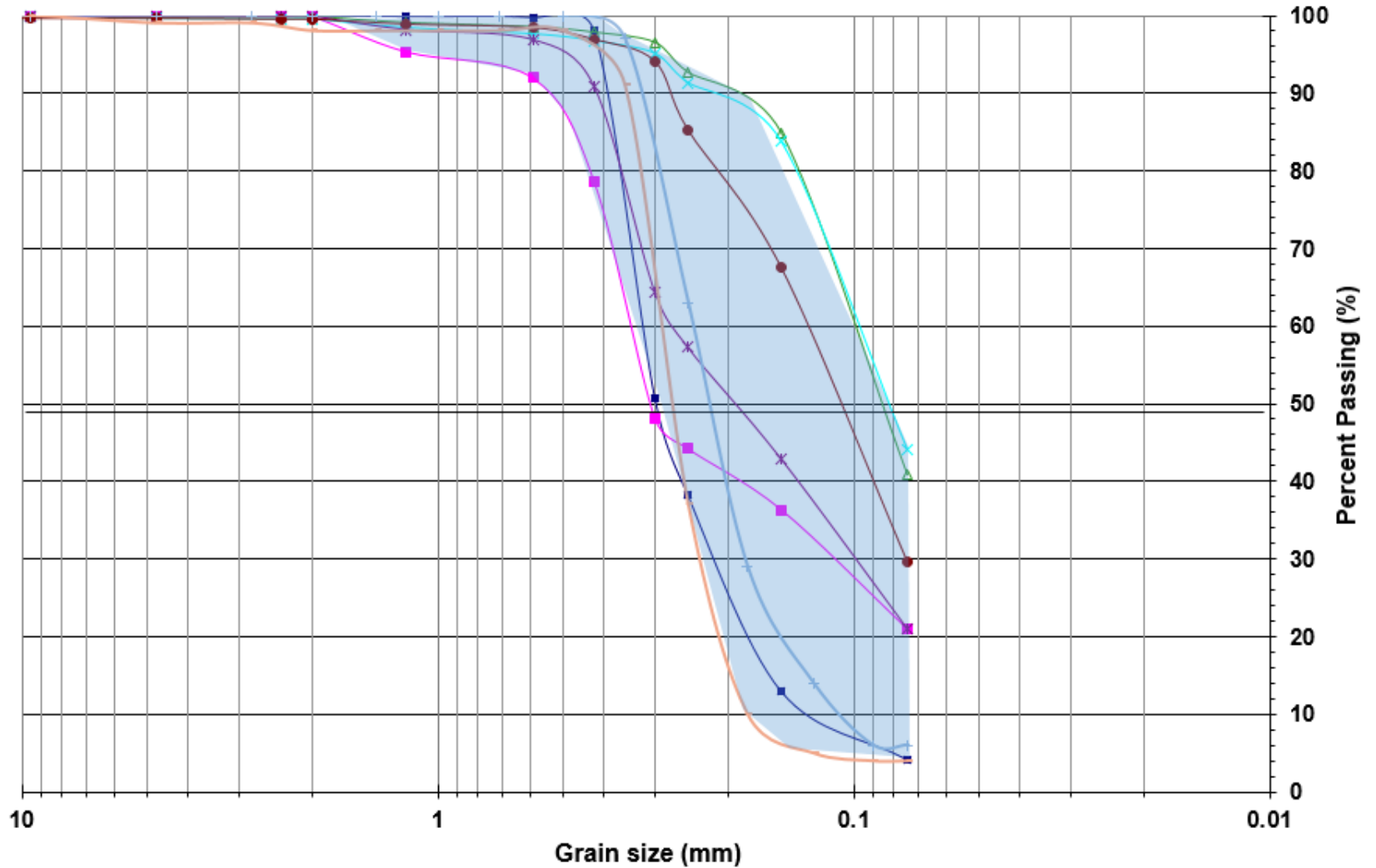


Sediment Sampling & Analysis – Proposed Sediment Sources



Sediment Sampling & Analysis – Results at Project Site

Grain Size Distribution - West Trail Samples



Fieldwork – Rookery Assessment





Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager/Director of Operations

DATE: November 20, 2019

SUBJECT: Pillar Point Harbor West Trail Erosion Protection Project Update;
Presentation

Recommendation/Motion:

Information only. Receive an update presentation from the San Mateo County Harbor District's (District) design/engineering consultant GHD regarding progress on the West Trail Erosion Protection Project.

Policy Implications:

Consistent with the District's ongoing efforts to provide long term stability, functionality and safe public use of the West Trail while protecting natural resources and guaranteeing access for emergency vehicles.

Fiscal Implications/Budget Status:

No new Fiscal Implications.

Background:

Initially, in 2012 GHD was contracted to develop a Draft Condition Survey Report which identified eroded areas along the West Trail. In 2014 GHD was contracted to provide environmental services, prepare construction documents and provide bidding and construction support services for the West Trail Project. While certain elements of this project were completed, the entire project was not finalized, as the District Board, in response to Coastal Commission actions, diverted efforts to an emergency repair of the West Trail at the drainage culvert outlet.



The culvert under the West Trail was eroded to the point of rendering the trail unsafe for public use. The California Coastal Commission provided the District with an Emergency Coastal Development Permit (ECDP) for the Emergency West Trail Repairs in July 2015. This was a temporary repair approval with the understanding that the District would act to develop a plan to design a long-term method to protect the entire shoreline of the West Trail.



The emergency Culvert Repair Project was completed in February 2016 and the entire West Trail was re-opened for public use.



In April 2016, the Board approved a contract with GHD for an amount not-to-exceed \$184,086.00 for Phase I of the Pillar Point Harbor West Trail Erosion Protection Project, which included identifying shoreline protection alternatives. After multiple public meetings and Board discussion, the sculpted concrete soil nail wall alternative was decided upon, with later beach replenishment.

In September 2017 the Board authorized the General Manager to execute a Work Directive with GHD for Phase II, not-to-exceed \$249,722, and in April 2019 the Board approved \$639,930, which pursuant to direction from the California Coastal Commission, includes costs for District consultant GHD to re-evaluate the alternatives to prevent further trail erosion, with an emphasis on Living Shoreline and minimal hard armoring to complete final design, engineering, permitting, bid documents and construction support services for erosion protection of the entire threatened trail shoreline.

The upper concrete swale will also be addressed. The swale channels rainwater to the mouth of the down pipe and has suffered damage in several locations. The original ECDP did not allow work to be done north of the bottom drain elbow. The Phase II design will include re-lining this concrete swale and further repair of the down-pipe top funnel, thus, returning full function. Phase II, which is in progress now, will also address the hillside adjacent to the trail with the planting and stabilization of sustainable native vegetation.



Summary/Recommendation:

Information only. Receive an update presentation from the San Mateo County Harbor District's (District) design/engineering consultant GHD regarding progress on the West Trail Erosion Protection Project.

Attachment:

- [GHD Project Update Presentation](#)



Committee Report

TO: Board of Harbor Commissioners

FROM: Vice President Nancy Reyering & Treasurer Tom Mattusch

Via: Julie van Hoff, Director of Administrative Services

DATE: November 20, 2019

SUBJECT: Appointment of James Pruett as General Manager; Adopt Resolution No. 19-15; Approve Employment Agreement and Authorize Board President to Execute

Recommendation/Motion:

Motion: Appointment of James Pruett as General Manager; adopt Resolution No.19-15; approve employment agreement and authorize Board President to execute.

Policy Implications:

Title 2 of the California Code of Regulation, Section 570.5 requires that compensation be duly approved and adopted by the governing body pursuant to public meeting laws. The General Manager's Salary of \$170,000 was previously approved on the District's salary schedule on July 17, 2019.

AB 1344 amended Government Code §54956(b), to prohibit the legislative body of a local agency (e.g., a governing board) from calling a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to a local agency executive and therefore, must be heard at a regularly scheduled meeting of the governing board.

Fiscal Implications/Budget Status:

The Operating Budget includes funds for the General Manager position. The General Manager will receive an annual salary of \$170,000, monthly automobile allowance of \$350, monthly housing allowance of \$1,250 for the first twelve months of employment, and benefits as outlined in the attached employment agreement (Attachment 2).

Background/Discussion:

Following an extensive recruitment process, the Ad Hoc General Manager Search Committee recommends Captain James (Jim) Pruett for General Manager of the District. Pruett has spent his career as a commissioned officer in the United States

Coast Guard, most recently serving as the Eleventh Coast Guard District's Chief of Staff in Alameda. District 11 includes all of California, Arizona, Nevada, Utah, as well as the offshore waters of Mexico and South America, totaling over 3.3 million square nautical miles.

Pruett, a native of Pacifica, is no stranger to the area. As a child, his family owned a fishing business at Pillar Point Harbor, and he spent his spare time walking the docks there. In 1991, he received his Coast Guard commission at Officer Candidate School in Yorktown, Virginia. Early in his Coast Guard career, he served in the marine safety and prevention field. His tours included Marine Safety Offices in Portland, Oregon, American Samoa, and the Puget Sound.

Later, Pruett served nine years in several legal assignments as a Judge Advocate and law specialist. His assignments included serving as the Staff Judge Advocate at the United States Coast Guard Academy and Chief Counsel to the Superintendent; Deputy Staff Judge Advocate for the Seventh Coast Guard District; and staff legal officer Pacific Area/Maintenance and Logistic Command Pacific from 2003 through 2006 in Alameda, California.

Prior to his assignment as District Chief of Staff, Pruett served as the Commander of Coast Guard Sector Guam, where he directed all Coast Guard missions across the U.S. Territory of Guam and Commonwealth of Northern Mariana Islands. He also directed a search and rescue region that encompassed the Federated States of Micronesia and the Republic of Palau. Pruett also previously served as the Deputy Commander, Sector Miami.

Summary/Recommendation:

Adopt Resolution No.19-15 approving appointment of James Pruett as General Manager, approve employment agreement and authorize Board President to execute agreement.

Attachments:

- [1. Resolution No.19-15](#)
- [2. Employment Agreement for the General Manager of San Mateo County Harbor District](#)

Resolution No.19-15
of the
San Mateo County Harbor District
to

Appoint James Pruett as General Manager of the San Mateo County Harbor District and Authorize President to Execute Employment Agreement

Whereas, pursuant to California Harbors and Navigation Code Section 6071, the Board of Harbor Commissioners may appoint the District's General Manager; and

Whereas, pursuant to District Ordinance 2.10.010, the General Manager provides day-to-day leadership for the District and is the executive officer of the District, with exclusive management and control of the operations and works of the District, all subject to approval of the Board of Harbor Commissioners; and

Whereas, the District's former General Manager retired, effective December 8, 2018; and

Whereas, the Board of Harbor Commissioners formed a General Manager Search Ad Hoc Committee, assisted by the firm CPS HR Consulting, to recruit a new General Manager for the District; and

Whereas, the General Manager Search Ad Hoc Committee, following an extensive search process including interviews with numerous qualified candidates by two panels, forwarded a number of finalist candidates for consideration by the full Board of Harbor Commissioners on October 18, 2019, which candidates were interviewed by the Board of Harbor Commissioners; and

Whereas, James Pruett was selected for final consideration at the conclusion of the interviews.

Now Therefore Be It Resolved,

1. The Board of Harbor Commissioners of the San Mateo County Harbor District hereby appoints James Pruett to serve as the District's General Manager; and
2. The President of the Board of Harbor Commissioners is authorized to execute an Employment Agreement with James Pruett on behalf of the District, in a form approved by Legal Counsel, and to take such other actions as may be necessary to effectuate this resolution.

PASSED and APPROVED this 20th day of November 2019 at the regular meeting of the Board of Harbor Commissioners by a recorded vote as follows:

For:

Against:

Absent:

Abstention:

Attested

BOARD OF HARBOR COMMISSIONERS

Debbie Gehret
Deputy Secretary

Virginia Chang Kiraly
President

**EMPLOYMENT AGREEMENT FOR THE
GENERAL MANAGER OF THE
SAN MATEO COUNTY HARBOR DISTRICT**

THIS AGREEMENT is made and entered into as of, November 20, 2019 by and between the San Mateo County Harbor District (hereinafter referred to as the "District"), a public agency, and James Pruett (hereinafter referred to as "Manager").

RECITALS

WHEREAS, the District desires to employ James Pruett as the General Manager of the District; and

WHEREAS, Mr. Pruett desires to accept the position of General Manager pursuant to the terms and conditions set forth in this Employment Agreement ("Agreement").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the District, through its Board of Harbor Commissioners, hereby appoints James Pruett, to serve as General Manager, and Manager agrees to serve in this capacity beginning on December 11, 2019 under the following terms:

Section 1. Term

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the District to, at any time and in its sole discretion, terminate the services of Manager. There is no express or implied promise made to Manager for any form of continued employment. Notwithstanding any other provision in this Agreement or in the District Personnel Rules and Policies and Procedures, Manager serves on an at-will basis, and may be terminated at any time with or without cause. This Agreement is the sole and exclusive basis for an employment relationship between Manager and the District.

B. This Agreement shall become effective on December 11, 2019, and shall continue for a one year term, unless this Agreement is terminated by either party as hereinafter provided. No later than 60 days prior to the expiration of the Agreement, the District should inform Manager whether it intends to extend the Agreement for an additional two-year term. Such extension is subject to the written consent of Manager. If the District does not provide 60 days' notice of its intent to extend the Agreement, Manager is released from his obligations under Section 7.B. Nothing in this Section 1.B prevents Manager from initiating the discussion as to whether the Agreement shall be extended, and Manager is encouraged to initiate such discussion if he wishes to remain in employment with the District and has not been informed of the District's intent with regard thereto.

Section 2. Duties

- A. Manager shall perform all services, acts, functions and duties necessary or advisable to manage and conduct the affairs of the District as provided in the District's enabling statute (codified at Harbor and Navigation Code Section 6000, et seq., as may be amended from time to time), and as directed or authorized by the District's Board of Harbor Commissioners.
- B. Manager will be responsible and have full authority for the management of the affairs of the District and the supervision and management of its employees, subject to the rules and polices of the District and the direction of the Board of Harbor Commissioners. Manager's responsibilities are further described in Exhibit A.
- C. Manager is exempt from the overtime provisions of the Fair Labor Standards Act, and will determine his own work schedule, provided that he shall devote such time, effort, ability and attention to the business of the District during his employment as may be required to perform faithfully and fully the duties of General Manager. Manager will not be employed by any other person or any other entity while employed as General Manager that would result in conflict of interest or prevent him from performing his duties. Specifically, Manager shall not, either as an employee, employer, consultant, agent, principal, planner, stockholder, corporate officer, director, or any other individual or representative capacity, engage or participate in any business that is in competition with, or in conflict in any manner whatsoever with, the business, projects, or official positions of the District.

Section 3. Compensation and Evaluation

A. Salary. The District agrees to pay Manager an annual base salary of \$170,000, payable in installments at the same time and in the same manner as other management employees of the District are paid, for the faithful and diligent performance of the duties and obligations of General Manager.

B. Performance Evaluation. The Board of Harbor Commissioners will conduct a performance review and evaluate Manager's performance at least once annually at or near the anniversary of employment with the District. As part of such performance evaluation, the Board of Harbor Commissioners will establish annual goals and criteria for the purpose of assessing Manager's performance at the next evaluation. In the first year of Manager's employment, it is the expectation of the parties that the Board of Harbor Commissioners will schedule an additional performance review between three to six months of the commencement of Manager's employment.

Manager's annual salary may be subject to increase based upon such evaluation of Manager's performance of his duties and obligations as the Board of Harbor Commissioners may, in its sole discretion, reasonably determine, predicated upon performance that achieves the goals and criteria that were established by the Board of

Harbor Commissioners. It shall be Manager's responsibility to work with staff to place his reviews and consideration of salary adjustments on a meeting agenda for Board consideration in a timely fashion.

Section 4. Holidays; Vacation; Leave

A. Holidays, Vacation and Leave. Manager will be entitled to paid holidays in accordance with the District's established holiday schedule. Manager will be entitled to bereavement leave, jury duty leave and other leave required by law in accordance with leave policies established from time to time by the Board of Harbor Commissioners for all of its managers, except as provided below.

B. Paid Time Off. Manager will receive annual Paid Time Off (PTO) as governed by District Policy and Procedure 6.5.1 modified as follows:

1. Manager will accrue PTO at the rate of 22 hours of PTO per month.
2. Unused PTO will carry over from year to year up to a total maximum of 540 hours.

C. Extended Illness Bank (EIB). The EIB is an individual account containing accrued hours designated for severe or long term illness. The EIB may be used when Manager experiences a severe or long term illness and one of these circumstances:

1. Is admitted to a hospital; or
2. Otherwise qualifies for State Disability benefits; or
3. Is eligible for Workers Compensation Benefits; or
4. When PTO, if available, has been used consecutively for the equivalent of one week's work and a physician's verification of illness is provided; or
5. Any other time when Manager requires time off for bona fide medical purposes of Manager or his immediate family (spouse or registered domestic partner, child, or parent), and a physician's verification of illness is provided.

EIB is not to be used for regular or routine physician or dental appointments for Manager or his family. EIB accrual rates are equivalent to 3.077 hours biweekly. There is no maximum number of EIB hours that may be accumulated. In no event may Manager cash out EIB hours at any time.

Section 5. Retirement, Health and Welfare, and Other Benefits

Except as otherwise modified by this Section 5, Manager will be entitled to participate in all benefit plans applicable to other management employees of the District including, but not limited to, a deferred compensation plan; health, dental, vision, workers compensation, flexible spending account, life/accidental death and

dismemberment, and short-term disability insurance benefits; and retiree health insurance benefits, subject to the terms and conditions of any such manager benefit plan and any applicable District Personnel Rules and Policies and Procedures. To the extent future changes are made in the coverages provided or Manager contributions required, Manager will be subject to those changes.

A. Pension. Manager shall participate in the CalPERS retirement plan. Manager is defined as a new member under applicable CalPERS statutes and regulations, and is subject to the retirement benefit formula of 2% at age 62 with 3-year final compensation. Manager shall pay the full employee share of the member contribution as determined by CalPERS through payroll withholding. The District shall not pay any portion of the Manager's member contribution.

B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Manager and his eligible family members, at a level of coverage substantially the same as the District provides other management employees. In its discretion, the District reserves the right to seek out and obtain alternative coverage in order to effect cost savings to the District. Manager agrees to pay 15% of the benefit premium cost for health insurance through payroll deductions. The District pays 100% of dental and vision premium obtained through the Special District Risk Management Authority.

C. Group Life Insurance. The District will provide Manager a group term life insurance policy of \$200,000. The District will pay the premium for such coverage.

D. Deferred Compensation. Manager is eligible to participate in the District's Deferred Compensation Plan through CalPERS 457 plan, or such other plan as is presently provided by the District on behalf of its employees. The District will not make any contributions to this plan on behalf of Manager.

E. Social Security. The District does not participate in Social Security. A pension based on earnings not covered by Social Security can affect the amount of your Social Security benefit. Further information is provided at <https://www.ssa.gov/planners/retire/wep.html> under the Windfall Elimination Provision.

Section 6. Other Obligations of the District

A. Office, Supplies, Business Expenses. The District agrees to provide Manager with an office, computer equipment, supplies and such other facilities and services commensurate with Manager's position in order to facilitate the performance of his duties. Manager may request reimbursement for expenses he incurs in the direct performance of the District's business, subject to prior approval by the Board of Harbor Commissioners. Such expenses may be reimbursed regularly as they are incurred, and submitted for reimbursement in compliance with the District Personnel Rules and Policies and Procedures.

B. Professional Development Activities. The District agrees to budget for and pay for the travel, meals, accommodations, registration and other expenses of Manager

for conferences, seminars, and such other occasions as are reasonably necessary for Manager to fulfill his duties, and to further Manager's professional growth and advancement. Such service and conferences include, but may not be limited to, those sponsored by the California Special District Association (CSDA) or California Association of Harbormasters and Port Captains. Such expenses must be appropriately documented and approved in advance by the Board of Harbor Commissioners in compliance with District Personnel Rules and Policies and Procedures.

C. Automobile. Manager will be entitled to an automobile allowance in the amount of Three Hundred Fifty Dollars (\$350) per month for use of his own automobile, for such meetings and other events as the District reasonably requires Manager to attend. Manager shall maintain collision and liability insurance on any automobile he uses for any District business, at Manager's own expense, with coverage no less than \$100,000 per occurrence, \$300,000 aggregate. Manager shall be responsible for any income tax or other taxes resulting from such an allowance. The automobile allowance is in addition to, and not instead of, the District's obligations to reimburse Manager's travel expenses pursuant to Section 6.B.

D. Housing Allowance. The District will provide Manager with a housing allowance of \$1,250 per month for the first twelve months of his employment, commencing with the first day of the calendar month following commencement of employment. Manager is responsible for any income tax or other taxes resulting from such allowance.

Section 7. Termination and Severance Pay

A. Termination With Cause. The District may terminate Manager at any time during the term of this Agreement for Cause. For purposes of this Agreement, "Cause" shall include the following: (a) malfeasance demonstrated by a pattern of failure to perform job duties diligently and professionally; (b) the refusal to implement or follow the District's reasonable personnel rules, policies, procedures or directives; (c) the breach of a material provision of this Agreement; (d) committing an act of fraud, dishonesty, misrepresentation, moral turpitude, or the misappropriation of property belonging to the District; (e) conviction of any criminal act; or (f) the commission of an act that has a direct, substantial, and adverse effect on the District's business interests or reputation. In the event of termination for Cause, Manager is not entitled to any severance payment. Manager will only be entitled to any unpaid compensation due to him as a matter of law.

B. Nothing in this Agreement prevents, limits, or otherwise interferes with Manager's right to resign at any time from his position with the District. Manager shall give 30 days' written notice to the District prior to the effective date of resignation unless a lesser period has been mutually agreed upon by both parties. In the event Manager resigns, he shall not be entitled to any severance payment.

C. If this Agreement is terminated, any cash settlement related to the termination that Manager may receive from the District will be fully reimbursed to the

District if Manager is convicted of a crime involving an abuse of his office or position with the District. This Agreement shall be subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement to the District under circumstances stated therein.

D. Termination Without Cause. In the event Manager is terminated without cause by the District during the term of this Agreement and during such time as Manager is willing and able to perform his duties under this Agreement, the District shall provide Manager written notice of said termination, which effective date shall be at least sixty (60) days from the date of said notice. In the event of such termination, and provided that Manager executes a full and complete waiver and release of any and all claim(s) arising out of his employment and termination thereof, the District will continue to provide Manager health insurance coverage for a period of three (3) months, and will pay Manager a cash payment of three (3) months of compensation based on Manager's then current annual base salary subject to the limitations imposed by Government Code 53260, which provides as follows: "regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18." If this Agreement is extended by mutual agreement for an additional two year term as provided in Section 1.B, the severance payments indicated in this paragraph shall be automatically extended to six (6) months. In addition, and regardless of any entitlement to severance benefits, Manager will receive a cash payment of the unused balance of any PTO and any other payments required by law.

Section 8. Other Terms and Conditions of Employment

The Board of Harbor Commissioners will fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Manager, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

Section 9. Mediation

Prior to the District and/or Manager seeking to arbitrate a dispute pursuant to Section 10, the parties may seek to resolve such a dispute through non-binding means, such as mediation. A party seeking to mediate a dispute must serve a written demand for mediation upon the opposing party. The demand for mediation must provide that it is given pursuant to this Section of the Agreement, should briefly describe the nature of the claim(s) sought to be mediated, and request that the opposing party respond in writing within a reasonable time with the opposing party's willingness to participate in mediation. Such demand for mediation need not include the names of potential mediators, nor the proposed time and place of mediation. If the opposing party declines to participate in mediation, the aggrieved party may immediately seek to arbitrate the dispute pursuant to Section 10 of this Agreement. If the opposing party agrees to

participate in mediation, the dispute will not be arbitrated until completion of the mediation, or reasonable and good faith efforts to schedule a mediation have proven unsuccessful. Any arbitration initiated without complying with this Section shall be subject to dismissal.

Section 10. Arbitration and Equitable Relief

A. Arbitration. The parties agree that any and all controversies, claims, or disputes with anyone arising out of, relating to, or resulting from Manager's employment relationship with the District or the termination of such relationship with the District, including any breach of this Agreement, shall be subject to binding arbitration under the arbitration provisions set forth in California Code of Civil Procedure sections 1280 through 1294.2 (the "act") and pursuant to California law. The Federal Arbitration Act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the Act. Disputes which the parties agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law. Manager further understands that this agreement to arbitrate also applies to any disputes that the District may have with Manager. Nothing herein changes the at-will nature of Manager's employment and that Manager may be terminated without cause. Nothing herein allows Manager to arbitrate or in any way challenge the District's decision to terminate the Agreement without cause.

B. Procedure. The parties agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS") pursuant to its commercial arbitration rules & procedures (the "JAMS rules"), which are available at <http://www.jamsadr.com/rules-employment-arbitration/> and from the Director of Administrative Services. The parties agree that the arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication and motions to dismiss and demurrers, applying the standards set forth under the California Code of Civil Procedure. The parties agree that the arbitrator shall issue a written decision on the merits. The parties also agree that the arbitrator shall have the power to award any remedies available under applicable law. The District shall be responsible for paying all of JAMS' administrative and arbitrators fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties agree that the decree or award rendered by the arbitrator may be entered as a final and binding judgment in any court having jurisdiction thereof. The parties agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure and the California Evidence Code, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. The parties further agree that any arbitration under this Agreement shall be conducted in San Mateo County, California.

C. Remedy. Arbitration shall be the sole, exclusive, and final remedy for any dispute between Manager and the District. Accordingly, except as provided for by the

Federal Arbitration Act and this Agreement, neither party will be permitted to pursue court action regarding claims that are subject to arbitration.

D. Availability of Injunctive Relief. In accordance with rule 1281.8 of the California Code of Civil Procedure, the parties agree that any party may also petition the court for injunctive relief where either party alleges or claims a violation regarding intellectual property, confidential information or noninterference. The parties shall bear their own attorneys' fees and costs.

E. Administrative Relief. The parties understand that this Agreement does not prohibit Manager from pursuing an administrative claim with a local, state or federal administrative body or government agency such as the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the Workers' Compensation Board.

F. Voluntary Nature of Agreement. Manager acknowledges and agrees that he is executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Manager further acknowledges and agrees that he has carefully read this Agreement and that he has asked any questions needed for him to understand the terms, consequences and binding effect of this Agreement. Finally, he agrees that he has been provided an opportunity to seek the advice of an attorney of his choice before signing this Agreement.

Section 11. General Provisions

A. Notices. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses indicated below or as changed by written notice delivered in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of three (3) calendar days after mailing.

To the District: 504 Avenue Alhambra, Suite 200
 P.O. Box 1449
 El Granada, CA 94018

To Manager: James Pruett
 294 Casa Grande Real
 Novato, CA 94949

B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Manager in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied herein and that no other agreement, statement or

promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if in writing signed by both parties.

C. Provisions Severable. If any provision or any portion hereof is held invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

D. Headings. The headings used in connection with this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

E. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

F. Waiver of Breach. The waiver by the District of a breach of any provision of this Agreement by Manager shall not operate or be construed as a waiver of a subsequent breach by Manager.

G. Assignment. This Agreement is not assignable by either the District or Manager.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

By: _____

James Pruett

By: _____



Committee Report

TO: Board of Harbor Commissioners

FROM: Governance & Policy Committee (Commissioners Brennan & Larenas, Public Member Ratts, Staff: Julie van Hoff, Director of Administrative Services)

DATE: November 20, 2019

SUBJECT: Policy 6.2.5 'Sexual & Unlawful Harassment Policy'

Recommendation/Motion:

Recommendation/Motion: Eliminate current Policy 6.2.5 'Harassment, Discrimination and Retaliation Prevention'. Adopt and replace current Policy with Policy 6.2.5 Sexual & Unlawful Harassment Policy.

Policy Implications:

Update current policy to include additional detail for compliance with State Laws, create greater transparency in the process, improve procedures, and add reporting requirements.

Fiscal Implications/Budget Status:

None

Background/Discussion:

On July 17, 2019, staff presented an item to the Harbor Commission Board discussing the process of updating the District's current policies related to Equal Employment Opportunity; Nondiscrimination; Harassment, Discrimination and Retaliation Prevention; and Policy Against Workplace Violence. The California State Laws have changed since the adoption of these policies, and employers are evaluating and updating their policies across the state. We evaluated and utilized information and recommendations from a variety of sources including the Special District Association, Ogletree Deakins, and the California State Legislature.

Staff and the Governance & Policy Committee worked with the District's Labor & Employment Counsel and the Governance & Policy Committee on the attached proposed Policy 6.2.5 'Sexual & Unlawful Harassment Policy'.

On October 7, 2019 Governance & Policy Committee there was a motion and a second to recommend that the revised policy go to the full board for consideration and action as recommended by the Governance & Policy Committee.

Attachment:

1. [Proposed Policy 6.2.5 'Sexual & Unlawful Harassment Policy'](#)
2. [Current Policy 6.2.5 'Harassment, Discrimination and Retaliation Prevention'](#)
3. [CA Legislature Joint Committee on Rules – June 25, 2018](#)

SAN MATEO COUNTY HARBOR DISTRICT

Policy Title: Sexual & Unlawful Harassment Policy	Number:	Date of Approval: MM/DD/YYYY
Other Revisions: N/A	Prepared By: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.	

The San Mateo Harbor District plays an important role in the community, interacts with customers and members of the public, and is held accountable for the behaviors and actions of the employees, contractors, and Commissioners. A fair and non-discriminatory sexual harassment policy is an important part of that accountability and is required under California law. <https://oag.ca.gov/workplace-sexual-harassment> and <https://www.dfeh.ca.gov/legal-records-and-reports/laws-and-regulations/>

Therefore, the District is committed to providing a workplace free from any form of unlawful harassment, discrimination, intimidation, or workplace bullying. This policy sets expectations of behaviors aligned with the District's values and supports positive working relationships and a professional work environment. This policy also defines various forms of harassment and unacceptable behavior and outlines the parties responsible for reporting, investigating, and responding to any reports of harassment.

This policy will be provided to all new employees and Commissioners and will be available via the Commissioner's policy book, employee handbook, and the District's website.

A. Coverage

This policy applies to all District employees, all members of the District Board of Harbor Commissioners, and anyone doing business with the District in a work-related situation. This includes applicants, customers, constituents, contingent workers, candidates, suppliers, and vendors.

B. Definitions

1. "Employee" means any individual under the direction and control of the District under any appointment or contract of hire or apprenticeship, express or implied, oral or written.
2. "The District" (or the "District" or "we") means the San Mateo County Harbor District, including its subsidiaries and various lines of business.
3. "You" means employees and others covered by this policy.
4. "Applicant" means anyone who files a written application or, where the District does not provide an application form, any individual who otherwise indicates a specific desire to the District to be considered for employment.
5. "Candidate" means anyone who has filed any type of notice of intent to run for office as a harbor commissioner.
6. "Investigator" means a person with skills, experience, and proficiencies in examining, reviewing, and scrutinizing harassment and discrimination claims such

that the investigator is competent to complete the work and provide a written report to the District.

6. "Panel" means a designated group of 3 individuals who will carry out an investigation of a complaint and report findings as directed.

C. Requirements

The District strictly prohibits and does not tolerate unlawful harassment of any kind.

It is the District's policy that everyone should work in an environment free from unlawful harassment. Approval of, participation in, or acceptance of conduct that creates even the potential for unlawful harassment will be considered a violation of this policy. This policy prohibits conduct that violates the letter or spirit of anti-harassment laws or conduct not aligned to the District's values, policies, or behavioral expectations. This includes conduct in any work-related setting, whether on the District premises, during working time, or while participating in activities outside the workplace such as District-related social events and travel.

Conduct prohibited by this policy includes, but is not limited to, unwelcome conduct, whether verbal, physical, or visual, that is based upon race, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical, including HIV and AIDs), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of family and medical leave, or any other status protected by federal, state, or local law.

The District will not tolerate such harassing conduct that affects the terms and conditions of employment or tangible job benefits, interferes with work performance, or creates a hostile, intimidating, or offensive work environment. Further, it is a violation of this policy to engage in workplace bullying. Prohibited harassment may take different forms:

Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and conduct of a sexual nature when anyone is engaged in harbor district activities and the following occurs:

1. Submission to, or tolerance of, such behavior is made a condition of employment; or
2. Submission to, tolerance of, or rejection of such behavior is used as the basis for a decision; or
3. Such behavior interferes with an employee's ability to perform his or her work, or creates an intimidating and hostile work environment.

Sexual harassment may be a single incident or a series of harassing acts. Inappropriate conduct that is sexually harassing in nature can involve individuals of the same or opposite sex, a supervisor (or manager) and subordinate, co-workers, an employee, or a non-employee (third party) such as a customer, constituent, contractor, vendor, or supplier.

Sexual harassment may result from a range of subtle to not-so-subtle conduct, depending on the circumstances and can cause emotional distress, anxiety, and other mental harm. It can result from verbal, visual, or physical conduct. Examples of sexual harassment and similar inappropriate conduct prohibited by this policy include, but are not limited to:

1. Unwelcome sexual advances, demands, pressures, or requests for sexual acts or favors.
2. Making or threatening reprisals, whether explicitly or implicitly, after a negative response to sexual advances.
3. Repeated, unwanted sexual flirtations, advances, or propositions.
4. Unwelcome physical contact such as patting, hugging, grabbing, pinching, or brushing against another's body.
5. Offensive visual conduct, including leering, making sexual gestures, or the display of sexually suggestive objects, pictures, artwork, cartoons, or posters.
6. Offensively suggestive or sexually explicit communications in any form, including but not limited to letters, notes, invitations, email, text messages, social media platforms, blogs, instant messaging, or voicemail.
7. Sexually-oriented verbal teasing or jokes, inquiries into one's sexual experiences, or discussions of one's sexual activities.
8. Graphic or degrading comments about an individual's appearance or sexual activity.
9. Sexually explicit or offensive images in emails or other forms of electronic messaging.

The legal definition of sexual harassment is broad and, in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, chilling, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

Other forms of harassment

The following is a non-exhaustive list of additional behaviors based upon protected categories listed in Section "C" above that will be considered harassment and are prohibited by this policy:

1. Derogatory and defamatory comments, epithets, slurs, or jokes.

2. Posting or sharing derogatory materials such as posters, cartoons, drawings, or gestures.
3. Aggressive or unwelcome physical conduct such as assault, blocking normal movement, restraint, touching, or other physical interference.
4. Bullying behavior, including but not limited to threats, intimidation, coercion, ridicule, insults, or belittling, including coordinating those activities with non-employees.
5. Spreading false, vicious, or malicious rumors.
6. Other behavior that creates a workplace where an employee reasonably feels threatened, humiliated, intimidated or bullied in the workplace.
7. The sabotage or undermining of a person's work performance.

D. Reporting, Investigation, and Findings

1. Reporting

You must report any violations of this policy that you experience or witness. If you believe in good faith that you have been subjected to, witnessed, or otherwise learned of harassment (or any other conduct prohibited by this policy) by anyone, including supervisors, managers, Commissioners, co-workers, suppliers, vendors, customers, constituents, candidates, or other third parties, you must immediately report the incident.

Verbal or written reports may be made to your supervisor, the Director of Administrative Services, or the General Manager. You are not required to report directly to your supervisor, or to any person engaging in the unwelcome behavior or any other person who is the subject of the report. You can also report a violation to the Department of Fair Employment & Housing ("DFEH") <https://www.dfeh.ca.gov/> or the U.S. Equal Employment Commission ("EEOC") <https://www.eeoc.gov/index.cfm>.

Supervisors or managers who receive reports or observe harassing conduct must immediately report it to the Director of Administrative Services or the General Manager. Supervisors and managers should maintain employee privacy to co-workers and not engage in gossip or discussion that could impact any investigation.

2. Investigation

When the District receives a complaint of harassment (or other conduct prohibited by this policy), it will conduct a fair, timely, and thorough investigation of the allegation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. Complainants, victims, and anyone alleged to have committed harassment will be entitled to periodic updates on the progress of the investigation on at least a monthly basis. Investigations will not be delayed or postponed.

Where practicable, the investigation will be conducted by the Director of Administrative Services or his/her designee. The investigation must be thorough and include examining all relevant documents, interviewing witnesses, analyzing witness statements, performing any necessary research, inspecting physical property, and performing any other aspects of the investigation that can be required to create findings and recommendations.

If a complaint involves the Director of Administrative Services, the General Manager, or a Commissioner, the District Board of Harbor Commissioners will designate an independent investigator and panel, and take action up to and including hiring outside counsels, subject matter experts, or other professionals to investigate, examine documents, interview all witnesses, analyze witness statements, perform research, inspect physical property, and perform any other aspects of the investigation that can be required to create findings and report to Commissioners.¹

4. Guidelines

The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The District will reasonably document and track the progress of all investigations so that the process is transparent and creates public confidence in the District.

5. Findings

When the investigation is completed, the person filing the complaint and the person alleged to have committed the conduct will, to the extent appropriate, be informed, both verbally and in writing, of the results of that investigation. If it is determined that inappropriate conduct has occurred, appropriate remedial measures will be taken, up to and including termination or a request for resignation. In addition to remedial measures, if the complainant believes that there continues to be a disagreement or difference that requires intervention, formal mediation may be offered to the complainant with costs paid by the District.

If after findings are made available to either the complainant or the perpetrator, if either party is dissatisfied with the findings, either party may write a formal rebuttal to the District memorializing their disagreement with the findings, the basis for the disagreement including a discussion of evidence, documents, statements that support their position.

E. Non-retaliation

One of the most important protections for employees is being free from retaliation after making a complaint, providing witness information, or participating in any way in an investigation. The District strictly prohibits retaliation in any way against anyone who has lodged a harassment complaint, has expressed a concern about harassment, including

¹ See Appendix A for Panel process and additional information.

sexual harassment, or has participated in a harassment investigation. Further, the initiation of a complaint, in good faith, shall not under any circumstances be grounds for discipline. It is a violation of the District's policy for an individual to be disciplined or otherwise disadvantaged or harmed because of their activities related to a sexual harassment complaint or investigation.

Persons engaging in any form of retaliation or retribution against any witness or complainant will be subject to disciplinary action, up to and including termination, censure, or a request for resignation.

F. Reporting and Tracking

Transparency of process and accountability are important aspects of this entire policy. Quarterly and annual reports of complaints, investigations, findings, and any rebuttals shall be provided to the Harbor Commissioners in a report². Personal informational privacy shall be protected in the report, however, the report shall be complete, comprehensive, and well-reasoned.

² See Appendix B.

APPENDIX A

The Panel Process is intended to create greater accountability with investigations that may involve persons with influence, authority, or the potential to exercise control over sexual harassment complaints, investigations, and findings. The following list of duties and procedures are incorporated into the sexual harassment policy:

Duties of Director of Administrative Services: The director, or their designee, shall maintain a list of ten panelists who are pre-approved to provide services associated with investigations. The panelist shall be chosen by the director or their designee based upon areas of expertise, professional experience, balance of skills among the panel, fees and costs, and knowledge of the District.

Duties of a Panel: The panel shall review and coordinate with the investigator on aspects of the investigation and shall provide guidance to the District, including the Commissioners, on recommendations and decision making related to the complaint, investigation, findings, rebuttal, and related matters. The panel shall maintain confidentiality and privacy in order to safeguard the sexual harassment complaint process but shall not use confidentiality and privacy to shield offenders.

APPENDIX B

Quarterly Reporting Format

The quarterly reporting as required herein is as follows:

Number of Complaints this Quarter	Details of claims, complaints, and conduct	Present Number of Complaints under Investigation	Present Number of Panels Appointed	Expected date of Findings
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Annual Reporting Format

The annual reporting as required herein is as follows:

Total Number of Complaints for YEAR	Details of claims, complaints, and conduct	Number of Complaints Investigated this YEAR	Details on panels appointed this year	Details and Information on findings this year	Any recommended policy changes or actions to be taken as a result of complaints, investigations or findings
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The information provided on a quarterly and annual basis should be extensive, detailed, and unrestrained. The purpose of the reporting is to create accountability and awareness at the District for the benefit of employees and the public trust.

San Mateo County Harbor District

Policy	Number: 6.2.5	Approved Date(s): 01/18/2006 Substantial Revision: August 3, 2016	Effective Date:
Title: Harassment, Discrimination and Retaliation Prevention	Prepared By: G. Lazof	Approved By: Resolution 07-06; Resolution 24-16	Page: Page 1 of 9
Purpose: The District has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace. The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth and establish a procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation.			

I. POLICY

The District has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of state or federal law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions,

Harassment or discrimination against an applicant, intern, volunteer, Harbor Commissioner, officer, contractor, or employee by a supervisor, management employee, Harbor Commissioner, officer, co-worker, member of the public, or contractor on the basis of race, religion, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or any other protected classification as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction up to and including termination (in the case of an employee or contractor) will be instituted for prohibited conduct as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination (in the case of an employee or contractor).

The District encourages all covered individuals to report—as soon as possible—any conduct that they believe violates this Policy. Any retaliation against an employee because he or she filed or supported a complaint or because he or she participated in the complaint resolution process is

Policy	Number: 6.2.5	Approved Date(s): 01/18/2006 Substantial Revision: August 3, 2016	Effective Date:
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prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

The District will implement the complaint procedures as set forth below.

II. DEFINITIONS

- A. **Protected Classification:** This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, marital status, age (over 40), medical condition, genetic information, physical or mental disability, military or veteran status, or any other protected classification protected by law. (Gov. Code § 12940(a).)
- B. **Policy Coverage:** This Policy prohibits the District, Harbor Commissioners, officers, employees (regardless of rank or title), interns, volunteers or contractors from harassing or discriminating against applicants, officers, Harbor Commissioners, employees, interns, volunteers, or contractors because of: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.
- C. **Protected Activity:** This Policy prohibits discrimination, harassment or retaliation because of an individual's protected activity. Protected activity includes: making a request for or receiving an accommodation for a disability; making a request for or receiving accommodation for religious beliefs or practices; making or supporting a complaint under this Policy; opposing violations of this Policy; or participating in an investigation pursuant to this Policy.
- D. **Discrimination:** This Policy prohibits treating individuals differently because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code, § 12926(o).)
- E. **Harassment may include, but is not limited to, the following types of behavior that is taken because of a covered individual's actual or perceived protected classification.**

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Note that harassment is not limited to conduct that the District's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as Harbor Commissioners, persons providing services under contracts, or even members of the public:

1. Speech, such as epithets, derogatory comments or slurs, and proposition on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
 2. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 3. Visual acts, such as derogatory posters, cartoons, e-mails, pictures or drawings related to a protected classification.
 4. Sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. (Gov. Code, §12940(j); 2 Cal.Code Regs. § 11091(b)(1).)
- F. Guidelines for Identifying Harassment: Harassment includes any conduct that would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:
1. It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
 2. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.

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3. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
 4. Conduct can constitute harassment even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over attention, endearing nicknames, hugs).
- G. Retaliation: Retaliation occurs when adverse conduct is taken against a covered individual because of the individual’s protected activity as defined in this Policy.
- H. “Adverse conduct” may include but is not limited to: disciplinary action; counseling; taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complaint; shunning and avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

III. COMPLAINT PROCEDURE

- A. A covered individual who believes he or she has been subjected to harassment, discrimination, or retaliation may make a verbal or written complaint with any of the following, with no need to follow the chain of command:
1. Immediate supervisor;
 2. Any supervisory or management employee within or outside of the department;
 3. Director of Administrative Services;
 4. Other Manager (e.g., Director of Operations);
 5. General Manager;
 6. District’s General Counsel (in a complaint by or against the General Manager or a Harbor Commissioner);
 7. District’s Board of Harbor Commissioners (in a complaint against the General Manager or a Harbor Commissioner)

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- B. Any supervisory or management employee who receives a complaint concerning alleged violations of this Policy (known collectively herein as a “harassment complaint”) should immediately notify the Director of Administrative Services or the General Manager, or with respect to a complaint involving a Harbor Commissioner or General Manager, the District’s General Counsel.
- C. Upon receiving notification of a harassment complaint, the Director of Administrative Services or General Manager (or designee) shall complete and/or delegate the following steps. If the Director of Administrative Services is an accused, the General Manager will complete and/or delegate the following steps; if the General Manager or a Commissioner is an accused, the District Counsel (or designee) shall complete and/or delegate the following steps:
1. Provide the complainant a timely response indicating that the complaint has been received and that a fair, timely and thorough investigation will be conducted.
 2. Timely authorize and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint. The investigation will afford all parties with appropriate due process and include interviews with: a) the complainant; b) the accused; and c) other persons who have relevant knowledge concerning the allegations in the complaint.
 3. Review the factual information gathered through the investigation to reach a reasonable conclusion as to whether the alleged conduct constitutes harassment, discrimination, or retaliation under the policy given consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 4. Timely report a summary of the determination as to whether this Policy has been violated to appropriate persons, including the complainant and the accused. If discipline or sanctions are imposed, the level of discipline or sanction will not be communicated to the complainant.
 5. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.

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6. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.
7. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.

D. The District takes a proactive approach to potential violations of this Policy and will conduct an investigation if its Commissioners, officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

Option to Report to Outside Administrative Agencies: An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are generally listed on the Internet, in the government section of the telephone book, or employees can check the posters that are located in District offices for office locations and telephone numbers.

IV. CONFIDENTIALITY

Every effort will be made to ensure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. The District will not disclose a completed investigation report except as it deems necessary to support a disciplinary action or sanctions, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

V. RESPONSIBILITIES:

- A. Each non-manager or non-supervisor, Harbor Commissioner, and contractor, is responsible for:
 1. Treating all individuals in the workplace or on worksites with respect and consideration.
 2. Modeling behavior that conforms to this Policy.

Policy	Number: 6.2.5	Approved Date(s): 01/18/2006 Substantial Revision: August 3, 2016	Effective Date:
Title: Harassment, Discrimination and Retaliation Prevention	Prepared By: G. Lazof	Approved By: Resolution 07-06; Resolution 24-16	Page: Page 7 of 9

3. Participating in periodic training.
 4. Cooperating with the District's investigations by responding fully and truthfully to all questions posed during the investigation.
 5. Taking no actions to influence any potential witness while the investigation is ongoing.
 6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor or department head, or to the Director of Administrative Services or another manager, or to the General Manager, or to the General Counsel (for complaints against the General Manager or a Harbor Commissioner).
- B. In addition to the responsibilities listed above, each manager and supervisor is responsible for:
1. Informing employees of this Policy.
 2. Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
 3. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
 4. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
 5. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
 6. Assisting, advising, or consulting with employees and the Director of Administrative Services or General Manager regarding this Policy.
 7. Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
 8. Implementing appropriate disciplinary and remedial actions.

Policy	Number: 6.2.5	Approved Date(s): 01/18/2006 Substantial Revision: August 3, 2016	Effective Date:
Title: Harassment, Discrimination and Retaliation Prevention	Prepared By: G. Lazof	Approved By: Resolution 07-06; Resolution 24-16	Page: Page 8 of 9

9. Reporting potential violations of this Policy of which he or she becomes aware to the Director of Administrative Services, another manager, the General Manager or the General Counsel (for complaints against the General Manager or a Harbor Commissioner), regardless of whether a complaint has been submitted.
10. Participating in periodic training and scheduling employees for training.

VI. DISSEMINATION OF POLICY

All employees and Harbor Commissioners shall receive a copy of this Policy when they are hired or elected or appointed into office. The Policy may be updated from time to time and redistributed.

Policy	Number: 6.2.5	Approved Date(s): 01/18/2006 Substantial Revision: August 3, 2016	Effective Date:
Title: Harassment, Discrimination and Retaliation Prevention	Prepared By: G. Lazof	Approved By: Resolution 07-06; Resolution 24-16	Page: Page 9 of 9

EMPLOYEE and HARBOR COMMISSIONER ACKNOWLEDGEMENT

I hereby acknowledge that I have received a copy of the San Mateo County Harbor District's Harassment, Discrimination and Retaliation Prevention Policy, that I am responsible for reading and understanding this Policy, and that I will comply with its requirements.

Print Name: _____

Signature: _____

Date: _____

In the case of an employee, the signed form will be placed in the employee's personnel file. In the case of a Harbor Commissioner, the signed form will be kept in the Commissioner's personal District file.

California Legislature

Joint Committee on Rules

ROOM 3016 — STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CALIFORNIA 94249-0001
TELEPHONE: (916) 319-2804

AGENDA

June 25, 2018

11:00 a.m. – 12:30 p.m.

State Capitol ~ Room 4202

Subject: Recommendations of the Subcommittee on Sexual Harassment Prevention and Response

I. Introductory Remarks

Assemblymember Ken Cooley, Chair
Senator Anthony Cannella, Vice Chair

II. Presentation and Receipt of Subcommittee Recommendations and Climate Survey Results

Assemblymember Laura Friedman, Chair, Subcommittee on Sexual Harassment Prevention and Response

Senator Holly Mitchell, Vice Chair, Subcommittee on Sexual Harassment Prevention and Response

III. Establishing the Workplace Conduct Unit

Diane Boyer-Vine, Legislative Counsel of California

IV. Public Comment

V. Acceptance of Recommendations and Approval of Policy



California Legislature

Joint Committee on Rules

ROOM 3016 — STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CALIFORNIA 94249-0001
TELEPHONE: (916) 319-2804

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- II. Draft Policy from the Subcommittee on Sexual Harassment Prevention and Response on Appropriate Workplace Conduct: Creating a Culture of Respect, Civility and Diversity
- III. TalentKeepers Workplace Climate Survey Results



CHAIR
LAURA FRIEDMAN
ASSEMBLYMEMBERS
BRIAN DAHLE
ELOISE GÓMEZ REYES
MARIE WALDRON

California Legislature



JOINT COMMITTEE ON RULES SUBCOMMITTEE ON SEXUAL HARASSMENT PREVENTION AND RESPONSE

VICE CHAIR
HOLLY MITCHELL
SENATORS
PATRICIA C. BATES
CONNIE M. LEYVA
JOHN M. W. MOORLACH

Recommendations to the Joint Committee on Rules

June 21, 2018

The Subcommittee on Sexual Harassment Prevention and Response (Subcommittee) convened its first hearing on January 24, 2018, to hear experts testify as to the importance of culture change to reducing sexual harassment in the Legislature. In essence, reducing sexual harassment in the Legislature requires more than simply a new policy. It requires a policy as well as the practices that support culture change.

The Subcommittee therefore has focused its recommendations to the Joint Committee on Rules on transforming the Legislature's workplace culture to promote respect, civility and diversity. Culture transformation is the first recommendation and the other recommendations support that transformation.

The Subcommittee makes the following recommendations in light of five informational hearings and a workplace climate survey. The hearings, available on the Legislature's websites, addressed the following topics:

- Best Practices for Changing Culture on Sexual Harassment
- Defining Sexual Harassment and Identifying Challenges
- Best Practices for Reporting Sexual Harassment and Protecting Victims
- Investigation and Response to Sexual Harassment Allegations
- Preventing Sexual Harassment through Training and Culture Change

After completing the informational hearings, the Legislature arranged for a workplace climate survey. The Subcommittee heard the climate survey results and considered draft recommendations from the Subcommittee's Chair and Vice-Chair on June 18. These recommendations reflect the Subcommittee's deliberations.

I. Transform the Legislature's Workplace Culture to Promote Respect, Civility and Diversity and Every Person's Responsibility to Build that Culture.

- A. Adopt "Policy on Appropriate Workplace Conduct" (Policy).** The accompanying Policy reflects an aspirational policy for moving the Legislature in the direction of a workplace that all members and staff wish to work. Actions will be judged on whether the action promotes respect, civility and diversity. "Inappropriate conduct toward others" is unacceptable and all reports of such conduct will be addressed, in order to improve the workplace culture. An independent workplace conduct unit will address those incidents of conduct affecting a protected class, while each house's human resources unit will address other reports. The Policy applies to members, employees, interns, volunteers, and applicants.

- B. Create engaging training program.** Implement a comprehensive training program that engages members and staff to understand how they can contribute to making the Capitol a workplace of respect, civility and diversity. Training programs may include in-person training and on-line programs, as well as implicit bias and bystander training. The training will give all staff and volunteers the tools they need to recognize and prevent inappropriate conduct toward others when they see it.
- C. Promote respect and civility in the legislative workplace.** Following the leadership of the Assembly Speaker and the Senate President Pro Tem, members and supervisors will promote respect and civility in the Capitol community. The legislative workplace extends beyond the Capitol, to the Legislative Office Building, district offices, and work-related social events. With training, members and supervisors will gain the understanding to recognize developing problems in their office and seek assistance with addressing the problem and promoting the values inherent to the Policy.
- D. Protect employees who suffer or report inappropriate conduct based on a protected class, harassment or discrimination.** While the law already bars retaliation against legislative employees for reporting sexual harassment, the Legislature should take action to protect and support victims, such as continuing the contract with WEAVE for confidential, voluntary pre-reporting counseling. Employees in offices where the member is the subject of an investigation will receive support from the relevant rules committee.
- E. Bolster anti-retaliation policies.** Retaliation for reporting sexual harassment is not only illegal, but an unacceptable contradiction to the Policy. The Legislature will not allow retaliation by its members or staff. Reports to the independent unit established under the Policy will be a “protected disclosure” under the Legislature’s anti-retaliation statute. Retaliation may include more than an adverse tangible employment action or material changes to the terms and conditions of employment. It could include harassment (*e.g.*, ostracism) or bad mouthing the complainant outside of the workplace. The training program will build understanding of the breadth of the retaliation that the law and the Policy prohibit. Members, supervisors and co-workers will be subject to corrective action for retaliation.

II. Address Problems Early.

- A. Establish legislative workplace conduct unit in the Legislative Counsel Bureau.** In order to create a bicameral, independent advisory, reporting and investigation operation that makes incident reporting accessible and straightforward, the Legislative Counsel will oversee the Legislature’s independent legislative workplace conduct unit (independent unit). The Legislative Counsel will have the responsibility, authority and budget to provide for reporting, assessment, investigation, and independent reports about inappropriate conduct toward others based on protected class. Investigators will have specialized workplace investigation training on sexual harassment and discrimination.

- B. Encourage reporting of all incidents that diminish respect and civility.** Witnesses testified that, generally, reports are submitted for only about 25% of incidents of sexual harassment. When it occurs, some may not recall how to report such incidents. Therefore, make **reporting as straightforward and accessible as possible**, including consideration of on-line apps for reporting. The independent unit will accept both named and anonymous reports, and respond to the extent it has sufficient information to proceed with an assessment and/or an investigation. The independent unit also will accept reports of inappropriate conduct by lobbyists and other third parties. The person who allegedly conducted themselves inappropriately shall be the “subject” of an assessment, investigation and determination, as necessary.
- C. Refer reports of conduct that may be criminal to law enforcement.** The assessment, investigation and panel process may proceed, depending on the circumstances.
- D. Require supervisors to report** complaints of inappropriate conduct immediately so the complaint can be resolved. Supervisors include members, chiefs of staff, and chief committee consultants. The independent unit will offer advice to supervisors to help them determine when reporting is appropriate.
- E. Offer complainants alternatives for addressing problems.** As part of intake, an internal investigator will explore with the person who submits the report whether there is any interest in addressing the alleged problem independent of the formal process, which continues in any case. This may include mediation between the person who allegedly suffered and the employer (not the subject of the investigation). These alternatives will be at the sole discretion of the person who suffered the alleged inappropriate conduct. Alternatives will not interfere with the assessment, investigation, and determination. The Legislature has a duty to investigate and prevent sexual harassment, which exists without regard to the preferences of those who are involved in an incident.
- F. Inform complainant as to the process.** The independent unit will provide appropriate updates to the complainant as to the status of the case.
- G. Expand the range of responses to inappropriate conduct toward others.** In order to address problems early, the responses to reports will include actions to address the problem, such as additional training. The responses may not necessarily be disciplinary, and may start with informal counseling, to help everyone understand how to help build a workplace culture of respect, civility and diversity.
- H. When appropriate, engage the entire office team.** When a report suggests that a legislative office is encountering actions that challenge the Policy, the office may be offered training formulated specifically for its needs.

III. Investigate Reports Promptly.

- A. Assess reports immediately, by subject-matter expert.** The independent unit would review the report and contact the one who the report suggests was impacted by the inappropriate conduct immediately. The intake assessment will allow for determination as to the need for immediate response.

B. Classify reports for further action. In order to determine the appropriate process for the report to be addressed, the subject-matter intake expert would examine whether the report relates to a protected class and whether an independent panel review is required. The categories and the responses would include:

- “A” (within Policy jurisdiction, requiring full investigation and panel briefing)
- “B” (within Policy jurisdiction but initial investigation is sufficient with recommendation targeted to be delivered to the employer within 30 days)
- “C” (not within Policy jurisdiction, referred back to house of origin’s human resources division)

C. Investigators collect evidence, including documents and interviews. While independent unit investigators would lead most investigations, external investigators may be authorized for investigations related to members, or to legislative staff who outrank the unit’s investigators. The staff members who outrank the unit include senior staff of leadership offices, rules committees and the Legislative Counsel Bureau. Productive investigations will require cooperation from all who are connected to the incident of inappropriate conduct. The subject of the investigation will have an opportunity for an interview with the investigator, who will collect evidence that addresses all perspectives on an incident. The evidence, from either internal or external investigators, will be submitted to the independent panel without the investigator making any factual findings.

IV. Create an Independent Panel of Subject-Matter Experts to Determine Facts and Recommend the House’s Response to Reports.

A. Appoint a 5-member panel of subject-matter experts. These experts will have decades of experience in addressing employment-related issues, particularly related to employment discrimination (including sexual harassment). This panel of experts will be responsible for making factual findings (substantiated or unsubstantiated) and recommendations to the relevant house as to how the house should respond. Request that the Chief Justice appoint a majority of panelists, while each house will appoint one panelist. The panelists will be under contract with the Legislative Counsel.

B. Provide each panel with the evidence developed by investigators. A panel of three of the five panel experts, in rotation, will have a period of time to review the evidence. This panel will then have an opportunity to discuss the evidence and develop preliminary findings and recommendations.

C. Provide briefing between supervisor/employer and review panel. After the panel has reviewed and discussed the evidence, an appropriate supervising person or persons would be invited to a briefing to discuss the panel’s preliminary findings. The appropriate person to participate as the supervising person or persons will depend on the circumstances. It may be the Secretary of the Senate or the Assembly Chief Administrative Officer. Or it may be a member or a chief of staff, or the Senate President Pro Tempore or the Assembly Speaker in the case where a legislator is the subject of the investigation.

D. Direct panel to make factual findings and recommend the response to substantiated facts. After the briefing, the panel will deliberate and determine the substantiated facts, make findings as to whether the conduct violated the Policy, and recommend how the relevant house should respond to those findings. Findings and recommendations would require unanimous support from the three panelists.

V. Retain House Authority to Determine Appropriate Response to Reports.

- A. Allow each house to determine how it wishes to respond to panel recommendations.** Each house will determine who responds to the panel's reports and makes the final decisions as to how to respond pursuant to the Policy to an incident of inappropriate conduct toward others based on protected class. The chair of the relevant rules committee will receive a copy of each report.
- B. The house's decision-maker documents decisions.** The house's decision-maker may adopt the panel's recommendations or may take other action to respond to the panel's report of inappropriate conduct pursuant to the Policy. If the house's decision-maker differs with the panel's recommendations, the reasons for the differences will be documented and maintained by the Secretary of the Senate or the Chief Administrative Officer of the Assembly.
- C. The house decision-maker will prepare a decision to present to the subject.** The decision will summarize the findings and describe what corrective action will be taken to address the substantiated facts.

VI. Maintain Policy on Disclosure Related to Sexual Harassment.

- A. Protect confidentiality of certain reports, investigations and determinations of inappropriate conduct toward others.** This entire process is an internal management process. Reports of inappropriate conduct, including sexual harassment, are more likely to be made if the reporter can be offered some level of confidentiality. As a public body, however, the Legislature cannot guarantee confidentiality, but it can make an effort to maintain the confidentiality where the law allows. This reflects a balance between the Legislature's duties to provide transparency and protect the privacy of its employees. Documents related to complaints of inappropriate conduct toward others will remain confidential.
- B. Disclose certain documents as to members and senior legislative staff.** The house will release certain documents in cases where the panel determines that facts related to sexual harassment claims have been substantiated against a member or a high-level legislative employee, and the house has imposed discipline or has determined that the allegations are well-founded. The documents to be released will be the claim filed and the letter provided to the subject of the investigation, which will include a summary of the panel's factual findings. All documents will redact the personally identifying information of the accuser and witnesses, for privacy reasons.

CHAIR
LAURA FRIEDMAN
ASSEMBLYMEMBERS
BRIAN DAHLE
ELOISE GÓMEZ REYES
MARIE WALDRON

California Legislature



JOINT COMMITTEE ON RULES SUBCOMMITTEE ON SEXUAL HARASSMENT PREVENTION AND RESPONSE

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California Legislature DRAFT Policy on Appropriate Workplace Conduct: Creating a Culture of Respect, Civility and Diversity

The Legislature is responsible for debating and enacting California law and policy, on behalf of all Californians. Members and staff engage the public, advocates, and each other in vigorous discussion of what is best for California. The Legislature’s success depends on creating a culture of respect, civility and diversity.

In creating that culture, the Legislature faces unique challenges. Members are elected by the people, not employed by the Legislature. Legislative staff includes some just entering the workforce and others with decades of experience. Legislation often addresses sensitive issues. The legislative calendar includes times of long hours, fast action, and stress, as well as times of more deliberate analysis and review. These challenges have led to incidents that counter efforts to promote respect, civility and diversity.

The California Legislature therefore adopts this Policy on Appropriate Workplace Conduct (Policy) to build a workplace culture based upon the values of respect, civility and diversity. All Members and legislative staff are required to conduct themselves in accordance with the Policy as well as all applicable local, state, and federal laws. They are encouraged to judge their own actions through the prism of these core values for a professional workplace. The Legislature seeks to build a workplace where all community members are respected, interaction and engagement is civil, and diversity is valued. Building that workplace will require time and the Legislature will need to invest the resources necessary to support that effort.

The purpose of this Policy is to preserve the dignity, respect, and professionalism of the legislative workplace as well as to protect the right of employees to be free from unlawful discrimination, sexual harassment and all other forms of unlawful harassment, retaliation and inappropriate conduct toward others based on a protected status. Retaliation, as well as discrimination, sexual harassment, other forms of harassment, and inappropriate conduct toward others based on a protected status, is contrary to the values of the Legislature. For the protections of individuals under this Policy, the term “employee” shall include unpaid interns, fellows, volunteers, applicants, and persons providing services pursuant to a contract. In addition, Members are both protected by this policy and required to abide by its terms.

As a preventive measure, the Legislature will not tolerate inappropriate conduct toward others, even if the conduct does not meet the legal definition of unlawful discrimination, harassment, or retaliation. The Legislative Counsel’s Legislative Workplace Conduct Unit (“Workplace Conduct Unit”) accepts all reports of inappropriate conduct, but will focus its investigations on conduct related to a protected class. Each house’s human resources unit will address other reports of inappropriate conduct. All legislative employees are responsible for conducting themselves in accordance with this Policy and its associated procedures. Violation of the Policy and/or procedures will lead to prompt and appropriate remedial action. Appropriate action includes a broad range of actions to promote a culture of respect, civility, and diversity, and may not always be disciplinary in nature.

Inappropriate conduct toward others is any physical, verbal, or visual conduct based on or because of sex, gender, gender identity or expression, race, color, ancestry, religious creed, national origin, age (40 and over), physical or mental disability, sexual orientation, marital status, military or veteran status, medical condition, genetic information or any other characteristic protected by state or federal employment law when such conduct reasonably would be considered inappropriate for the workplace. This Policy prohibits inappropriate conduct by coworkers and third parties, as well as supervisors and managers, with whom the employee comes into contact.

This provision is intended to prevent inappropriate conduct based on a protected status before it becomes unlawful discrimination or harassment. As such, the conduct need not meet legally actionable state and/or federal standards of severe or pervasive conduct to violate this Policy. An isolated derogatory comment, joke, racial slur, sexual innuendo, etc., may constitute conduct that violates this Policy and provide grounds for response. Similarly, the conduct need not be unwelcome to the party against whom it is directed; if the conduct reasonably would be considered inappropriate for the workplace, it may violate this Policy. Depending on the facts, the relevant house's response may include counseling, training or other corrective action up to and including termination of employment of staff or suspension or expulsion of a Member.

Conduct which violates this Policy may take many forms and includes, but is not limited to, slurs, jokes, statements, gestures, pictures, or cartoons that relate to a protected class, such as those that have a racial, sexual, disability-related, religious, age or national origin connotation, or derogatory comments about religious differences and practices. Specific examples of conduct which may be found to violate this Policy are:

- 1) Offering employment benefits in exchange for sexual favors.
- 2) Making or threatening reprisals after a negative response to sexual advances.
- 3) Verbal sexual advances or propositions; or pressuring or repeatedly asking an employee for dates.
- 4) Visual conduct: leering, sexual gestures, or a display of offensive images, objects, pictures, cartoons, calendars or posters that has a derogatory connotation to any protected class.
- 5) Verbal conduct: degrading or derogatory comments, epithets, slurs or jokes that have a derogatory connotation to any protected class; frequently questioning someone about his or her personal life or speculating about his or her sex life.
- 6) Written conduct: suggestive or obscene letters, notes, electronic mail messages, or invitations, or similar written conduct that has a derogatory connotation to any protected class.
- 7) Physical conduct: unwelcome touching, assault, or impeding or blocking normal movement.
- 8) Other unwelcome conduct based upon any protected class which is unbecoming of Members and staff and that creates an intimidating, hostile or offensive work environment.

The procedures associated with this Policy support the Legislature's movement toward a workplace culture of respect, civility and diversity. Each complaint will receive a timely response and will be investigated timely and impartially by qualified personnel. The Workplace Conduct Unit will receive, document, and investigate complaints, and track them for reasonable progress.

Employees do not have to complain to their direct supervisor, but may go directly to the Workplace Conduct Unit. Employees may also go to Human Resources or any supervisor in their house. Supervisors (including Members) must report any complaints of misconduct to the Workplace Conduct Unit immediately so that the complaint can be resolved. All employees are strongly encouraged to report any violation of this Policy to the Workplace Conduct Unit. All legislative employees and Members are responsible to fully and honestly cooperate in any investigation by either house's Human Resources Department or the Workplace Conduct Unit.

No one may retaliate against an employee for complaining about a violation of this Policy or for participating in an investigation.

The procedures for investigation by the Workplace Conduct Unit provide details for independent assessment and investigation of complaints, and an independent panel to make findings related to alleged violations of the Policy. The Workplace Conduct Unit and the independent panel will conduct a fair, timely, and thorough investigation that reaches reasonable conclusions based on the evidence collected. The Workplace Conduct Unit and the independent panel will close investigations in a timely manner. Each house will have responsibility for considering the panel's findings and recommendations, and determining whether the Policy has been violated and the appropriate response that will promote a workplace culture of respect, civility and diversity.

Confidentiality of the process encourages reporting, and the Legislature will work to maintain the confidentiality of the investigation and determination process to the extent possible and consistent with this Policy. The Legislature, however, is a public body. In balancing the interests in confidentiality and transparency, the Legislature will maintain the confidentiality of these personnel matters, except as follows: Certain documents will be released in cases where the panel determines that facts related to sexual harassment claims have been substantiated against a member or a high-level legislative employee, and the house has imposed discipline or has determined that the allegations are well-founded based on the independent panel's findings. The documents to be released will be the claim filed and the letter provided to the subject of the investigation, which will include a summary of the panel's factual findings. All documents will redact the personally identifying information of the accuser and witnesses, for privacy reasons.

Employees also may direct complaints to the California Department of Fair Employment and Housing (DFEH) at 1-800-884-1684 or <https://www.dfeh.ca.gov>.

California Legislature



Climate Survey Results

April 2018 Survey Administration



TALENTKEEPERS®



COMMIT | ENGAGE | EXCEL

Agenda

Purpose, Process & Outcomes

Employee Engagement and
Building a Fair & Inclusive Climate

Climate Survey Results

Recommendations

TALENTKEEPERS®

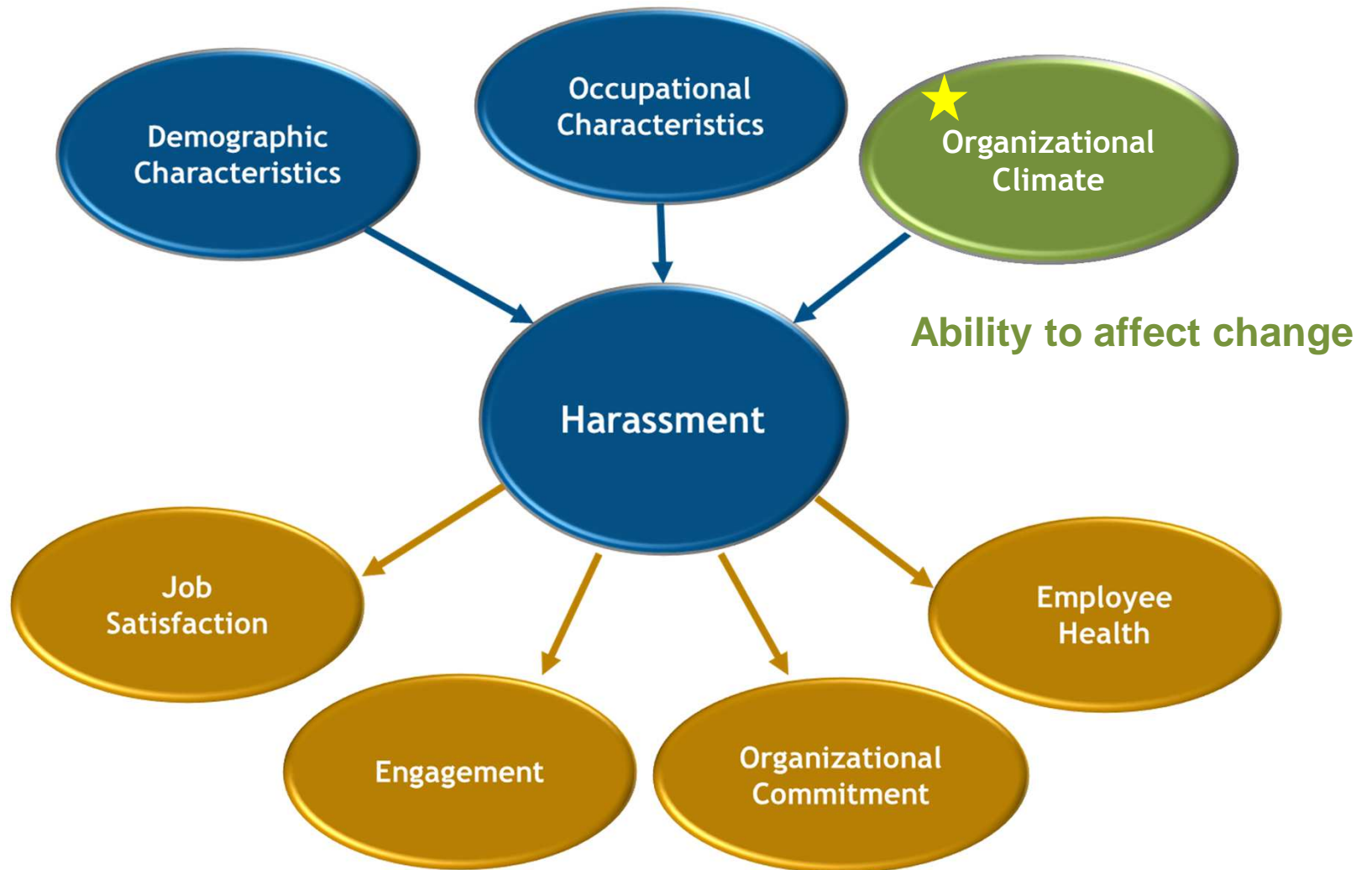


COMMIT | ENGAGE | EXCEL

Purpose

- Create a fair, accepting & open culture; free from discrimination and harassment
- Measure organizational climate, identify strengths and opportunities
- Recommend actions to improve climate and reduce instances of reported harassment

Building a Fair & Inclusive Climate



Employee Engagement

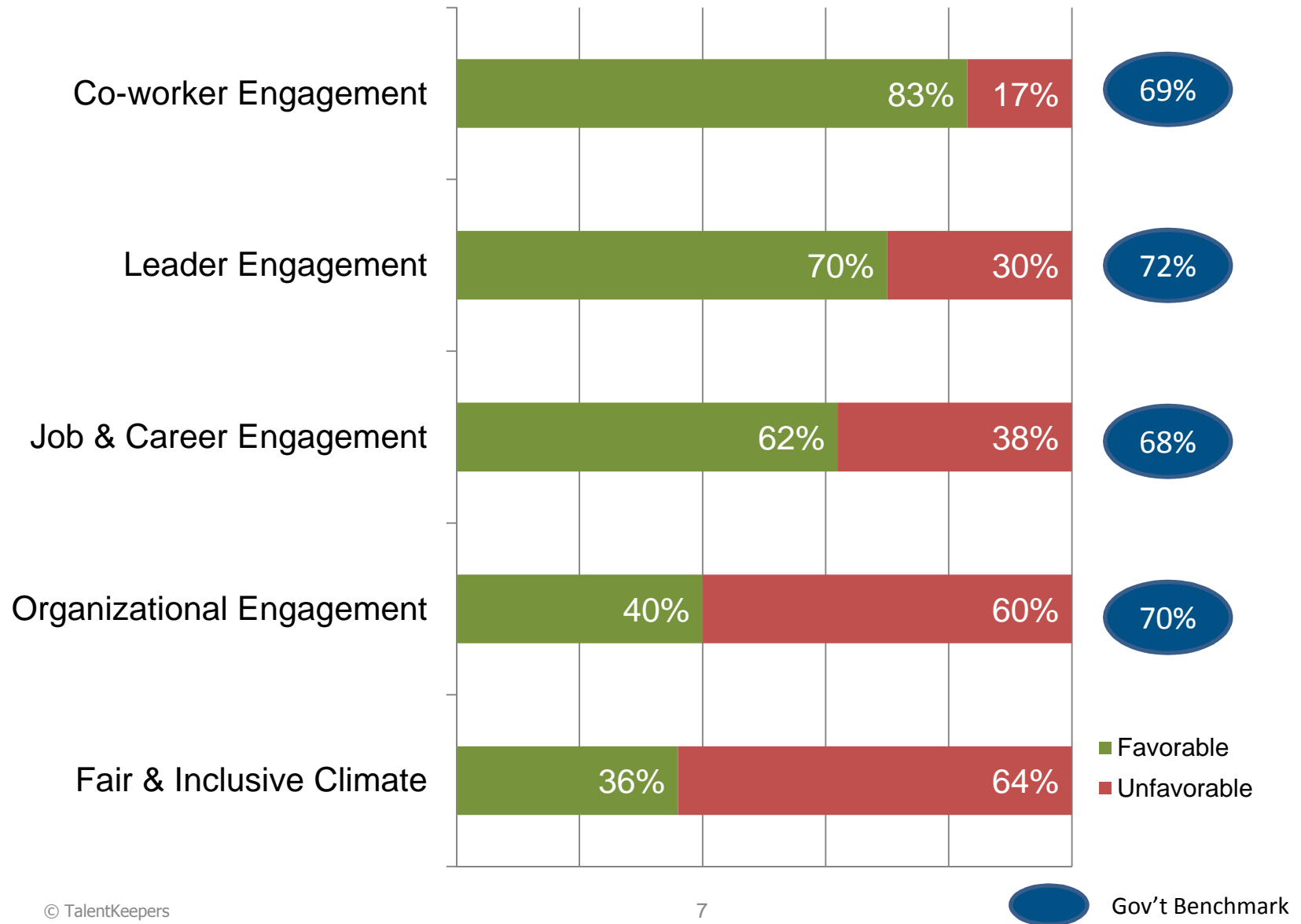


Climate Survey Participation

- **Survey Administration: 4/18/2018 - 5/11/2018**
- **Eligible Participants: 2,661**
 - Includes: All benefits eligible employees; legislators; volunteers

Group	Completion Percentage	Count
Legislature Overall	46%	1,220
Assembly	49%	751
Senate	42%	469

Engagement Dashboard





Organizational Strengths

1. Employees are satisfied with their work duties and are committed to their work in public service
 - A. 70% are satisfied at work
 - B. Job duties are cited as the number one reason employees are staying
 - C. 78% of employees indicate they intend to remain employed with the Legislature for 3 years or more
 - D. Employees are satisfied with their health plans and believe the Legislature is committed to delivering high quality service to the public



Organizational Strengths

2. Results indicate strong relationships with co-workers and leaders
 - A. 83% of employees are engaged by their co-workers
 - B. 70% of employees are engaged by their direct/immediate supervisor
 - C. Over 80% of employees believe their supervisor is trustworthy, caring, and listens to ideas



Organizational Opportunities

1. Employees do not feel secure in their jobs and do not feel respected by the Legislature
 - A. Only 55% of employees believe individuals in positions of power support a harassment-free work environment
 - B. 38% do not believe victims or reporters of harassment are free from retaliation
 - C. 33% do not believe appropriate action will be taken after a complaint is made

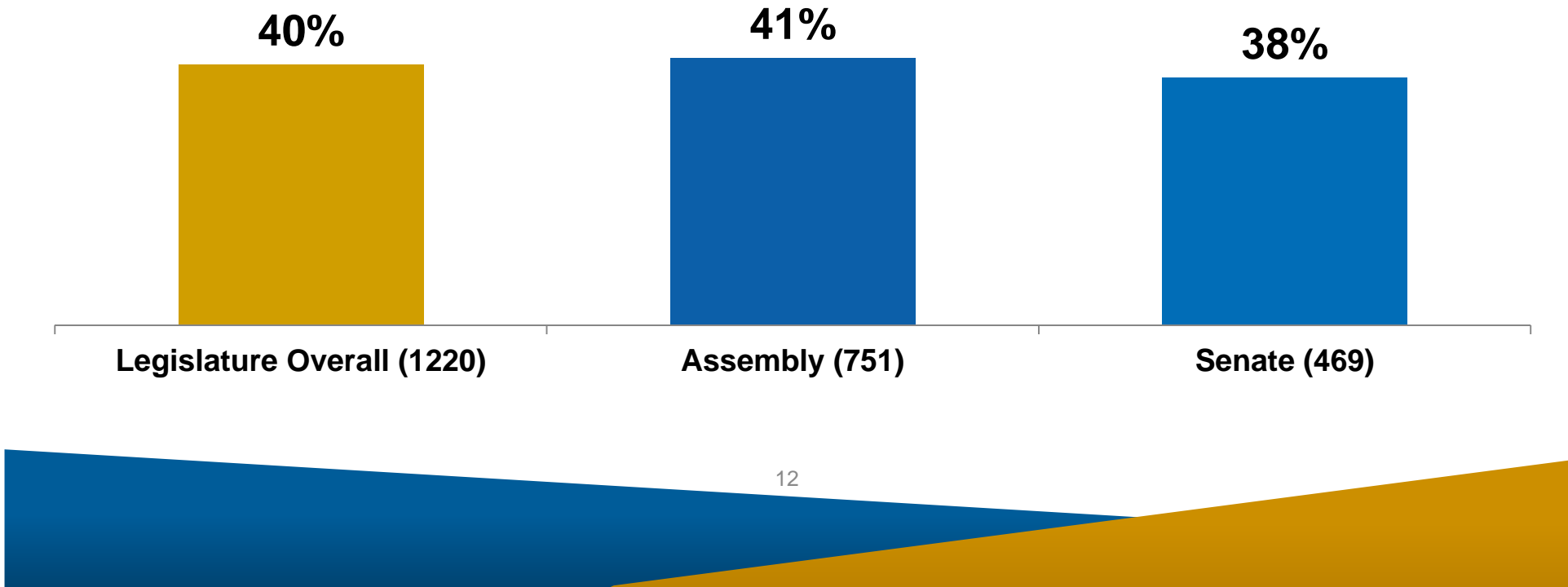


Organizational Opportunities

2. Of those who indicate they have experienced or witnessed harassment:
 - A. Females reported higher incidents of harassment than men
 - B. The percentage of Supervisors who report harassment is higher than that of non-supervisors, however, the number of non-supervisors reporting harassment is greater than that of supervisors
 - C. The most prevalent indication of harassment resulted from lobbyists/members of the public
 - D. Capitol employees reported higher incidents of harassment than those located in the districts

Organization Engagement Index

Percent Engaged



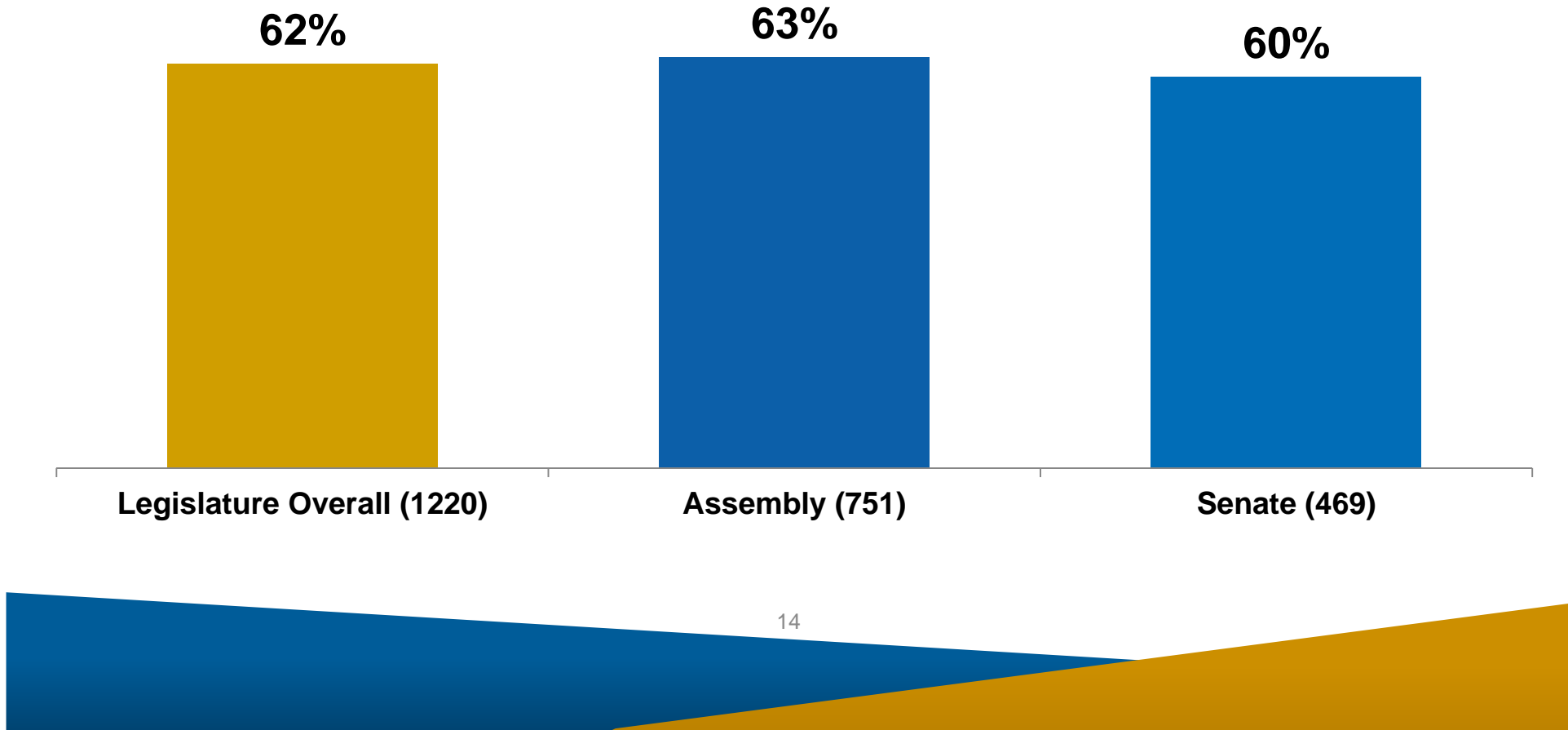
Organization Engagement Items	Legislature Overall	Assembly	Senate
OEI	40%	41%	38%
The Legislature consistently demonstrates that delivering high quality service to the public is a high priority.	69%	68%	69%
Managers are accessible and approachable when necessary.	64%	66%	62%
The Legislature shows respect for employees.	49%	50%	47%
I feel that I can question a policy or practice, without fear of being penalized.	45%	47%	42%
My employer's process and procedures to evaluate and promote employees is fair.	44%	46%	41%

Engagement Index Calculation:

$$\frac{\text{\# of employees averaging 3.65 + across all questions}}{\text{\# of total respondents}}$$

Job & Career Engagement Index

Percent Engaged



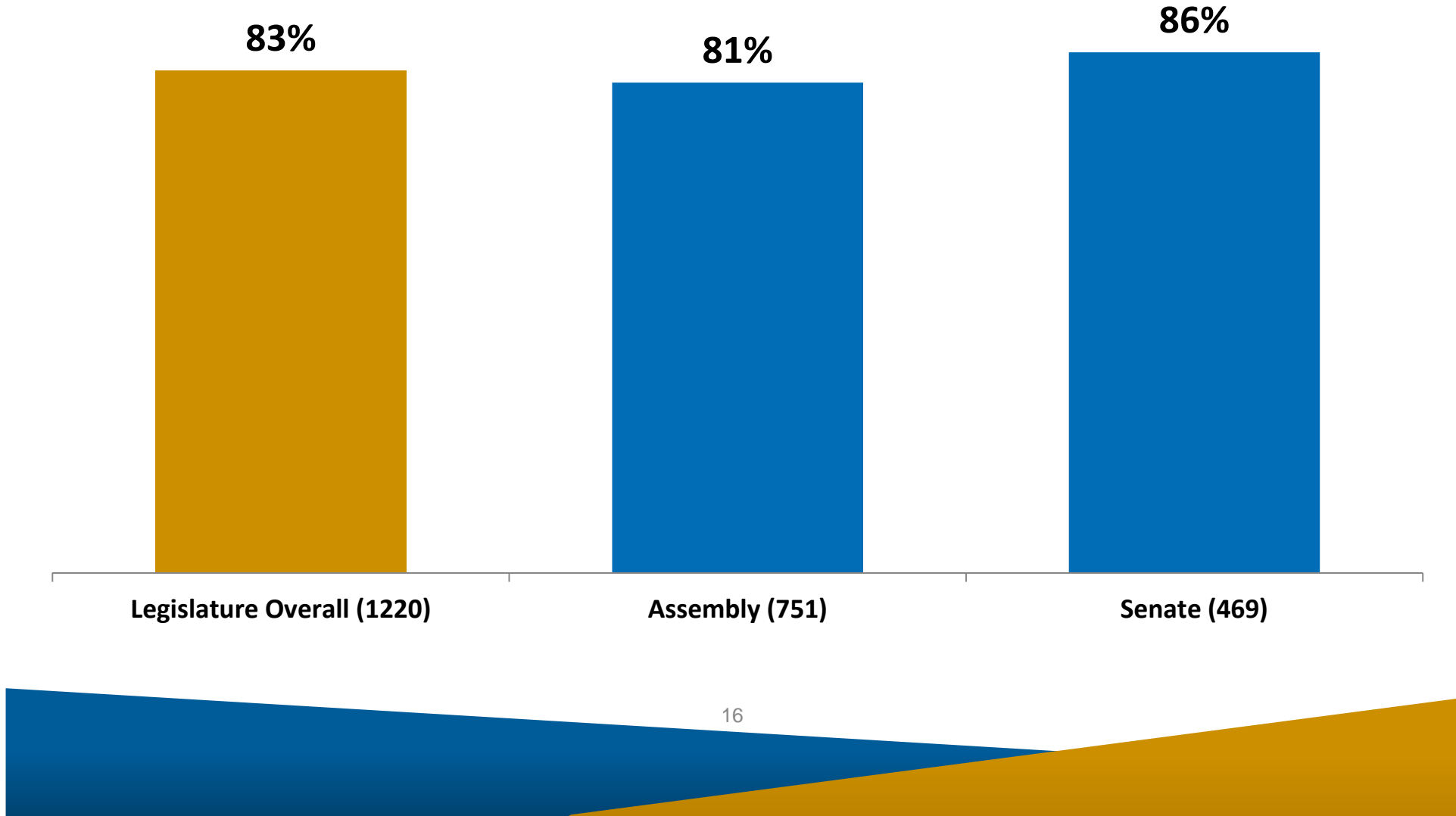
Job & Career Engagement Items	Legislature Overall	Assembly	Senate
JEI	62%	63%	60%
This is a career that I love and believe in.	82%	80%	86%
My decision-making authority is sufficient for me to perform my job effectively.	78%	76%	82%
I have the information and resources needed to effectively get my work done.	77%	78%	76%
I receive the training needed to perform my job effectively.	67%	68%	65%
At work, I have sufficient opportunities for professional growth.	54%	56%	51%

Engagement Index Calculation:

$$\frac{\text{\# of employees averaging 3.65 + across all questions}}{\text{\# of total respondents}}$$

Co-Worker Engagement Index

Percent Engaged



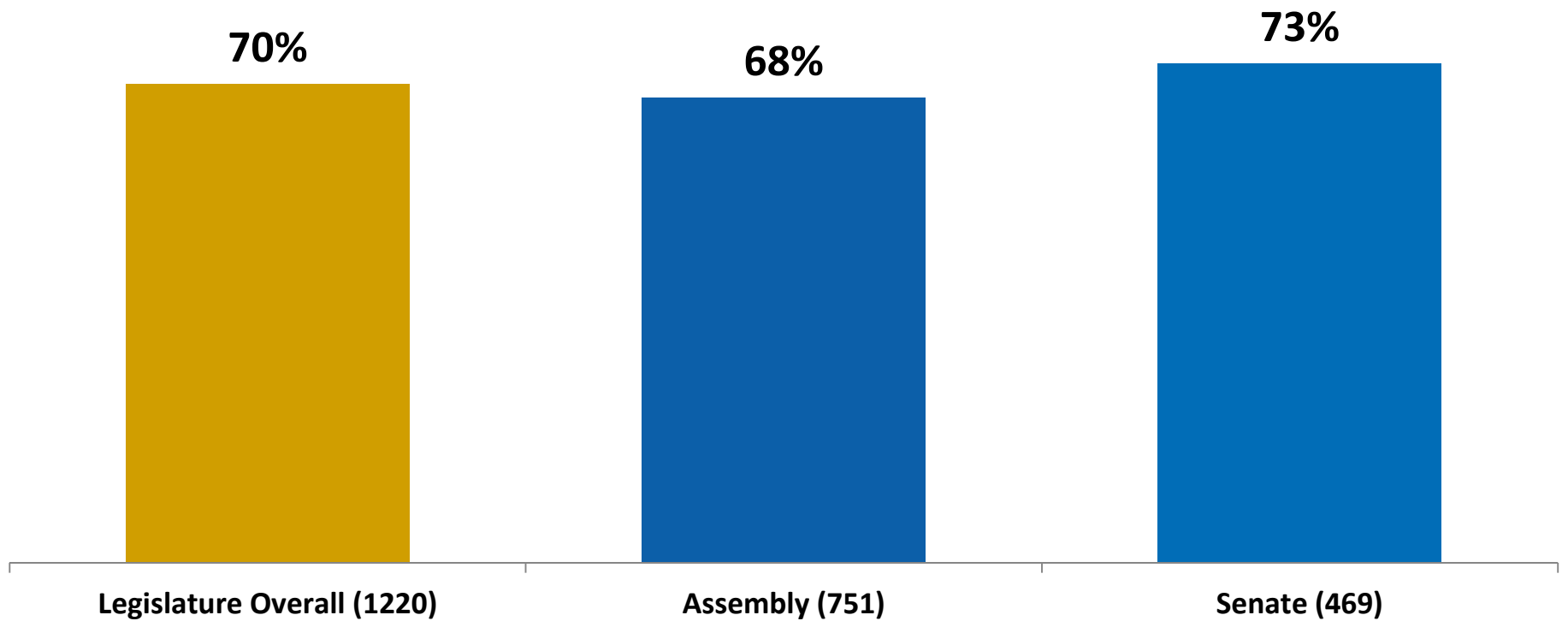
Co-Worker Engagement Items	Legislature Overall	Assembly	Senate
CEI	83%	81%	86%
Most of my co-workers communicate effectively with me.	84%	82%	88%
I receive the support I need to be able to succeed from most of my co-workers.	84%	82%	88%
Most of my co-workers demonstrate interest and concern for my personal well being.	84%	82%	86%

Engagement Index Calculation:

$$\frac{\text{\# of employees averaging 3.65 + across all questions}}{\text{\# of total respondents}}$$

Leader Engagement Index

Percent Engaged

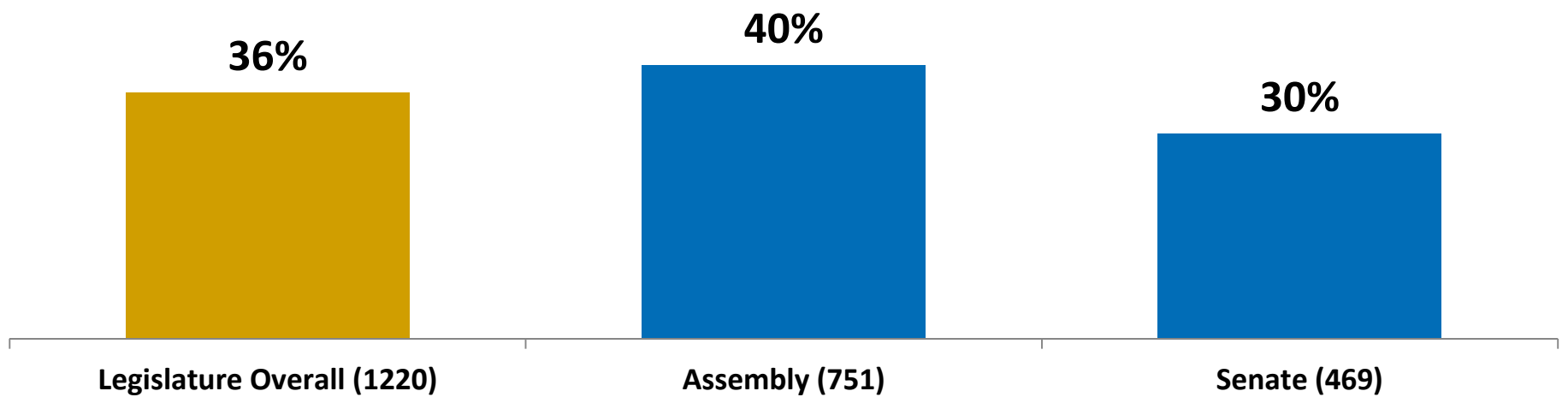


18


Leader Engagement Items	Legislature Overall	Assembly	Senate
LEI	70%	68%	73%
My direct/immediate supervisor is someone I can trust.	82%	79%	87%
My direct/immediate supervisor listens when I have suggestions on how to do things better.	81%	80%	83%
My direct/immediate supervisor is concerned for me as an individual.	81%	80%	84%
My direct/immediate supervisor holds me and my co-workers appropriately accountable for performance.	77%	76%	78%
The feedback my direct/immediate supervisor provides me helps me improve my performance.	76%	74%	79%
My direct/immediate supervisor helps me feel empowered and creates an environment that encourages decision making.	75%	73%	78%
My direct/immediate supervisor clearly communicates expectations and the reasons behind changing priorities.	73%	72%	76%
My direct/immediate supervisor is aware of generational differences in the workplace and responds appropriately.	72%	71%	72%

Fair & Inclusive Climate Index

Percent Engaged



20

Fair & Inclusive Climate Items 	Legislature Overall	Assembly	Senate
FIC	36%	40%	30%
I understand my employer's sexual harassment prevention policy.	86%	88%	82%
I am aware of my employer's complaint process.	72%	76%	66%
Individuals in positions of power support a harassment-free work environment.	55%	58%	51%
The Legislature has policies and practices that provide equal opportunity to staff regardless of membership in protected classes.	54%	56%	50%
I believe that if I report harassment (witnessed or experienced) by following the complaint process, appropriate action will be taken.	40%	42%	35%
I am confident that if I report harassment (witnessed or experienced) there is no risk for retaliation for myself or the victim.	39%	40%	36%
I have heard others make jokes at work about protected classes.	34%	36%	31%

Note: Lower agreement on this question is preferred. Percent agreement shown are percent agreement

Employee Net Promoter Score (ENPS)

- Measures employees' willingness to recommend the organization as a good place to work
- Scale: (negative) -100 to (positive) +100

ENPS Calculation = (Promoters – Detractors) ÷ Total # of Respondents

Detractors

1-6 Rating

- Negative referral & feedback
- Reduce motivation & pride
- Diminished loyalty

Passives

7-8 Rating

- Rarely recommend
- Passively satisfied
- Loyalty unstable & short-term

Promoters

9-10 Rating

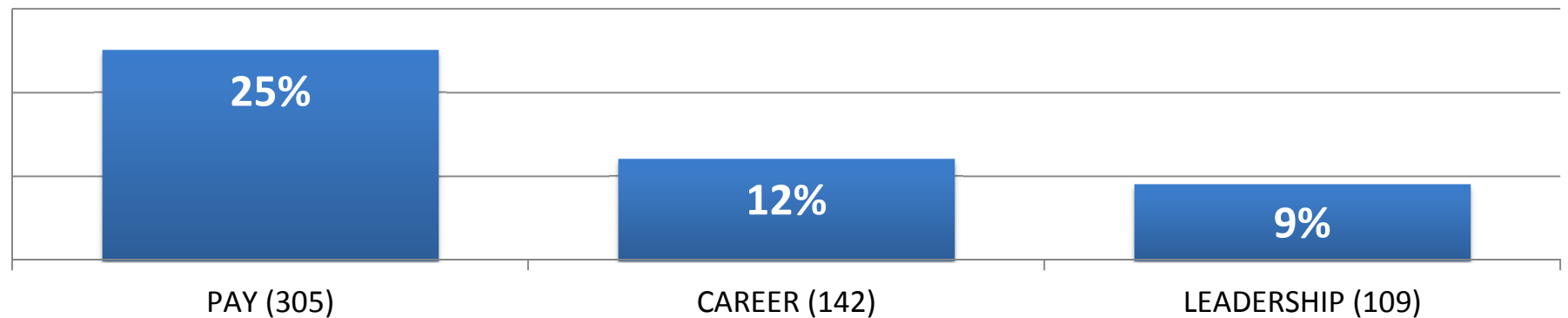
- Proud to recommend
- Enthusiastic
- Loyal

Willingness to Recommend as a GOOD Place to Work

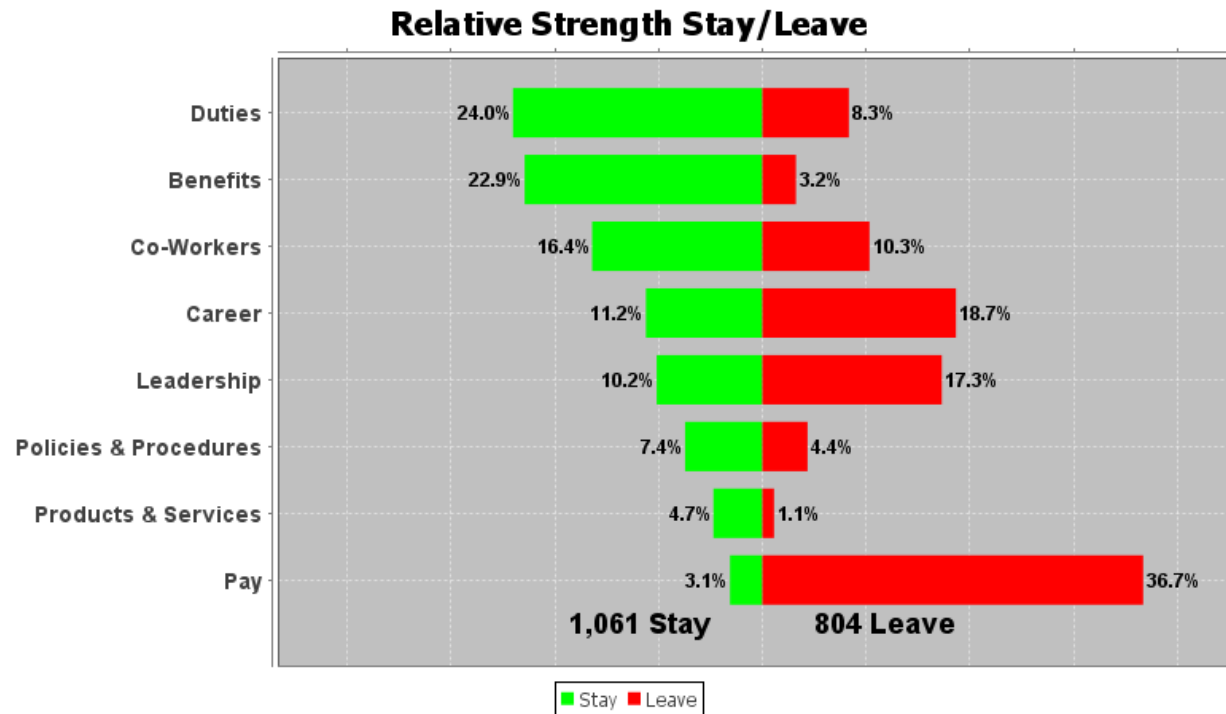
Goal: 30 or higher; Moderate: 1-30; Focus: 0 or below

<i>How likely are you to recommend the organization as a good place to work?</i>	ENPS (-100 to 100)	Detractor Count	Passive Count	Promoter Count
Legislature Overall	-3	356	540	324
Assembly	-3	215	340	196
Senate	-3	141	200	128

What would increase your willingness to recommend as a good place work?



Free Responses Themes



STAY		LEAVE	
Themes	Themes	Themes	Themes
Duties	Doing work that matters	Pay	Stagnant or low wages, inequity
Benefits	Good healthcare and pension	Career	Lack of growth and advancement
Co-workers	Great teamwork	Leadership	Hostile/unfair work environment

Recommendations Summary

Change Management for Policies, Procedures & Processes

1. Policies and procedures assessment
 - A. *Review*: Assess policies and procedures and their relevance to the current climate. Are they out of sync with the culture? Are they clearly defined?
 - B. *Reset*: Educate employees on appropriate avenues to log complaints; be transparent about what happens once the complaint is made.
 - C. *Evaluate*: Frequently evaluate the usage, understanding, and execution of the policy/procedure/process.
 - D. *Enforce*: Balance confidentiality of process with transparency in investigation and follow-up with person reporting.

Recommendations Summary

Leverage Co-Worker Engagement

2. Educate all stakeholders on how to create a fair & inclusive climate
 - A. *Understand*: More employees reported witnessing harassment than employees reported experiencing harassment.
 - B. *Educate*: Train employees on how to anonymously report incidents they have witnessed, and encourage employees to make reports.

Transparency & Accountability

3. *Transparency*: Be very clear about the steps involved in the processes, including who will be handling complaints in order to mitigate fear of retaliation.
4. *Model*: Hold leaders accountable for following appropriate procedures and creating a fair and inclusive climate a priority
5. *Evaluate*: We will reassess these metrics with a follow-up survey to gauge progress.

Appendix



Harassment Definitions & Protected Class List

Verbal Harassment

- e.g., epithets; derogatory jokes or comments; slurs; innuendos; questions about a person's sexual practices; and, propositions or requests for sexual favors

Written Harassment

- e.g., suggestive, obscene, or derogatory notes, letters, e-mails, text messages, or social media postings or messages.

Visual Harassment

- e.g., derogatory, offensive, obscene or sexually-oriented posters, photography, calendars, cards, cartoons, drawings, or gestures; and, display of offensive, sexually-suggestive, or lewd objects.

Physical Harassment

- e.g., assault; unwanted touching or physical contact; intentionally blocking normal movement or interfering with work or movement; and, leering or staring.

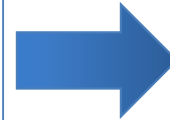
Protected Classes

- Race; Color; Religion (includes religious dress and grooming practices); Sex/gender (includes pregnancy, childbirth, breastfeeding and/ or related medical conditions); Gender identity, gender expression; Sexual orientation; Marital status; Medical Condition (genetic characteristics, cancer or a record or history of cancer); Military or veteran status; National origin (includes language use and possession of a driver's license issued to persons unable to provide their presence in the United State is authorized under federal law); Ancestry; Disability (mental and physical including HIV/AIDS, cancer, and genetic characteristics); Generic information; Request for family care leave; Request for leave for an employee's own serious health condition; Request for Pregnancy Disability Leave; Retaliation for reporting patient abuse in tax-supported institutions; Age (over 40)

Engagement Index Measures

Engagement Indices

1. Organization (OEI)
2. Job/Career (JEI)
3. Co-Worker/Team (CEI)
4. Leader (LEI)



Index Measurement

- Each index is a composite of specific items
- Employees rated items on a 5-point scale (1=strongly disagree; 5=strongly agree)
- Employee deemed engaged if average rating of index items is 3.65 or above
- Index represents the % of employees engaged
- Index score can range from 0% to 100%

Sample Calculation of Index

Index	Survey Item #1	Survey Item #2	Survey Item #3	Survey Item #4	Survey Item #5	Survey Item #6	Survey Item #7	Survey Item #8	Avg Rating	Team Member Favorable at 3.65+
Team Member 1	3	3	3	3	3	3	3	3	3.0	No
Team Member 2	4	4	4	4	4	3	3	3	3.6	No
Team Member 3	5	4	4	4	4	4	4	4	4.1	Yes
Team Member 4	5	5	5	5	5	4	4	5	4.6	Yes
Team Member 5	5	5	5	5	5	5	5	5	5.0	Yes
Total Team Members Responding Favorably to the Survey Item	80%	80%	80%	80%	80%	60%	60%	60%		Index Score 60%
Average Item Rating	4.4	4.2	4.2	4.2	4.2	3.8	3.8	4.0		

It is harder to have a group favorable on every item in an index than to attain positive ratings on each individual item.



Staff Report

TO: Board of Harbor Commissioners

FROM: Julie van Hoff, Director of Administrative Services

DATE: November 20, 2019

SUBJECT: Review District's Current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy and Newly Drafted 'Commissioner Reimbursement' Policy

Recommendation/Motion:

Recommendation: Review and comment on the District's current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy and newly drafted 'Commissioner Reimbursement' Policy.

Motion: Approve replacement of current policy with newly drafted policy 4.2.4 'Commissioner Reimbursement' (including any proposed revisions, if applicable); or take no action and keep the current Policy.

Policy Implications:

If approved by the Harbor Commission, newly drafted Policy 4.2.4 'Commissioner Reimbursement' would replace the District's current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy which was approved on September 7, 2016.

California Government Code (CGC) §53232 et. seq. provides reimbursement requirements of members of a legislative body.

Internal Revenue Service (IRS) Publication 463 is referenced in CGC §53232 and provides further reimbursement requirements.

Fiscal Implications/Budget Status:

None

Background:

The Harbor Commission approved the District's current Policy 4.2.4 'Expense Accounting and Expenditure Reimbursement for Commissioners' (Attachment 1) on September 7, 2016. Staff is requesting that the current Policy be evaluated and potentially replaced with the attached draft Policy (Attachment 2). The primary goals of the draft Policy are to clarify requirements of District-related expenses, the approval process for those expenses, ensure compliance with current laws, and identify reasonable rates for reimbursement. Following is a summary of key components of the current and newly drafted Policies:

Allowable Expenses:

CGC §53232 and IRS regulations allow for the following District-related expenses to be paid on behalf of a Board Member.

- Actual (including standard meal allowance as included in draft policy), ordinary and necessary expenses incurred in the performance of official duties.
 - Actual expenses are documented by original receipts or IRS published standard meal allowance.
 - Ordinary expenses are defined as common and accepted by other Local Government Agencies.
 - Necessary expenses are helpful and appropriate for a Local Government Agency.

Board Pre-Approval Not Required:

The District's current policy allows for the following types of activities that do **not** need pre-expense approval by the Board.

- Communicating with representatives of regional, state and national governments on Board-adopted policy positions;
- Attending conferences or educational seminars designed to improve the skills and knowledge of Commissioners, so long as the skills and knowledge relate to their position with the District; and
- Participating in regional, state and nation organizations whose activities or agenda directly affect the District needs.

The above listed activities would **not** need pre-expense approval by the Board as long as the activity occurs within the State of California. **Staff requests Board direction as to whether or not all or some of the activities would require Board approval prior to the Board member incurring an expense.**

Board Pre-Approval Required:

CGC §53232 requires that if an expense does not fall within the adopted policy of the District or IRS Publication 463, then the Board must approve the anticipated expense prior to when it is incurred.

Current District Policy requires pre-approval for out-of-state travel.

The above items are included in the newly drafted policy as requiring pre-approval by the Board. If the Board does not approve an expense the Board Member may travel at his or her own expense per CGC §53232.

Treasurer Approval:

The District's current Policy states that expense report forms will be reviewed by the Treasurer and will be approved by the Harbor Commission pursuant to the normal process for approving bills and claims. The District's current normal process is that the Harbor Commission pre-approves payments of bills and claims up to \$500,000 per month. Pre-approval of expense report forms would require a change to the District's normal process. **Staff requests direction on whether or not the normal process should be changed to require Treasurer pre-approval prior to reimbursement or District credit card charges and Board President approval in the event that the Treasurer submitted a reimbursement claim.**

Following are other key components of the Proposed Policy:

CGC §53232 requires the adoption of a policy in order for the District to reimburse members of the Board. The policy may specify reasonable rates for reimbursement and if rates aren't stated the District must use the IRS rates as established in Publication 463.

A. Recommended Reasonable Rates:

Staff recommends that the following recommended reasonable rates be established for Travel. For the purposes of this Policy, Travel is defined as being away from the Board Member's home, on District Business, for a substantial amount of time; **and** the Board Member needs to sleep or rest away from his or her home (from IRS publication 463).

1) Transportation-

- Airplane, Train, Bus -Coach fares will be reimbursed along with baggage charges. *Original receipts required*
- Board Member's Car- IRS reimbursable mileage rate- adjusted annually on October 1, *Starting location & ending location required*
- Rental Car-economy size. *Original receipts for rental and gas required.*
- Taxi, Commuter Bus, Ferries, Airport Shuttles, Tolls and Parking- *Original receipts required.*

As per CGC §53232- Board members shall use government and group rates offered by a provider of transportation travel when available.

2) Lodging -

- a. As per CGC §53232- If lodging is in connection with a conference or organized educational activity, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Board member at the time of booking. If the group rate is not available, the Board member shall use comparable lodging.

- b. As per CGC §53232- Board members shall use government and group rates offered by a provider of lodging services for lodging when available.
- c. *Original receipts are required.*

3) Meals & Incidental Expenses-

The District's current policy requires a comparison of actual receipts submitted by staff and the IRS published Standard Meal Allowance. Meals are reimbursed up to a maximum of the IRS rate. To reduce record keeping and as allowed by the IRS, staff recommends that the District use the Standard Meal Allowance. With approval of this change, the District would reimburse the Board Member a standard amount as published by the IRS. If a meal is included in education, training, conference or seminar registrations fees, the meal would not be eligible for reimbursement. For travel days, the Standard Meal Allowance would be 75% of the total daily Standard Meal Allowance. Standard Meal Allowances are adjusted annually on October 1st. Incidental expenses include fees and tips to porters, baggage carriers, and hotel staff.

It is anticipated that this change would result in a minimal increase in District costs and would require less time for Board member record keeping and staff review.

Per CSDA Sample Policy -Board members are encouraged to make travel arrangements sufficiently in advance to obtain discounted transportation and lodging rates.

Reporting Requirements:

CGC §53232 requires Board members to provide brief reports on meetings attended at the expense of the District at the next regular meeting of the Board, or if the Board member is not in attendance at the next regular meeting.

CGC §53232 includes a requirement that Board members must provide an expense report form for actual and necessary expenses incurred in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. The expense reports shall: 1) document that expenses meet the existing policy for expenditure of public resources; 2) shall be submitted within a reasonable time after incurring the expense; and 3) the reports shall be accompanied by the receipts documenting each expense.

In consultation with District Counsel, staff recommends that the expense report would be required regardless of whether public funds are spent via a staff members credit card or check reimbursement. In addition, if the expense exceeds \$100 it would be reported annually as required by CGC §53065.5

Required Ethics Training Per CGC §53232:

For a Board member to be eligible to receive reimbursement, the Board member must attend at least two hours of training in general ethics principles and ethics laws relevant

to his or her public service every two years. "Ethics laws" include, but are not limited to, the following:

- (1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- (2) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
- (3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

Note: All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1. In addition, an annual report will be posted on the District's website identifying all reimbursements made for over \$100 as required by CGC §53065.5.

- (4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

Staff recommends that the above list replace the list of expenses not eligible for reimbursement in the current District policy to simplify policy and so that nothing is inadvertently left out of the list.

Penalties Per CGC §53232:

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

- (a) The loss of reimbursement privileges.
- (b) Restitution to the local agency.
- (c) Civil penalties for misuse of public resources pursuant to CGC §8314.
- (d) Prosecution for misuse of public resources, pursuant to §424 of the Penal Code.

Attachments:

1. [Current Policy 4.2.4 'Expense Accounting and Expenditure Reimbursement for Commissioners'](#)
2. [Proposed Policy 4.2.4 'Commissioner Reimbursement'](#)
3. [California Government Code 53232 et. seq.](#)
4. [CSDA Sample Policy](#)

Reference:

Internal Revenue Service Publication 463

<https://www.irs.gov/forms-pubs/about-publication-463>

San Mateo County Harbor District

Policy	Number: 4.2.4	Date of Approval: 06/21/2006	Adopted By: Resolution No. 25-16
Title: Expense Accounting and Expenditure Reimbursement for Commissioners	Prepared By: G. Lazof	Revised By: Board of Harbor Commissioners September 1, 2010, September 7, 2016	Page: Page 1 of 8
Purpose: To establish policy guidelines on District reimbursement for expenses for Commissioners while on District business.			

1. STATEMENT OF POLICY

The San Mateo County Harbor District (District) is obligated to ensure that expenditures made by the District are solely for public purposes as well as prudent. This policy governs and provides for a process by which a member of the District's Board of Harbor Commissioners (Board) may seek reimbursement for expenses that he or she has incurred in the conduct of District business.

This policy complies with Government Code Section 53232.2, which provides that if a local agency reimburses members of its legislative body for actual and necessary expenses incurred in the performance of official duties, then the agency's governing board must adopt a written policy, in a public meeting, specifying the types of activities that qualify for reimbursement of expenses such as those related to travel, meals and lodging. To the extent practical, Commissioners are encouraged to work with District staff to make travel arrangements paid for in advance directly by the District, not subject to reimbursement under this Policy.

This policy applies to all members of the Board of Harbor Commissioners, and its provisions regarding expense reimbursement are intended to result in no personal gain or loss to a commissioner.

District Commissioners are eligible to receive reimbursements for travel, meals, lodging, and other reasonable and necessary expenses. Commissioners are limited to reimbursement only as authorized in this policy.

Policy	Number: 4.2.4	Date of Approval: 06/21/2006	Adopted By: Resolution No. 25-16
Title: Expense Accounting and Expenditure Reimbursement for Commissioners	Prepared By: G. Lazof	Revised By: Harbor Commission- September 1, 2010, September 7, 2016	Page: Page 2 of 8

2. AUTHORIZED EXPENSES

A. Expenses

Expenses incurred in connection with the following types of activities generally constitute authorized and reimbursable expenses, and do not need pre-expense approval of the Board, as long as the other requirements of this Policy are met:

- a. Communicating with representatives of regional, state and national governments on Board-adopted policy positions;
- b. Attending conferences or educational seminars designed to improve the skills and knowledge of Commissioners, so long as the skills and knowledge relate to their position with the District; and
- c. Participating in regional, state and national organizations whose activities or agenda directly affects the District's interests.

B. Prior Approvals

Out-of-State travel and expenses require prior approval by the Board of Harbor Commissioners, in writing, which shall verify that budgeted funds are available prior to approving the travel and expenses.

C. Other Expenses

All other expenses must be approved by the Board, in a public meeting, before the expense is incurred.

3. EXPENSES NOT ELIGIBLE FOR REIMBURSEMENT

Expenses that are not eligible for reimbursement include:

- a. The personal portion of any trip;
- b. Political or charitable contributions;

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- c. Family expenses, including a partner's expenses when accompanying a Commissioner on District-related business, as well as child- or pet-related expenses;
- d. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf-related expenses), or other cultural events;
- e. Alcoholic beverages, including personal hotel honor bar expenses;
- f. Tips greater than 20 percent (unless automatically included in the bill);
- g. Regular commuting costs and personal automobile expenses, including for vehicle maintenance and repairs, traffic citations, insurance and gasoline;
- h. Personal losses incurred while on District business;
- i. Laundry, cleaning, or valet service including luggage transportation (except of trips of over one week duration);
- j. Personal telephone calls;
- k. Meals and lodging in lieu of other meals and/or lodging the expense of which is included in the Registration fee;
- l. Fines, forfeitures, traffic citations or other penalties;
- m. Loss or damage to personal property;
- n. Barber, beauty parlor, shoe shine or toiletries;
- o. Personal postage; and
- p. Credit card late fees or interest as a result of untimely submission of expense accounting forms.

Policy	Number: 4.2.4	Date of Approval: 06/21/2006	Adopted By: Resolution No. 25-16
Title: Expense Accounting and Expenditure Reimbursement for Commissioners	Prepared By: G. Lazof	Revised By: Harbor Commission- September 1, 2010, September 7, 2016	Page: Page 4 of 8

Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

4. TRANSPORTATION

Commissioners are encouraged to use public transit and carpool to the maximum extent possible when travelling on District business. When transportation is needed for Commissioners to travel for District business other than in District vehicles, costs are eligible for reimbursement as follows:

- a. **Airfare.** Airfares that are reasonable and economical (coach fare) are eligible for reimbursement. Ticket purchases should be made well in advance to take advantage of low fares when possible.
- b. **Automobile.** Personal automobile mileage is reimbursed at Internal Revenue Service (IRS) rates in effect at the time of travel. Tolls are eligible for reimbursement.

Reimbursement for auto mileage will be capped at the cost of corresponding coach airfare for the same trip when it would be less expensive to fly than drive.

- c. **Car Rental.** Rental car costs and fees are authorized for reimbursement only when absolutely necessary and when other transportation is not feasible or car rental is more economical. Cars are to be reserved at a rate that does not exceed the standard-size car rate.
- d. **Parking and Shuttles.** Reasonable parking costs will be reimbursed. Long-term parking or shuttle service to and from the airport may be claimed as a miscellaneous expense for reimbursement.
- e. **Public Transit.** Actual fares for public transit will be reimbursed.

5. LODGING

Lodging costs are only reimbursable when Commissioners travel for authorized purposes.

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Lodging expenses at the single-room rate will be reimbursed or paid for when travel on District business reasonably requires an overnight stay. If such lodging is in connection with a conference, training or other educational activity, lodging expenses must not exceed the group rate published by the conference sponsor or training provider for the event in question.

6. MEALS & INCIDENTAL EXPENSES

Meals and incidental expenses are reimbursable whenever Commissioners travel for authorized purposes, and as otherwise set forth below:

- a. **Business Meetings.** Actual and reasonable costs of business meals and gratuities are allowed when representing the District, regardless of geographic location. These are capped at GSA per diem rates.
- b. **Conference, Seminar or Training.** When Commissioners attend conferences, seminars and trainings for the District, reimbursements will be provided, upon submission of receipts, for the actual cost of meals, capped by the maximum established GSA for all meals, based on the locations of the events.
- c. **Alcohol.** The District will not pay for alcohol or hotel-room personal bar/honor bar expenses.

7. REGISTRATION FEES

Registration fees for conferences or meetings will be reimbursed at actual cost.

8. TELEPHONE/FAX/INTERNET

Commissioners will be reimbursed for actual telephone, fax, or Internet connection expenses incurred for District business.

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9. REPORTS TO THE COMMISSION

When a Commissioner attends a conference, training, seminar or other event for which he or she seeks reimbursement from the District, the Commissioner must submit a brief oral or written report at the next regular Commission meeting. If multiple members attended, a joint report may be made.

10. COMPLIANCE WITH LAWS

Commissioners should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All District expense reports and accompanying documentation are public records subject to disclosure under the Public Records Act and other applicable laws.

11. VIOLATION OF POLICY

Misuse of public resources or falsifying expense reports in violation of District Policy may result in any or all of the following:

- a. Loss of reimbursement privileges;
- b. Restitution to the District;
- c. The District reporting the expenses as income to State and Federal tax authorities;
- d. Civil Penalties of up to \$1,000 per day and three-times the value of the resources used;
- e. Prosecution for misuse of public resources; and
- f. Censure by the Board or such other measure as may be determined by the Board.

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12. IMPLEMENTING PROCEDURES

The District and its Commissioners must follow the procedures adopted to implement this Policy. These procedures may be revised by the General Manager in compliance with all laws and in furtherance of this Policy.

13. EXPENSE REPORT FORM SUBMISSIONS

- a. All expense reimbursement requests must be submitted on an Expense Report Form approved by the General Manager. Completed Expense Report Forms must document that the expense in question met the requirements of the Policy.
- b. Expense Report Forms must be submitted within thirty (30) calendar days of an expense being incurred, and must include the following attachments:
 1. Original receipts showing the claimed expenses (e.g., restaurant receipts as opposed to credit card receipts or statements);
 2. Name of the Commissioner, as well as a description of the purpose of the meeting;
 3. A copy of the Program or Agenda of the event(s) attended, when relevant;
 4. When original receipts are required under these procedures, but have been lost, a duplicate receipt if available;
 5. If neither an original nor duplicate receipt is available, or if a receipt is not available for a small expenditure (e.g., parking meters), a detailed explanation of the expenditure and explanation of which receipts are not available;
 6. Telephone bills identifying calls made on District business, when relevant; and

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7. Actual Odometer readings or Google (or similar) map displaying mileage by most direct route.
 - c. Expense Report Forms will be reviewed by the Treasurer and will be approved by the Harbor Commission pursuant to the normal process for approving bills and claims.

14. AUDITS OF EXPENSE REPORTS

All evidence of expenses and related documentation are subject to verification that they comply with this Policy.

San Mateo County Harbor District

Policy Title: Commissioner Reimbursement	Number: 4.2.4	Date of Approval: 11/20/19
Other Revisions: 9/1/2010; 9/7/2016	Prepared By: Julie van Hoff	

1. STATEMENT OF POLICY

The purpose of this policy is to:

- A. Provide guidance to Board members seeking reimbursement for actual, ordinary and necessary expenses incurred in the performance of official duties; and
- B. Ensure compliance with California Government Code (CGC) §53232 et. seq.; and
- C. Ensure compliance with Internal Revenue Service Taxable Fringe Benefits Guide, Federal per Diem Rate Publication 1542, Internal Revenue Code §162, the Federal Travel Regulation Chapter 300 Part 300-3, and Travel, Gift, and Car Expenses Publication 463.

2. AUTHORIZED EXPENSES

CGC §53232 and IRS allows for the following District-related expenses to be paid on behalf of a Board Member.

Actual, ordinary and necessary expenses incurred in the performance of official duties.

- Actual expenses are documented by original receipts or IRS published standard meal allowance.
- Ordinary expenses are defined as common and accepted by other Local Government Agencies.
- Necessary expenses are helpful and appropriate for a Local Government Agency.

A. Pre-approval Not Required:

Expenses incurred in connection with the following types of activities constitute authorized and reimbursable expenses, and do not require pre-approval by the Board, as long as the other requirements of this Policy are met.

1. Communicating with representatives of regional, state and national governments on Board-adopted policy positions;

2. Attending conferences or educational seminars designed to improve the skills and knowledge of Commissioners, so long as the skills and knowledge relate to their position with the District.
3. Participating in regional, state and nation organizations whose activities or agenda directly affect the District needs.

B. Pre-approval Required:

The following require pre-approval by the Board of Harbor Commissioners in an open public meeting:

1. Out-of-State travel expenses
2. Activities that are not included in this policy

If the Board does not approve an expense, the Board Member may travel at his or her own expense per CGC §53232.

3. REASONABLE RATES FOR TRAVEL

Travel is defined as being away from the Board Member's home, on District Business, for a substantial amount of time; **and** the Board Member needs to sleep or rest away from his or her home (from IRS publication 463). Board members are encouraged to make travel arrangements sufficiently in advance to obtain discounted transportation and lodging rates.

A. Transportation

- Airplane, Train, Bus -Coach fares will be reimbursed along with baggage charges. *Original receipts required*
- Board Member's Car- IRS reimbursable mileage rate- adjusted annually on October 1, *Starting location & ending location required*
- Rental Car-economy size. *Original receipts for rental and gas required.*
- Taxi, Commuter Bus, Ferries, Airport Shuttles, Tolls and Parking-*Original receipts required.*

As per CGC §53232- Board members shall use government and group rates offered by a provider of transportation travel when available.

B. Lodging

- If lodging is in connection with a conference or organized educational activity, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Board member at the time of booking. If the group rate is not available, the Board member shall use comparable lodging.

- As per CGC §53232- Board members shall use government and group rates offered by a provider of lodging services for lodging when available.
- *Original receipts are required.*

C. Meals & Incidental Expenses

Meals & Incidental Expenses will be reimbursed as follows:

- Standard Meal Allowances (a.k.a per diem) will be reimbursed as published by the IRS at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. Per diem amounts are adjusted annually on October 1st.
- If a meal is included in education, training, conference or seminar registrations fees, the meal would not be eligible for reimbursement.
- For travel days, the Standard Meal Allowance would be 75% of the total daily published per diem amount.
- Incidental expenses are included in the Standard Meal Allowance and include fees and tips to porters, baggage carriers, and hotel staff.

4. REPORTING REQUIREMENTS

- A. CGC §53232 requires Board members to provide brief reports on meetings attended at the expense of the District at the next regular meeting of the Board, or if the Board member is not in attendance at the next regular meeting.
- B. Board members must provide an expense report form for actual and necessary expenses incurred in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. The expense reports shall: 1) document that expenses meet the existing policy for expenditure of public resources; 2) shall be submitted within a reasonable time after incurring the expense; and 3) the reports shall be accompanied by the receipts documenting each expense. The expense report would be required regardless of whether public funds are spent via a staff members credit card or check reimbursement.

5. “ETHICS LAWS”

For a Board member to be eligible to receive reimbursement, the Board member must attend at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years. All Board member reimbursements must be in compliance with “Ethics laws” that include, but are not limited to, the following:

- A. Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.

- B. Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
- C. Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

Note: All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1. In addition, an annual report will be posted on the District's website identifying all reimbursements made for over \$100 as required by CGC §53065.5.

- D. Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

6. PENALTIES

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

- A. The loss of reimbursement privileges.
- B. Restitution to the local agency.
- C. Civil penalties for misuse of public resources pursuant to CGC §8314.
- D. Prosecution for misuse of public resources, pursuant to §424 of the Penal Code.

7. ASSISTANCE WITH TRAVEL ARRANGEMENTS

District staff provides Commissioners with assistance in making travel/training/conference arrangements and costs associated with those arrangements may be charged to a staff member's District credit card. Approval and reporting requirements are the same regardless of whether or not a Commissioner chooses to ask for assistance.



Code:

Section:



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GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] (Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 2. Officers and Employees [53200 - 53299] (Chapter 2 added by Stats. 1949, Ch. 81.)

ARTICLE 2.3. Compensation [53232 - 53232.4] (Article 2.3 added by Stats. 2005, Ch. 700, Sec. 3.)

53232. For the purposes of this article, the following terms have the following meanings:

(a) "Governing body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a special district.

(b) "Legislative body" has the same meaning as specified in Section 54952.

(c) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(d) "Meeting" has the same meaning as specified in subdivision (a) of Section 54952.2.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.1. (a) When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body for attendance at the following occurrences:

(1) A meeting of the legislative body.

(2) A meeting of an advisory body.

(3) A conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234).

(b) A local agency may pay compensation for attendance at occurrences not specified in subdivision (a) only if the governing body has adopted, in a public meeting, a written policy specifying other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.

(c) This section shall not apply to any local agency that pays compensation in the form of a salary to members of a legislative body, including, but not limited to, those local agencies whose legislative bodies' compensation is subject to Section 36516 or 36516.1, subparagraph (B) or (C) of paragraph (2) of subdivision (a) of Section 21166 or Section 22840 of the Water Code, Section 11908.1 of the Public Utilities Code, Section 6060 of the Harbors and Navigation Code, or subdivision (b) of Section 1 or Section 5 of Article XI of the California Constitution.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.2. (a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal

Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) If a member of a legislative body chooses to incur additional costs that are above the rates established pursuant to this section and those costs have not been approved pursuant to subdivision (f), then the member of a legislative body may do so at his or her own expense.

(h) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

(Amended by Stats. 2006, Ch. 643, Sec. 10. Effective January 1, 2007.)

53232.3. (a) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body for reimbursement for actual and necessary expenses incurred on behalf of the local agency in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.

(b) Expense reports shall document that expenses meet the existing policy, adopted pursuant to Section 53232.2, for expenditure of public resources.

(c) Members of a legislative body shall submit expense reports within a reasonable time after incurring the expense, as determined by the legislative body, and the reports shall be accompanied by the receipts documenting each expense.

(d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

(e) All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.4. Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

(a) The loss of reimbursement privileges.

(b) Restitution to the local agency.

(c) Civil penalties for misuse of public resources pursuant to Section 8314.

(d) Prosecution for misuse of public resources, pursuant to Section 424 of the Penal Code.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)



POLICY TITLE: Training, Education and Conferences
POLICY NUMBER: 4125

4125.1 Members of the Board of Directors are encouraged to attend educational conferences, seminars, trainings, and professional meetings when the purpose of any such activity is to improve District operation. There is no limit as to the number of Directors attending a particular activity when it is apparent that attendance is beneficial to the District, as long as a majority of the members of a body do not discuss issues related to their local agency's business. Directors shall not attend conference or training event when it is apparent that there is no significant benefit to the District. Directors shall not attend or engage in any tour or journey for pleasure at public expense (e.g. "junkets" or other such events that are not beneficial to the District.

4125.2 It is the policy of the District to encourage Board development and excellence of performance by reimbursing actual expenses incurred for tuition, travel, lodging and meals as a result of training, educational courses, participation with professional organizations, and attendance at local, state and national conferences associated with the interests of the District. Cash advances or use of District credit cards for these purposes is not permitted.

4125.2.1 The Finance Division Manager shall reimburse Directors for conference tuition and registration expenses, and for per diem expenses. Per diem expenses, when appropriate, shall include meals, lodging, and travel. All expenses for which reimbursement is requested by Directors, or which are billed to the District by Directors, shall be submitted to the Finance Division Manager, together with validated receipts. All reimbursements shall be made in accordance with applicable State and federal law, including but not limited to Internal Revenue Service Guidelines.

4125.2.2 Attendance by Directors at seminars, workshops, courses, professional organization meetings, and conferences shall be approved by the Board of Directors prior to the District incurring any reimbursable costs.

4125.2.3 Expenses to the District for Board of Directors' training, education, and conferences should be kept to a minimum by utilizing recommendations for transportation and housing accommodations recommended by the Finance Division Manager, and by:

4125.2.3.1 Utilizing hotel(s) recommended by the event sponsor in order to obtain discounted rates.

4125.2.3.2 Directors traveling together whenever feasible and economically beneficial.

4125.2.3.3 Requesting reservations sufficiently in advance, when possible, to obtain discounted air fares and hotel rates.



4125.3 A Director shall not be reimbursed for expenses incurred at any educational conference, seminar, training, or professional meeting event if such event occurs after the District has announced that Director's pending resignation, or if such event occurs after an election in which it has been determined that the Director will not retain his or her seat on the Board.

4125.4 Upon returning from educational conferences, seminars, trainings, and professional meetings where expenses are reimbursed by the District, Directors will either prepare a written or verbal report for presentation at the next regular meeting of the Board. Said report shall detail what was learned at the session(s) that will be of benefit to the District. Materials from the session(s) may be delivered to the District office to be included in the District library for the future use of other Directors and staff.



Committee Report

TO: Board of Harbor Commissioners

FROM: Governance & Policy Committee (Commissioners Brennan & Larenas, Public Member Ratts, Staff: Julie van Hoff, Director of Administrative Services)

DATE: November 20, 2019

SUBJECT: Policy 1.1.1 'San Mateo County Harbor District Code of Ethics and Values'

Recommendation/Motion:

Recommendation: Review and comment on draft policy.

Motion: Approve Policy 1.1.1 'San Mateo County Harbor District Ethics and Values' (including any proposed revisions, if applicable).

Policy Implications:

The proposed amended Policy 1.1.1 'San Mateo County Harbor District Code of Ethics and Values' amends and replaces the policy approved on July 15, 2015.

Fiscal Implications/Budget Status:

None

Background:

The Harbor Commission approved the District's current Policy 1.1.1 'San Mateo County Harbor District Ethics and Values' on July 15, 2015. The District based its policy on the Code of Ethics & Values developed in 1999 by the City of Santa Clara. The Markkula Center for Applied Ethics at Santa Clara University worked with the City of Santa Clara to create its policy and reflect the issues and concerns of a complex and diverse society.

Staff compared the District's current Ethics and Values policy with the California Special District Association (CSDA) Sample Policy revised in 2017. Attachment 1 includes policy amendments recommended made by the CSDA along with suggested changes related to the applicability of the Code and other minor adjustments. In addition, it

includes a definition of District representatives that includes the Harbor Commissioners, District Counsel, District staff, volunteers, and members of the District's committees.

On July 11, 2019 the Governance & Policy Committee met to review staff proposed changes to the Policy, recommended approval of the changes and requested that the item be brought to the Harbor Commission for consideration.

On July 17, 2019 the Harbor Commission requested that this item be considered at the August 21, 2019 meeting to allow time for further review.

On August 21, 2019 Commissioner Chang Kiraly, provided oral comments regarding proposed changes to the District Code of Ethics and Values Policy. Commissioner Brennan requested that the changes be submitted in writing for further review. Commissioner Chang Kiraly recommended that the item be brought back to the Harbor Commission with consideration. A Special Meeting was noticed on September 12, 2019 to review proposed changes, but the meeting was canceled due to lack of quorum. Commissioner Chang Kiraly's proposed changes are presented in Attachment 2 for Board consideration.

Upon approval of the Policy, staff will create posters and laminated copies.

Attachments:

1. [Draft Amended Policy 1.1.1 'San Mateo County Harbor District Code of Ethics and Values' \(tracked changes not including Commissioner Chang Kiraly recommended amendments\)](#)
2. [Draft Amended Policy 1.1.1 'San Mateo County Harbor District Code of Ethics and Values' \(tracked changes including Commissioner Chang Kiraly recommended amendments\)](#)
3. [California Special District Association Sample Policy](#)

San Mateo County Harbor District

Policies	Number: 1.1.1	Approved Date: 7/15/2015	Revision:
Title: San Mateo County Harbor District <u>Code of Ethics and Values</u>	Prepared By: Glenn Lazof <u>Julie van Hoff</u>	Approved By: Harbor Commission	Page: 1 of 6
Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

Statement of Policy

The Harbor District's designed its Code of Ethics & Values (the "Code"), ~~adopted by the Harbor Commission of 2015, is designed~~ to provide clear, positive statements of ethical behavior reflecting the core values of the District and the communityies it serves. The Code includes practical strategies for addressing ethical questions and a useful framework for decision-making and handling the day-to-day operations of the -municipalityDistrict.

The current Code ~~of Ethics & Values~~ was developed in 1999 by the City of Santa Clara by a Committee composed of three elected officials, nine City commissioners, two community members, the City Manager and the City Attorney. The Committee took a fresh approach by working with the Markkula Center for Applied Ethics at Santa Clara University to create a new Code ~~of Ethics & Values~~ that would better reflect the issues and concerns of today's complex and diverse society.

1.1 Goals of the Code of Ethics & Values

- To make San Mateo County a better place to live, work and play.
- To make the Harbor District a stronger-better public agency, built on mutual respect and trust.
- To promote and maintain the highest standards of personal and professional conduct among all involved in ~~local-District~~ government including -elected officialsHarbor Commissioners, District Counsel, District staff, volunteers, and members of the District's committees (herein referred to as District representatives).

Policies	Number: 1.1.1	Approved Date:- 7/15/2015	Revision:
Title: San Mateo County Harbor District <u>Code of Ethics and Values</u>	Prepared By: Glenn Lazof Julie <u>van Hoff</u>	Approved By: Harbor Commission	Page: 2 of 6
Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

The Code ~~of Ethics & Values~~ is a touchstone for members of the Board of Commissioners and ~~Committees~~ staff in fulfilling their roles and responsibilities.

1.2 Preamble

The proper operation of democratic government requires that decision-makers be independent, impartial, and accountable to the people they serve. The San Mateo County Harbor District has adopted this Code ~~of Ethics & Values~~ to promote and maintain the highest standards of personal and professional conduct in the District's government. All ~~elected and appointed officials, District employees, volunteers, District~~ representatives and others who participate in the District's government are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its eight core values in their work. Because we seek public confidence in the District's services and public trust of its decision-makers, our decisions and our work must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this ~~e~~Code.

1.3 Applicability

This Code shall apply to all District representatives as defined in section 1.12.

1.4 Core Values

As participatory representatives in the District's government, we subscribe to the following Core Values:

1. As a Representative of the San Mateo County Harbor District, I will be ethical. In practice, this value looks like:
 - a. I am trustworthy, acting with the utmost integrity and moral courage.

Policies	Number: 1.1.1	Approved Date:- 7/15/2015	Revision:
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Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

- b. I am truthful, do what I say I will do, and am dependable.
- c. I make impartial decisions, free of bribes, unlawful gifts, narrow political interests, ~~and~~ financial, and other personal interests that impair my independence of judgment or action.
- d. I am fair, distributing benefits and burdens according to consistent and equitable criteria.
- e. I extend equal opportunities and due process to all parties in matters under consideration. If I engage in unilateral meetings and discussions, I do so without making voting ~~decisions~~ or any improper or unauthorized representations on behalf of the District.
- f. I show respect for persons, confidences, and information designated as "confidential."
- g. I use my title(s) only when conducting official District business, for information purposes, or as an indication of background and expertise, carefully considering whether I am exceeding or appearing to exceed my authority.
- h. I will avoid actions that might cause the public or others to question my independent judgment.
- g.i. I maintain a constructive, creative, and practical attitude toward the District's affairs and a deep sense of social responsibility as a trusted public servant.

2. As a Representative of the San Mateo County Harbor District, I will be professional. In practice, this value looks like:

- a. I apply my knowledge and expertise to my assigned activities and to the interpersonal relationships that are part of my job in a consistent, confident, competent, and productive manner.
- b. I approach my job and work-related relationships with a positive collaborative attitude.
- c. I keep my professional education, knowledge and skills current and growing.

Policies	Number: 1.1.1	Approved Date: 7/15/2015	Revision:
Title: San Mateo County Harbor District <u>Code of Ethics and Values</u>	Prepared By: Glenn Lazof <u>Julie van Hoff</u>	Approved By: Harbor Commission	Page: 4 of 6
Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

3. As a Representative of the San Mateo County Harbor District, I will be service oriented. In practice, this value looks like:
 - a. I provide friendly, receptive, courteous service to everyone.
 - b. I am attuned to, and care about, the needs and issues of citizens, public officials, and ~~city~~ District workers.
 - c. In District-related matters my interactions with constituents, I am interested, engaged, and responsive.

4. As a Representative of the San Mateo County Harbor District, I will be fiscally responsible. In practice, this value looks like:
 - a. I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the District, especially its financial stability.
 - b. I demonstrate concern for the proper use of District assets (e.g., personnel, time, property, equipment, funds) and follow established procedures.
 - c. I make good financial decisions that seek to preserve programs and services for District residents.
 - ~~c.d.~~ I have knowledge of and adhere to the District's Purchasing, and Contracting and Allocation of Funds Policies.

5. As a Representative of the San Mateo County Harbor District, I will be organized. In practice, this value looks like:
 - a. I act in an efficient manner, making decisions and recommendations based upon research and facts, taking into consideration short and long-term goals.
 - b. I follow through in a responsible way, keeping others informed, and responding in a timely fashion.
 - c. I am respectful of established District processes and guidelines.

Policies	Number: 1.1.1	Approved Date:- 7/15/2015	Revision:
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Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

6. As a Representative of the San Mateo County Harbor District, I will be communicative. In practice, this value looks like:

- a. I positively convey the District's care for and commitment to its citizens.
- b. I communicate in various ways that I am approachable, open-minded and willing to participate in dialog.
- c. I ~~will~~ engage in effective two-way communication, by listening carefully, asking questions, and determining an appropriate response, which adds value to conversations.

7. As a Representative of the San Mateo County Harbor District, I will be collaborative. In practice, this value looks like:

- a. I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
- b. I work towards consensus building and gain value from diverse opinions.
- c. I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
- d. I consider the broader regional and statewide implications of the District's decisions and issues.

~~d.~~

8. As a Representative of the San Mateo County Harbor District, I will be progressive. In practice, this value looks like:

- a. I exhibit a proactive, innovative approach to setting goals and conducting the District's business.
- b. I display a style that maintains consistent standards, but is also sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms when necessary.

Policies	Number: 1.1.1	Approved Date: 7/15/2015	Revision:
Title: San Mateo County Harbor District <u>Code of Ethics and Values</u>	Prepared By: Glenn Lazof Julie <u>van Hoff</u>	Approved By: Harbor Commission	Page: 6 of 6
Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.			

c. I promote intelligent and thoughtful innovation in order to forward the District's policy agenda and District's services

1.5 Enforcement

1.5 Any Official representative found to be in violation of this Code may be subject to Censure by the District Board. Any member of any advisory Committee found in violation may be subject to dismissal from the Committee. In the case of an employee, appropriate action shall be taken by the General Manager or by an authorized designee.

San Mateo County Harbor District

Policy Title: San Mateo County Harbor District Code of Ethics and Values	Number: 1.1.1	Date of Approval: 10/16/19
Other Revisions: 07/15/15 (Original)	Prepared By: Julie van Hoff	
Purpose: To promote and maintain the highest standards of personal and professional conduct in the District's government. All elected and appointed officials, District employees, volunteers and others who participate in the District's government are required to subscribe to this Code.		

Statement of Policy

The Harbor District designed its Code of Ethics and Values (the "Code"), to provide clear, positive statements of ethical behavior reflecting the core values of the District and the communities it serves. The Code includes practical strategies for addressing ethical questions and a useful framework for decision-making and handling the day-to-day operations of the District.

The current Code was developed in 1999 by the City of Santa Clara by a Committee composed of three elected officials, nine City commissioners, two community members, the City Manager and the City Attorney. The Committee took a fresh approach by working with the Markkula Center for Applied Ethics at Santa Clara University to create a new Code that would better reflect the issues and concerns of today's complex and diverse society.

1.1 Goals of the Code of Ethics and Values

- To make San Mateo County a better place to live, work and play.
- To make the Harbor District a better public agency, built on mutual respect and trust.
- To promote and maintain the highest standards of personal and professional conduct among all involved in District government including Harbor Commissioners, District Counsel, District staff, volunteers, and members of the District's committees (herein referred to as District representatives).
- **To promote good government and transparency to serve the public by adhering to all applicable laws, including but not limited**

to the CA Brown Act, CA Fair Political Practices Commissioner Statutes, and CA Government Code Statutes.

The Code is a touchstone for members of the Board of Commissioners, public Committee members and staff in fulfilling their roles and responsibilities.

1.2 Preamble

The proper operation of democratic government requires that decision-makers be independent, impartial, and accountable to the people they serve. The San Mateo County Harbor District has adopted this Code to promote and maintain the highest standards of personal and professional conduct in the District's government. All Harbor Commissioners, elected and appointed officials, District employees and volunteers ~~District representatives~~ and others who participate in the District's government are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its eight core values in their work. Because we seek public confidence in the District's services and public trust of its decision-makers, our decisions and our work must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this Code.

1.3 Applicability

This Code shall apply to all ~~District representatives~~ Harbor Commissioners, appointed officials, District employees and volunteers as defined in section 1.1.

1.4 Core Values

As participatory representatives in the District's government, we subscribe to the following Core Values:

1. As a Representative of the San Mateo County Harbor District, I will be ethical. ~~In practice, this value looks like:~~
 - a. I am trustworthy, acting with the utmost integrity and moral courage.
 - b. I am truthful, ~~do what I say I will do~~ I am reliable, doing what I say I will do , and am dependable.
 - c. I make impartial decisions, free of bribes, unlawful gifts, narrow political interests, financial, and other personal interests that impair my independence of judgment or action.

- d. I am fair, distributing benefits and burdens according to consistent and equitable criteria.
- e. I extend equal opportunities and due process to all parties in matters under consideration. If I engage in unilateral meetings and discussions, I do so without making voting-decisions or any improper or unauthorized representations on behalf of the District.
- f. I show respect for persons, confidences, and information designated as "confidential."
- g. I use my title(s) only when conducting official District business, for information purposes, or as an indication of background and expertise, carefully considering whether I am exceeding or appearing to exceed my authority.
- h. I will avoid actions that might cause the public or others to question my independent judgment.
- i. I maintain a constructive, creative, and practical attitude toward the District's affairs and a deep sense of social responsibility as a trusted public servant.

2- As a Representative of the San Mateo County Harbor District, I will be professional. ~~In practice, this value looks like:~~

- a. I apply my knowledge and expertise to my assigned activities and to the interpersonal relationships that are part of my job in a consistent, confident, competent, and productive manner.
- b. I approach my job and work-related relationships with a positive **and professional** ~~collaborative~~ attitude.
- c. I keep my professional education, knowledge and skills current and growing.

3- As a Representative of the San Mateo County Harbor District, I will be service oriented. ~~In practice, this value looks like:~~

- a. I provide friendly, receptive, courteous service to everyone.
- b. I am attuned to, and care about, the needs and issues of citizens, public officials, and District workers.
- c. In District-related matters, **and my interactions with the public**, I am interested, engaged, and responsive.

4. As a Representative of the San Mateo County Harbor District, I will be fiscally responsible. ~~In practice, this value looks like:~~

- a. I make decisions after prudent consideration of their financial

impact, taking into account the long-term financial needs of the District, especially its financial stability.

- b. I demonstrate concern for the proper use of District assets (e.g., personnel, time, property, equipment, funds) and follow established procedures.
- ~~c. I make good financial decisions that seek to preserve programs and services for District residents.~~
- d. I make good financial decisions and I have knowledge of and adhere to the District's Purchasing, Contracting and Allocation of Funds Policies.

~~5.~~ As a Representative of the San Mateo County Harbor District, I will be organized. ~~In practice, this value looks like:~~

- a. I act in an efficient manner, making decisions and recommendations based upon research and facts, taking into consideration short and long-term goals.
- b. I follow through in a responsible way, keeping others informed, and responding in a timely fashion.
- c. I am respectful of established District processes and guidelines.

~~6.~~ As a Representative of the San Mateo County Harbor District, I will be communicative. ~~In practice, this value looks like:~~

- a. I **positively** convey the District's care for and commitment to its citizens.
- b. I communicate in various ways that I am approachable, open-minded and willing to participate in dialog.
- c. I engage in effective two-way communication, by listening carefully, asking questions, and determining an appropriate response, which adds value to conversations.

~~7.~~ As a Representative of the San Mateo County Harbor District, I will be ~~collaborative-professional in my conduct. In practice, this value looks like:~~

- a. I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
- b. I work towards consensus building and gain value from diverse opinions.

- c. I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
- ~~d. I consider the broader regional and statewide implications of the District's decisions and issues.~~

~~8.~~ As a Representative of the San Mateo County Harbor District, I will be ~~progressive fair~~. ~~In practice, this value looks like:~~

- a. I exhibit a proactive, ~~innovative thoughtful~~ approach to setting goals and conducting the District's business.
- b. I ~~display a style that~~ maintains consistent standards ~~and will show respect for different viewpoints with the understanding that compromise is often necessary. but is also sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms when necessary.~~
- ~~c. I promote intelligent and thoughtful innovation in order to forward the District's policy agenda and District's services~~

1.5 Enforcement

Any representative found to be in violation of this Code may be subject to Censure by the District Board. Any member of any advisory Committee found in violation may be subject to dismissal from the Committee. In the case of an employee, appropriate action shall be taken by the General Manager or by an authorized designee.



POLICY TITLE: Code of Ethics
POLICY NUMBER: 1030

1030.1 Background information:

[District name] designed its Code of Ethics & Values (the “Code”) to provide clear, positive statements of ethical behavior reflecting the core values of the District and the communities it serves. The Code includes practical strategies for addressing ethical questions and a useful framework for decision-making and handling the day-to-day operations of the District. The Code is developed to reflect the issues and concerns of today’s complex and diverse society.

1030.2 Goals of the code of ethics & values:

- a) To make [District name] a better District built on mutual respect and trust.
- b) To promote and maintain the highest standards of personal and professional conduct among all involved in District government, District staff, volunteers and members of the District’s Board. All elected and appointed officials, officers, employees, members of advisory committees, and volunteers of the District, herein called “Officials” for the purposes of this policy.
- c) The Code is a touchstone for members of District Board and staff in fulfilling their roles and responsibilities.

1030.3 Preamble:

- a) The proper operation of democratic government requires that decision-makers be independent, impartial and accountable to the people they serve. The [District name] has adopted this Code to promote and maintain the highest standards of personal and professional conduct in the District’s government.
- b) All Officials, and others, who participate in the District’s government are required to subscribe to this Code, understand how it applies to their specific responsibilities and practice its eight core values in their work. Because we seek public confidence in the District’s services and public trust of its decision-makers, our decisions and our work must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this Code.

1030.4 Applicability:

This Code shall apply to all District Officials as defined in 1030.2 b.

1030.5 Core Value:

As participatory Officials in the District’s government, we subscribe to the following Core Values:

1030.6 As a representative of [District name], I will be ethical.

In practice, this value looks like:



-
- a) I am trustworthy, acting with the utmost integrity and moral courage. I am truthful. I do what I say I will do. I am dependable.
 - b) I make impartial decisions, free of bribes, unlawful gifts, narrow political interests, financial, and other personal interests that impair my independence of judgment or action.
 - c) I am fair, distributing benefits and burdens according to consistent and equitable criteria.
 - d) I extend equal opportunities and due process to all parties in matters under consideration. If I engage in unilateral meetings and discussions, I do so without making voting decisions or any improper or unauthorized representations on behalf of the District.
 - e) I show respect for persons, confidences, and information designated as "confidential."
 - f) I use my title(s) only when conducting official District business for information purposes or as an indication of background and expertise carefully considering whether I am exceeding or appearing to exceed my authority.
 - g) I will avoid actions that might cause the public or others to question my independent judgment.
 - h) I maintain a constructive, creative, and practical attitude toward the District's affairs and a deep sense of social responsibility as a trusted public servant.

1030.7 As a representative of [District name], I will be professional.

In practice, this value looks like:

- a) I apply my knowledge and expertise to my assigned activities and to the interpersonal relationships that are part of my job in a consistent, confident, competent and productive manner.
- b) I approach my job and work-related relationships with a positive, collaborative attitude.
- c) I keep my professional education, knowledge, and skills current and growing.

1030.8 As a Representative of [District name], I will be service-oriented.

In practice, this value looks like:

- a) I provide friendly, receptive, courteous service to everyone.
- b) I attune to and care about the needs and issues of citizens, public Officials and District workers.
- c) In my interactions with constituents, I am interested, engaged and responsive.

1030.9 As a representative of [District name], I will be fiscally responsible.

In practice, this value looks like:

- a) I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the District, especially its financial stability.
- b) I demonstrate concern for the proper use of District assets (e.g., personnel, time, property, equipment, funds) and follow established procedures.
- c) I make good financial decisions that seek to preserve programs and services for District residents.
- d) I have knowledge of and adhere to the District's Purchasing and Contracting and Allocation of Funds Policies.



1030.10 As a representative of [District name], I will be organized.

In practice, this value looks like:

- a) I act in an efficient manner, making decisions and recommendations based upon research and facts, taking into consideration short and long term goals.
- b) I follow through in a responsible way, keeping others informed and responding in a timely fashion.
- c) I am respectful of established District processes and guidelines.

1030.11 As a representative of [District name], I will be communicative.

In practice, this value looks like:

- a) I positively convey the District's care for and commitment to its citizens.
- b) I communicate in various ways, that I am approachable, open-minded, and willing to participate in dialog.
- c) I engage in effective two-way communication, by listening carefully, asking questions, and determining an appropriate response which adds value to conversations.

1030.12 As a representative of [District name], I will be collaborative.

In practice, this value looks like:

- a) I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
- b) I work towards consensus building and gain value from diverse opinions.
- c) I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
- d) I consider the broader regional and state-wide implications of the District's decisions and issues.

1030.13 As a representative of [District name], I will be progressive.

In practice, this value looks like:

- a) I exhibit a proactive, innovative approach to setting goals and conducting the District's business.
- b) I display a style that maintains consistent standards; but is also sensitive to the need for compromise, "thinking outside the box" and improving existing paradigms when necessary.
- c) I promote intelligent and thoughtful innovation in order to forward the District's policy agenda and District services.

1030.14 Enforcement:

Any Official found to be in violation of this Code may be subject to Censure by the District Board. Any member of any advisory Committee found in violation may be subject to dismissal from the Committee. In the case of an employee, appropriate action shall be taken by the General Manager or by an authorized designee.



Committee Report

TO: Board of Harbor Commissioners

FROM: Governance & Policy Committee (Commissioners Brennan & Larenas, Public Member Ratts, Staff: Julie van Hoff, Director of Administrative Services)

DATE: November 20, 2019

SUBJECT: Policy for Board Meeting Agenda

Recommendation/Motion:

Recommendation: Review information from District Counsel and staff regarding current policies in other governmental entities. Adopt Policy 3.3 'Board Meeting Agenda'.

Policy Implications:

Policy 3.3 'Rules for the Preparation and Distribution of Meeting Agendas' (Attachment 1) was amended on April 18, 2018. The current policy allows the following persons to place matters on the regular meeting agenda:

- 1) The Board of Harbor Commissioners, by majority vote (Board).
- 2) A committee of the Harbor District, on a matter within the scope of the committee, and approved by the committee as a whole.
- 3) The General Manager of the District.
- 4) The legal counsel of the Harbor District.

Fiscal Implications/Budget Status:

None

Background:

On August 21, 2019 at a Special Meeting, a discussion was held regarding as to whether or not the District should return to the previous policy which allowed all members of the Board of Harbor Commissioners to place matters on the agenda and did not require approval by the majority vote.

During the discussion of this item it was recommended to return to the Governance & Policy Committee, with instruction to General Counsel to prepare a matrix (Attachment 3) of policies of other governmental agencies. The attachment also includes information gathered by staff.

This item was discussed at the September 12, 2019 Governance & Policy Committee meeting and the Committee recommended that the CSDA Sample Policy be used as a template for a new District Policy. Attachment 2 presents the CSDA Sample Policy with redlines to show changes relevant to the District.

Attachments:

1. [Current Policy](#)
2. [CSDA Sample Policy \(marked up\)](#)
3. [Matrix from District Counsel/Staff](#)

San Mateo County Harbor District

Policy	Number: 3.3	Date: April 18, 2018	Revision:
Title: Rules for the Preparation and Distribution of Meeting Agendas	Prepared By: S. McGrath	Approved By: Resolution 18-06	Page: Page 1 of 3
Purpose: To guide the development of agendas for the Board of Commissioners			

STATEMENT OF POLICY

I. General:

The following rules for the preparation of the agenda for Harbor Commission Meetings are based on the premise that it is in the interest of good government that the public and the San Mateo County Harbor District be fully informed on all matters upon which the District is called upon to act; that the Harbor Commission relies upon the members of the Harbor District staff to prepare proper reports and thorough research and investigation require adequate time to carry out their duties and responsibilities.

Additionally, District Policy 6.2.5 'Harassment, Discrimination and Retaliation Prevention' is specifically referenced herein to affirm that the District has zero tolerance for harassment, discrimination or retaliation in the application of any of the District's policies, procedures or rules.

II. Preparation of Agenda:

- A. The General Manager shall prepare an agenda for each regular and special meeting of the Board of Harbor Commissioners, which, for regular meetings, shall include, but not be limited to:
- i. An opportunity for members of the public to address the Board on items not on the agenda;
 - ii. An opportunity for Commissioners to make comments or public statements;
 - iii. A Consent agenda of routine items that may be approved by one motion;
 - iv. A Discussion agenda of matters of public significance, items requiring Board action or items requiring Board direction to staff;
 - v. A Future Agenda Items section for Board discussion and action on items to be placed on future agendas.

San Mateo County Harbor District

Policy	Number: 3.3	Date: April 18, 2018	Revision:
Title: Rules for the Preparation and Distribution of Meeting Agendas	Prepared By: S. McGrath	Approved By: Resolution 18-06	Page: Page 2 of 3
Purpose: To guide the development of agendas for the Board of Commissioners			

B. Authority to place matters on the Agenda:

The following persons shall have the authority to place matters on the agenda:

1. The Board of Harbor Commissioners, by majority vote (Board).
2. A committee of the Harbor District, on a matter within the scope of the committee, and approved by the committee as a whole.
3. The General Manager of the Harbor District.
4. The legal counsel of the Harbor District.

C. Unless specifically directed otherwise by the Board, the General Manager will determine the schedule for placement of items on the agenda of a future meeting, depending on the availability of staff and/or consultant resources and the complexity of the subject.

D. All matters placed on the agenda shall be identified by author.

E. If a Commissioner wishes to place an item on a future agenda, he or she shall first suggest the item under the Future Agenda Items portion of the Harbor District meeting agenda; and shall make a motion to that effect. If the motion is passed by the Board, the item will be placed on a future agenda.

F. Once the agenda has been posted to the District's website, an item may not be removed therefrom except by the majority vote of the Commission at the time the item is called at the meeting.

III. Posting of Agenda:

A. The agenda shall be posted in compliance with the provisions of the "Brown Act", Government Code §54950 et sequitur, and in accordance with District Policy 3.2, 'Brown Act Compliance'.

Policy	Number: 3.3	Date: April 18, 2018	Revision:
Title: Rules for the Preparation and Distribution of Meeting Agendas	Prepared By: S. McGrath	Approved By: Resolution 18-06	Page: Page 3 of 3
Purpose: To guide the development of agendas for the Board of Commissioners			

IV. Distribution of the Agenda:

- A. When distributing agenda packages and other materials to Commissioners, those materials should be provided to all Commissioners at the same time. Agenda packets, except for closed session materials, must also be made available to the public once distributed to the Commission.
- B. Copies of the agenda, and notice of Board packet availability, shall be distributed to:
 - 1. All members of the Board of Harbor Commissioners.
 - 2. Each of the Harbor Masters.
 - 3. Legal Counsel of the Harbor District.
 - 4. Members of the public who have requested, in writing, the printed agenda and packet, providing that they have paid the fee to cover the cost of distribution.
 - 5. Members of the public who have requested addition to the electronic distribution list of agenda and board packet availability.
- C. At the Commission Meetings, copies of the agenda and Board packet shall be made available for the public attending the meeting.

SAN MATEO COUNTY HARBOR DISTRICT

<u>Policy Title:</u> Board Meeting Agenda	<u>Number:</u> 3.3	<u>Date of Approval:</u> XX/XX/XX
<u>Other Revisions:</u> Reso: 19-13 8/7/13 Reso: 18-06 4/18/18	<u>Prepared By:</u> Julie van Hoff	

STATEMENT OF POLICY

I) Agenda preparation. The General Manager, in cooperation with the Board President, shall prepare an agenda for each regular and special meeting of the Board of Commissioners in accordance with the Brown Act. Any Commissioner may contact the General Manager and request an item to be placed on the agenda no later than 5:00 P.M. on the day that is eight business days prior to the closing of the agenda for the next meeting date. The General Manager shall add any or all items requested by Commissioners unless it is not in compliance with the Brown Act or other laws or regulations.

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POLICY NUMBER: 4205

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II) Public requests. Any member of the public may request that a matter directly related to District business be placed on the agenda of a regularly scheduled meeting of the Board of Commissioners, subject to the following conditions:

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4205.2.1

A) The request must be in writing and be submitted to the General Manager [or other responsible managing employee] together with supporting documents and information, if any, at least eight business days prior to the date of the meeting.

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B) The General Manager shall be the sole judge of whether the public request is or is not a "matter directly related to District business."

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C) The General Manager shall determine the timing of when the item will be placed on the agenda.

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D) The public member requesting the agenda item may appeal the General Manager's decision at the next regular meeting of the Board of Commissioners. Any Commissioner may request that the item be placed on the agenda of the Board's next regular meeting.

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E) No matter which is legally a proper subject for consideration by the Board in closed session will be accepted under this policy.

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F) The Board of Commissioners may place limitations on the total time to be devoted to a public request issue at any meeting, and may limit the time allowed for any one person to speak on the issue at the meeting.

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III) Agenda descriptions. All Board agendas shall include an unambiguous description of each item on the agenda to be discussed, including closed session items. The General

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Manager shall ensure that the description gives notice to the public of the essential nature of business to be considered.

IV) Agenda posting. Agendas for regular meetings shall be posted 72 hours in advance of the meeting and agendas for special meetings shall be posted 24 hours in advance of the meeting. The posting must occur in a place that is freely accessible to the public and on the District's website. A touch screen electronic kiosk may take the place of the paper posting. The internet posting shall occur on the District's primary website homepage through a prominent, direct link to the current agenda. The agenda shall also be accessible in an open format.

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V) Agenda packages. When distributing agenda packages and other materials to members of the Board of Directors, those materials should be provided to all members at the same time. Agenda packages, except for closed session materials, should also be made available to the public once distributed to the Board.

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VI) Public comment.

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A) For regular meetings the Board shall provide the public with an opportunity to address not only any item on the agenda but any item within the subject matter jurisdiction of the District.

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B) For special meetings, the Board shall provide the public with an opportunity to address any item on the agenda.

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C) The Board may not prohibit public criticism, but shall control the order of the proceedings, including placing reasonable time limits on public comment.

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D) The Board may not require members of the public to give names or sign a register as a condition of attendance or speaking.

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VII) Closed sessions. The Board may conduct a closed session during a noticed meeting for certain matters, as identified on the agenda, where it is necessary to conduct business in private. Major reasons for permissible closed sessions, as authorized by the Brown Act, include real property transactions, labor negotiations, and pending litigation. The Board shall allow public comment on any closed session item before going into closed session.

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VIII) Items not on the agenda. The Board shall not discuss or take action on any item that does not appear on the posted agenda except that the Board may act on items not on the agenda to address emergency situations, subsequent need items, and hold-over items from a continued previous meeting held within the prior five days. The Board may also respond to public comments and make announcements.

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Governmental Entity

<u>District</u>	<u>City</u>	<u>Notes</u>	<u>Only GM/City Mgr. can add item</u>	<u>The Board President can add item</u>	<u>Any Board Member can add an item</u>
City	Cupertino	The City Clerk prepares the agenda. "Every official, board, commission or other body, connected with the City government, and every citizen, individual, corporation, committee or civic group, having any reports, communications or other matters to be presented at a City Council meeting, shall be referred to the City Clerk in writing before nine a.m. of the sixth day (Sunday included) preceding the day of such meeting for it to be given consideration as an item of agenda business." It does not appear to be mandatory that the Clerk put a requested item on the agenda. See: Cupertino Municipal Code Section 2.08.080	n.a.	n.a	n.a
City	Half Moon Bay	The City Clerk prepares the agenda. The Mayor also participates in the preparation of the agenda. The Mayor, with the approval of a majority of the Council, can change the order of hearing of items on the agenda. City Councilmembers, the City Manager and the City Attorney may place matters on the agenda. A Councilmember may request an item be considered on a future agenda and, if a second Councilmember agrees with the request, staff will prepare a staff report. Councilmembers may make this request verbally during a meeting or may submit a written request. Members of the public may request Council take action in the following ways: write a letter to the City Council; speak during the public comment period at a City Council meeting; or attend annual Council Strategic Workshop and provide input. Upon agreement of a majority of the City Council, Council will determine whether to place an item requested by the public on a future agenda. See: City Council Rules of Procedure and Decorum, Chapter 5	No	Yes	Yes

Agenda Matrix

City	Foster City	Staff, in consultation with the Mayor, prepares the agenda. While items are usually placed on the agenda at the request of the Council or Staff members, citizens who would like the Council to review an item should send a formal written request to the Mayor and City Council. The item will be reviewed to determine whether it should be handled administratively, referred to a commission or committee, or added to an upcoming City Council agenda. See: Foster City Agenda and Minutes	No	Yes	Yes & Public
San Lorenzo Valley Water District	Boulder Creek	The District Manager, in consultation with the President or Presiding Officer, prepares the agenda for upcoming Board of Directors or committee meetings. Persons wishing to have an agenda item scheduled should make their request known in writing to the President of the Board. All such written requests, including supplemental materials, must be delivered to the office of the district secretary by Thursday, 5:00 p.m., one (1) week preceding the date of the scheduled Board of Directors meeting. The President of the Board shall decide whether the subject matter is one which can and should be considered as part of a Board meeting agenda. Generally, such matters will be placed on the written correspondence portion of the agenda for discussion and consideration. However, no action may be taken by the Board of Directors on any written communications presented. The Board of Directors may request that the matter be placed on a future agenda for additional consideration and possible action. See: San Lorenzo Valley Water District Board Information	No	Yes	No

Agenda Matrix

Cosumnes American Bear Yuba Joint Powers Authority	Auburn	The Secretary, in consultation with the Board President, shall prepare an agenda for each regular and special meeting of the Board of Directors. Any Director may request that the Secretary place an item on the agenda no later than 5 business days preceding the meeting. Additionally, any member of the public may request that matter directly related to the District business be considered for placement on the agenda of a regularly scheduled meeting of the Board of Directors, subject to conditions.	No	Yes	Yes & Public
Malaga County Water District	Fresno	The General Manager, in cooperation with the Malaga County Water District Board of Directors Chair, prepares an agenda for each regular and special meeting. Any Director may request any item to be placed on the agenda by contacting the General Manger at least 14 business days prior to the date of the meeting. Any member of the public may request that a matter directly related to District business be placed on the agenda of a regularly scheduled Board meeting, subject to conditions.	n.a.	n.a.	n.a.
Vallejo City Unified School District	Vallejo	The Board President and the Superintendent, as Secretary to the Board, shall work together to develop the agenda for each regular and special meeting. Any Board Member or member of the public may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting.	No	Yes	n.a.
Santa Clara Valley Open Space Authority	San Jose	The Chairperson or the General Manager may place a matter on the agenda for Board consideration. The Chairperson, the General Manager and the Clerk of the Board shall confer one week prior to the preparation and posting of the agenda. Board members may request to place items on an agenda during a Board meeting, or make requests to the Chairperson to place a matter on the agenda. It is the responsibility of the Clerk of the Board to prepare written agendas for all meetings of the Board and to place matters on the agenda as requested by the Chairperson or the General Manager. See: Board Operating Rules and Procedures, section 2.20.040	No	Yes	n.a.

Agenda Matrix

Bayshore Sanitary District	Brisbane	Any Board or staff member can request an item be placed on the meeting agenda. If the request is made within 72 hours of the monthly meeting, the item may be discussed but no action can be taken. The exception to that is if the matter is of some urgency and cannot wait until the next monthly meeting. That being said, our Board very seldom feels the need to add an item to the agenda and when that right has been exercised there is not exhaustive discussion.	No	Yes	Yes
Coastside County Water District	Half Moon Bay	Under our policies, an agenda item can be added by the President and the GM (both must agree) or at the request of any two directors. No individual director, including the President, has the authority to add an item or to direct that one be added. We also have a standing item on our Board agenda for adding future agenda items.	No	No	No
Humboldt Bay Harbor Recreation & Conservation District	Eureka	The Executive Director prepares the Agenda and gives to the Board President.	No	Yes	No
Ladera Recreation District	Portola Valley	Any board member can direct the GM to add an agenda item.	No	Yes	Yes
San Mateo County Resource Conservation District	Half Moon Bay	Any board member can add an item.	No	Yes	Yes
Westborough Water District	Westborough	The GM will present the Agenda to the District Counsel and than it will be presented to the Board. He said they have never removed any item someone has added. They don't have anything in formal writing stating this.	No	Yes	Yes



Committee Report

TO: Board of Harbor Commissioners

FROM: Governance & Policy Committee (Commissioners Brennan & Larenas, Public Member Ratts, Staff: Julie van Hoff, Director of Administrative Services)

DATE: November 20, 2019

SUBJECT: Policy 3.5 'District Counsels & Board Relationship'

Recommendation/Motion:

Recommendation: Review and comment on draft policy.

Motion: Approve Policy 3.5 'District Counsels & Board Relationship' (including any proposed revisions, if applicable).

Policy Implications:

The proposed Policy 3.5 'District Counsels & Board Relationship' is a new policy that would help guide the working relationship between District Counsel and the Harbor Commission.

Fiscal Implications/Budget Status:

None

Background:

On October 7, 2019 Commissioner Brennan and Larenas (Public Member Ratts was absent) moved that the attached policy (as revised) go to the full Board for consideration and action as recommended by the Governance & Policy Committee.

The Policy was based on information obtained from 'Counsel and Counsel: A guide for Building a Productive Employment Relationship' published by the League of California Cities and 'Guidelines for Outside Counsel Non-Risk Program Matters' published by the University of California.

Attachments:

1. [Draft Policy 3.5 'District Counsels & Board Relationship'](#)
2. [Counsel and Council Guide-League of California Cities](#)
3. [University of California Guidelines for Outside Counsel](#)

SAN MATEO COUNTY HARBOR DISTRICT

Policy Title: District Counsels & Board Relationship	Number: 3.5	Date of Approval: MM/DD/YYYY
Other Revisions: N/A	Prepared By: Julie van Hoff	

1. STATEMENT OF POLICY

The San Mateo County Harbor District Board of Harbor Commissioners (Harbor Commission) relationship with District Counsel is integral to the success of the District. The relationship should be amicable, and District Counsel should have intimate knowledgeable of the challenging and evolving public policy issues and how these issues may impact the District. District Counsel acts as the Chief Legal Officer and proactively represents the District in all legal matters pertaining to District business. District Counsel provides the Harbor Commission with objective advise and does not advocate for any position. Counsel shall take ethical considerations into account when providing advice and not automatically default to a financially responsible choice. Counsel provides clear, open and complete reporting, particularly in advance of significant activity.

Employment & Labor Counsel reports directly to the Harbor Commission. However, due to sensitive nature of certain District staff employment issues, protection of privacy will be maintained to the greatest extent possible when Employment & Labor Counsel provides reports the Harbor Commission.

A. Attributes of District Counsel

1. Experience in broad range of municipal law.
2. Stays current and is well versed in the “art of the possible” and is not risk adverse in terms of problem solving or approaches to best meet the District’s needs.
3. Is an advisor, sounding board, confidant, and a resource; recognizes the importance or retaining trust and confidence and is accessible.
4. Provides his/her best professional advice on legal issues; is politically astute, but not political.
5. Recognizes what the Harbor Commission is trying to achieve and helps them reach their objective.
6. Knows when to argue and when to settle without unnecessarily giving away District resources.
7. Seeks justice and develops a full and fair record and does not use the economic power of the District to harass parties or to bring about unjust settlements or

results (American Bar Associate Model Code of Professional Responsibility, Ethical Consideration 7-14)

8. Excellent communicator, critical thinker, analytical and creative.
9. Provides neutral and objective advice, provides options, and does not advocate for any particular position.
10. Recognizes when a legal issue requires outside legal expertise and does not interfere with outside legal counsel's recommendations to the Harbor Commission.

B. Obligations

1. District Counsel is governed by the ethical obligations of an attorney (Rules of professional conduct of the State Bar of California).
2. District Counsel has a duty to represent the District competently and in a professional and ethical manner.
3. District Counsel acts as an advisor to the Harbor Commission.

C. Duties

1. Fully complies with this Policy.
2. Attends regular meetings of the Harbor Commission and special meetings when called.
3. Frames all ordinances, resolutions, and contracts as required by Harbor Commission. Reviews public meeting agendas.
4. Responds to and remains in reasonable contact with the District. Keeps the Harbor Commission properly informed and fully explains matters that are crucial to significant activities.
5. Defends the District against non-meritorious claims and disputes
6. Resolves as soon as possible, claims or disputes where liability is reasonably clear (including informal settlement negotiations).
7. Collects necessary information as quickly as possible. Provides the Harbor Commission with an evaluation of the matter and an appropriate case handling plan as soon thereafter. The plan should include a description of the matter, and estimated timeline for disposition, a discussion of early disposition potential, and estimated costs.
8. Explains proposed legal tactics and strategies and receives direction from Harbor Commission prior to proceeding.
9. Reevaluates the case posture to ensure the best possible outcome and communicates with the Harbor Commission when new facts, legal issues, or other matters are discovered.

10. If informal settlement negotiations fail but other alternatives become at all encouraging, Counsel, in consultation with the Harbor Commission, shall seek the use of programs such as mediation or stipulated arbitration.
11. Provides a written status report every 60 days or sooner if it is warranted by significant developments.
12. All settlements/offers/demands shall be discussed in advance with Harbor Commission before being communicated to others. Final settlement requires approval of the Harbor Commission.
13. Recommends outside counsel for issues outside District Counsel's expertise.
14. Provides recommendations and advice when requested by the Harbor Commission pertaining to the retention of and employment of outside law specialists.
15. Responds annually, in a timely manner, to the District's outside auditor regarding legal confirmation letters.

D. Expertise

1. Ralph M. Brown Act
2. California Public Records Act
3. Conflict of Interest Law and Political Reform Act
4. Tort Claims Act
5. Environmental laws
6. Public Works Construction regulations and laws

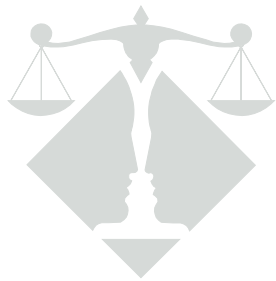
E. Billing Requirements

Invoices shall identify and describe each item of service in sufficient detail to identify the persons involved and the work performed by date and time billed and the person providing the services.

F. Review of Counsel

The Harbor Commission will review District Counsel's performance no less than every two years. Performance will be based on the above attributes, obligations, duties, and expertise. A formal evaluation may help the Harbor Commission with setting the legal goals it wants District Counsel to accomplish, improve communications, and protect the District from potential liability.

COUNSEL AND COUNCIL:



*A Guide for Building a Productive
Employment Relationship*



VISION

To be recognized and respected as the leading advocate for the common interests of California Cities.

MISSION AND CORE BELIEFS

To restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

WE BELIEVE:

Local self-governance is the cornerstone of democracy.

Our strength lies in the unity of our diverse communities of interest.

In the involvement of all stakeholders in establishing goals and in solving problems.

In conducting the business of government with openness, respect, and civility.

The spirit of public service is what builds communities.

Open decision-making that is of the highest ethical standards honors the public trust.

Cities are vital to the strength of the California economy.

The vitality of cities is dependent upon their fiscal stability and local autonomy.

The active participation of all city officials increases the League's effectiveness.

Focused advocacy and lobbying is most effective through partnerships and collaboration.

Well-informed city officials mean responsive, visionary leadership, and effective and efficient city operations.

ABOUT THE LEAGUE

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents.

In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts educational conferences and research, and publishes *Western City* magazine.



COUNSEL AND COUNCIL: A GUIDE FOR BUILDING A PRODUCTIVE EMPLOYMENT RELATIONSHIP

ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this publication:

Valerie J. Armento

City Attorney, Sunnyvale

Helene Leckman Leichter

City Attorney, Morgan Hill

Richard S. Whitmore

Partner, Liebert Cassidy Whitmore

Kathi Bailey

Secretary to the City Attorney, Morgan Hill

Additional copies of this publication may be purchased by using the order form located on the last page or by calling (916) 658-8257. Visit CityBooks online at www.cacities.org/store.

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Introduction

This booklet is intended to assist city council members and city attorneys in defining the structure of their employment relationship.

Among the issues addressed by this booklet are:

- *The nature of the employment relationship.*
- *The recruitment and selection of a city attorney and defining his or her role.*
- *Defining the parameters of the city attorney-city council employment relationship.*
- *Maintaining a viable employment relationship.*
- *Effectuating an amicable and enforceable conclusion to the employment relationship.*
- *Suggested employment agreement provisions for both contract and in-house city attorneys.*

This booklet should serve as a starting point for discussions about how the relationship should be viewed. It offers practical suggestions on structuring the employment relationship in an effort to achieve both parties' objectives and expectations.

This booklet evolved from a survey given to all city attorneys, both contract and in-house, in March 2001. The survey asked about such issues as:

- *Particulars about the employment relationship between city attorneys and their councils.*
- *The city attorney hiring process and whether there was an employment agreement.*
- *How the city attorney's job performance was evaluated, and what role the city attorney played in the organization and community.*

Attorneys were asked to provide copies of employment agreements and other documents governing their employment, such as charter provisions, municipal codes, resolutions, and civil service rules and regulations.

A total of 148 surveys were completed and returned. The results were tallied and the agreements and other documents analyzed. **The goal of this booklet is to put the results into context by exploring the basic aspects of the relationship between a city attorney and his or her council.**

CHAPTER 1

I. Nature of the Relationship

The traditional attorney-client relationship is often viewed as pre-defined and static - the client asks for legal advice and/or representation and the attorney provides it. However, due to the integration of the city attorney into the management structure of the public entity, and the need to address challenging and evolving public policy issues, the nature of the relationship between city attorneys and their employers is a very dynamic one. Yet, despite this dynamism, many aspects of the relationship are defined by more stable and long-standing issues, including the duty owed by an attorney to his or her client, as well as broader ethical obligations owed by the attorney.

This section explores current issues underlying and defining the relationship between a city and its attorney. It includes a discussion of management trends and offers some practical tips for achieving a positive working relationship for everyone.

A. VARIED APPOINTMENT STRUCTURES CREATE DIFFERING RELATIONSHIP DYNAMICS

Some city attorneys are city employees, and some are members of private law firms. Some are elected, a few are appointed by the city manager and most are appointed by the city council. Some serve for a specified term, and some serve at the pleasure of the appointing authority.

City councils directly appoint the city attorney in 464 of California's 478 incorporated cities. Of those, approximately two-thirds are contract city attorneys from outside firms; the remaining one-third are hired as in-house city attorneys. Voters directly elect their city attorney in eleven charter cities and city managers appoint the city attorney in three charter cities.¹

Attorneys appointed by the city manager or elected by the voters may have a different relationship with the city council than those appointed by the city council. Appointment by the city council may create a more traditional employer-employee relationship and, at times, loyalties and reporting obligations may become blurred.

Regardless of how a city attorney takes office or his or her classification, he or she remains the chief legal officer of the city. The city attorney's job is to provide legal advice to minimize the city's liability and promote compliance with the law. The relationship between the city council and city attorney is a critical component in ensuring that the city functions as a well-managed organization and in accomplishing the public policy objectives of elected officials.

B. WHO IS THE CLIENT AND WHOM DOES THE CITY ATTORNEY REPRESENT?

Who does the city attorney represent? Is it a corporate "city" client? Are individual "public officials" clients? Is the "public" the client? Is it some combination of all of these? California courts have not provided much guidance on this subject. However, the courts have made it clear that government lawyers are governed by the ethical standards of the profession. In California, these standards are contained in the Rules of Professional Conduct of the State Bar of California. Not all duties are in the Rules, however, nor do the Rules supersede case law.

Lawyers' Obligations and Relationships to Clients and the Legal System

Lawyers have two sets of obligations and relationships: to their clients, on the one hand, and to the courts and the rule of law, on the other. In some instances, a duty can be understood as being owed primarily to the client. An example of this is the lawyer's duty to represent clients competently. In other instances, the duty primarily is to the legal system, such as the lawyer's duty not to mislead the courts. Regardless of whether a duty is owed primarily to the client or primarily to the system, however, the performance of a lawyer's duty generally redounds to the benefit of the legal system.²

The Rules of Professional Conduct define an attorney’s role and responsibilities in representing an organization. They say, in part, that:

*In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.*³

So, in response to the question, “Who is the client?” this rule states that for a city attorney, the client is the city – the municipal corporation as a whole. For purposes of giving advice, receiving direction, and providing representation, however, the question remains, “Who is the city?”

In general terms, the city attorney takes direction from a majority of the council. He or she cannot take any action requested by an individual council member contrary to the desires of the city as expressed by the council majority. However, given the nature of legislative entities, which may often be split with a consistent “majority” and “minority,” the city attorney must provide balanced legal advice to both sides.

The Rules of Professional Conduct recognize that a city may be embodied in various constituent parts. The rule goes on to state that a city attorney’s dual representation of the entity as well as its directors, officers, or other constituents in a given matter may only occur with the city council’s consent.

Under rule 3-600 of the Rules of Professional Conduct, an individual council member or other city official (such as the city manager) is not the client. There is no attorney-client confidentiality in these communications. Advice may only be given to an individual in his or her capacity as an officer of the city. Such advice is subject to disclosure to the city council. For example, if a city council member has a conflict of interest that could result in the invalidation of the council’s decision under state conflict of interest laws, the city attorney must advise the council of the consequences of the conflict if the council member fails to disclose the conflict and abstain.

Even though the city attorney’s client is the city itself, there are times when the city attorney owes a duty of defense to an individual employee under the California Government Tort Claims Act.⁴ If a lawsuit alleges an act or omission that arose out of the course and scope of public employment, the entity has consented to dual representation by operation of law. For the limited purpose of the lawsuit, the city attorney has a relationship with both the city and employee. A city may refuse to undertake a joint defense if a specific conflict of interest would result, but the city must pay costs of a separate defense attorney.

For More Information:

The League’s *Municipal Law Handbook* provides practical advice on the Tort Claims Act and other areas of municipal law. The handbook can be found on the League’s website in the Muni Law Research Center at www.cacities.org/munilaw. This publication is available for purchase through CityBooks by calling (916) 658-8257 or online at www.cacities.org/store.

C. PRESERVING CONFIDENCES – WHO DECIDES?

In *Roberts v. City of Palmdale*,⁵ the California Supreme Court recognized that an attorney-client privilege exists in the public arena. Communications between the city attorney and the city council may be kept confidential. However, it is important to be clear as to who holds the confidentiality privilege. Because the city attorney’s client is the city – as embodied by the city council – it follows that the city council holds the privilege. As the holder of the privilege, the city council may decide to waive the privilege and disclose the city attorney’s communications to the general public. This should be a decision made by a majority of the council expressly stated on the public record. It should not be the decision of an individual council member.

Another aspect of the attorney-client privilege is that the city attorney’s communications on substantive matters with staff members cannot be kept confidential from supervisors. Communications with individual council members on city business cannot be kept confidential from the full city council. It is important for each city official to understand this principle in order to avoid misunderstandings.

Example:

The city attorney learns an employee is not complying with a statute or regulation that could expose the city to liability and if speaking with the employee is not feasible or fails to rectify the situation, the city attorney must report the matter to the employee’s superior and up the chain of command, if necessary. If the problem continues, the city attorney must report it to the city manager, and ultimately, to the city council if the issue is not resolved. Failure to do so constitutes a violation of the Rules of Professional Conduct and can be a basis for attorney discipline by the State Bar.

D. DUTIES OWED TO THE PUBLIC

In addition to acting as an advisor or advocate for the city, the city attorney owes two duties directly to the public: to act as a check on governmental action in certain limited circumstances, and to accurately advise the public when called upon to do so. In addition, the city attorney may have the direct authority to enforce certain laws.

1. Legality of the City's Conduct

The city attorney's advice as to the legality of the city's conduct also appears to be intended to act as a check on illegal city conduct. This may occur where the city attorney has the duty to review claims or contracts or to provide written consent prior to a given action, such as the destruction of records.⁷ In other contexts, the city attorney's only duty is to the public, such as when he or she prepares a true and impartial title and summary of an initiative measure.⁸ State law also grants city attorneys the right to bring certain civil enforcement actions in the name of the People, such as the abatement of nuisances or violations of the Unruh Civil Rights Act.⁹

2. Protecting the Public Interest

The city attorney is also called upon to advise the city to follow laws designed to protect the public interest. These duties include giving advice during hearings to ensure not only that the public entity follows the law, but also that the applicant receives due process. The city attorney may also be called upon to determine whether the public has the right to access the city's records under the Public Records Act.¹⁰

3. Ethical Duty

At times, the question arises as to whether city attorneys have a higher ethical duty to the public than exists for attorneys representing private parties. The Rules of Professional Conduct provide no distinction between public and private attorneys when handling civil matters. The American Bar Association's standards (which do not have binding effect in California) suggest public lawyers may have a higher duty:

A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.¹¹

4. Prosecutorial Duties

City attorneys deal mainly with civil legal matters. In some cities, the city attorney also has prosecutorial duties for certain criminal matters. In such instances, the city attorney represents the People of the State of California, not the city. Case law holds that a prosecuting attorney is a public officer and not an "attorney" who represents a "client."¹² As a result, the city attorney is not subject to taking direction from the city council with respect to prosecuting criminal matters. Instead, the prosecuting attorney is vested with the discretionary power to determine whether to prosecute.¹³

The fact that the city attorney does not represent the city when prosecuting a criminal case can mean two things:

- *An attorney-client privilege will not protect city attorney communications and documents prepared for a criminal case from disclosure when such information is later sought by parties in a civil case in which the city is not a defendant.*
- *The city council cannot require the city attorney to bring a criminal action or in any other way interfere with the city attorney's discretion with respect to the disposition of a case.*

The United States Supreme Court has held attorneys prosecuting criminal matters to a higher standard than when conducting civil actions or administrative proceedings.

[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.¹⁴

In California, this higher standard has been applied to city attorneys prosecuting criminal and nuisance abatement cases. It is important that city officials be mindful of these particular duties owed by the city attorney to the public so they can work cooperatively with the city attorney to resolve situations where a perception exists that prosecution (or non-prosecution) of the case conflicts with the city's interests.

E. WHO DEFENDS THE CITY'S ATTORNEY?

As a public official, the city attorney is entitled to defense and indemnification with regard to acts or omissions arising out of the course and scope of his or her employment.¹⁵ If charges are filed with the State Bar against a city attorney, the city does not have a duty to provide the attorney with a defense, but it has the discretion to do so. A city attorney is acting in his or her capacity as an employee when making a request for representation in such a proceeding. The city should seek legal advice from independent counsel with regard to the legality or propriety of providing the city attorney with such representation.

Most contract city attorney agreements include a discussion of these issues and many reverse the duty – under these agreements the attorney defends and indemnifies the city. Virtually all contract city attorneys provide malpractice insurance to protect not only themselves, but the city as well.

For More Information:

The Institute for Local Self Government produces several publications offering practical ethics advice to local officials.

The publications can be found on ILSG's website at www.ilsg.org/trust.

ILSG publications are available for purchase through CityBooks by calling (916) 658-8257 or online at www.cacities.org/store.

II. Recruitment / Selection Process

Recruitment and selection of city attorneys is a complex decision-making process. It is usually conducted in one of three ways:

- (1) Through in-house personnel specialists;
- (2) Through a professional recruiter; or
- (3) By the council members themselves.

Whatever method is used, there are issues of concern that are common to all. This section discusses the various types of recruitment methods with a special discussion regarding contract attorneys.

A. CONTRACT OR IN-HOUSE CITY ATTORNEY?

The first task in any recruitment and selection process for a city attorney is to determine whether to have a contract or in-house attorney. The city council needs to fully analyze the relative merits of each option from both a fiscal and administrative standpoint in making its decision.

From a fiscal standpoint, whether an in-house office is the most prudent alternative depends on a number of factors. These include the volume of work to be performed and whether one person can efficiently do the job, whether support staff will be necessary or if the office will require assistance from outside counsel, and whether it is more cost effective

CONTRACT OR IN-HOUSE?

Public agencies often struggle with whether to have an in-house or contract city attorney. Here are some considerations to keep in mind when making such a decision:

1. How many hours of legal work do you have per week?
2. How much of the work is specialized, such as redevelopment, personnel, and utilities?
3. How much litigation do you have? Do you need litigation specialists or generalists?
4. How much office time does staff need for day-to-day matters?
5. Should the attorney be part of a management team, or is a consultant role sufficient?
6. Is it more economical to have a salaried employee or to pay hourly rates?

simply to retain a full-service outside law firm. A thorough review of current legal costs, and a comparison of those costs with other cities with similar needs, should be performed.

An administrative analysis should include whether city staff and council members need a large amount of daily, informal legal advice. If not, perhaps the council will be more comfortable with an attorney who provides more limited coverage. In large part, this depends on the volume and urgency of legal questions that need to be answered. In addition, councils should evaluate whether they want the city attorney to be a fully integrated member of the management team. If so, this objective may be best achieved by having the attorney be a city employee rather than retained on a contract basis.

B. RECRUITMENT ISSUES

1. Needed Skills

One of the primary concerns in recruiting a city attorney is what experience and skills should be required of the applicants. Expertise in relevant legal fields is a given – few councils are interested in candidates who need on-the-job training. Moreover, because the city attorney's role is becoming increasingly more important in the day-to-day functioning of city government, many councils are placing a greater emphasis on managerial skills, including law office administration. City attorneys are often members of the city's management team. They are involved in the decisions made by their executive teams – and not just as legal consultants. This growing emphasis on managerial expertise means that city attorney applicants who possess experience in areas such as budget administration and personnel supervision make attractive candidates.

2. Finding Applicants

Some city councils may seek to recruit a sitting city attorney with several years' experience, whether in-house or contract. Beyond that, viable candidates include practicing assistant or deputy city attorneys, and attorneys practicing in law firms that specialize in municipal law. However, these candidates may not possess the breadth of subject matter or administrative experience councils are looking for. Given the increasing complexity of municipal law, hires from outside this limited applicant pool are rare.

3. Candidate Concerns

Practical concerns of the candidates, such as relocation and moving expenses, need to be addressed. This is especially true if the city is in an area with high housing costs. Candidate recruitment is also becoming more difficult from the attorney's perspective. Candidates today are more likely to want explicit assurance of control over the legal affairs of a city to avoid conflict with department heads.

4. Using Recruiters

The use of recruiters appears to be on the rise for practical reasons. While some cities still turn the recruitment process over to their in-house human resources professionals, some may not have the resources to conduct the kind of in-depth, statewide recruitment efforts necessary to create a viable pool of candidates.

Recruiters often maintain contact with a variety of city attorneys with varying skill levels and expertise. They are in a good position to judge the available candidates in the job market and how those candidates fit the profile the council has of its desired city attorney. Because of their knowledge of the job market, recruiters are also able to advise city councils as to what compensation and benefit package may be necessary to entice the best candidates.

There should be a recruitment process that identifies potential candidates through both targeted recruitment efforts and through the use of job announcements in Western City Magazine, professional journals and other media.

Selection criteria should be tightly controlled at the initial screening phase. Candidates who do not meet the minimum qualifications should be rejected. Selection of candidates to attend council interviews should also be based on objective criteria. These may include specialization in needed practice areas, or years of service in a commensurate sized agency. The adoption and uniform application of objective criteria at this stage may assist in defending the selection process or outcome. It may be used to counter any claims of bias or inconsistency in the process.

The interview with the city council usually involves set questions asked of each candidate. Some type of free-form discussion often takes place. This discussion should be memorialized. Each council member should record his or her impressions and/or scores of each candidate. Following the interviews, the recruiter or human resources director may assist the council in ranking the candidates.

C. SELECTION FACTORS

A successful selection process depends on large part on the thoroughness of the recruitment process in finding viable candidates. There should be a recruitment process that identifies potential candidates through both targeted recruitment efforts and through the use of job announcements in *Western City Magazine*, professional journals and other media. After an initial screening of resumes, the recruiter or human resources director should conduct telephone or in-person interviews. Finally, interviews with the city council should follow.

Although rare, a citizens' advisory panel may conduct interviews. However, this process may raise some problems. It could create the perception that the selection of the city attorney will turn on political issues rather than professional abilities. Such panels also eliminate the city's ability to ensure that candidate applications will be kept confidential. This is important because some candidates request confidentiality in order not to have a negative impact on their current employment, especially if not ultimately selected for the position.

D. CONTRACT CITY ATTORNEYS

Although portions of the above discussion relate both to in-house and contract city attorneys, there are specialized concerns relative to contract city attorneys. One difference is that, for contract city attorneys, requests for proposals are generally sent out to prospective firms or individuals to provide legal services, as opposed to targeted recruitment efforts.

In evaluating contract city attorney candidates, the council should examine the following factors:

- *The depth of a candidate's (or their firm's) legal knowledge and experience in municipal law.*
- *The availability of the attorney.*
- *Whether the person selected will perform the work or whether another member of the firm will perform it.*
- *The billing structure. For example, will the city be billed on a flat rate or hourly basis? Particular attention should be paid to "add-ons," legal costs for matters billed in addition to the basic retainer amount, such as code enforcement actions.*

III. Defining the Parameters of the Employment Relationship

The relationship between a city and its attorney is defined by two primary governing boundaries:

1. Externally through state and local regulations; and
2. Internally through the job description, job announcement, and performance evaluation forms.

This section examines the parameters that establish the skills, experience, and character traits needed by a particular agency in its city attorney, and form the basis of the employment relationship.

A. STATE AND LOCAL REGULATIONS

California law pays sparse attention to defining the relationship of the city attorney to the rest of the city government. The few provisions of the law that address the subject consist of the following:

1. The city attorney shall advise the city officials in all legal matters pertaining to city business.¹⁶
2. The city attorney shall frame all ordinances and resolutions required by the legislative body.¹⁷
3. The city attorney shall perform other legal services required from time to time by the legislative body.¹⁸
4. With the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law.¹⁹

5. Whenever the city attorney is acting as a prosecutor in a criminal case pursuant to any provision of law or under a city charter, the city attorney shall have the power to issue subpoenas in a like manner as the district attorney.²⁰
6. The city attorney shall receive compensation as is allowed by the legislative body.²¹
7. A city may limit or prohibit the private practice of any attorney it retains or employs.²²

Many municipal codes and city charters use these concepts in describing the position and responsibilities of the city attorney. Such descriptions may provide further detail as to whom the attorney provides advice and enumerate the types of documents the attorney will handle. They may describe the city attorney's duties to represent the city in various kinds of litigation and administrative proceedings. They may state that the city attorney advises certain boards and commissions or performs general counsel services when the city council functions in another capacity, such as the redevelopment agency. In some cities, they may assign the city attorney risk management responsibilities.

For More Information:

Links to online city charters and municipal codes can be found on the League's website at www.cacities.org/municodes and www.cacities.org/charters.

The following are general statements found in various city charters and municipal codes regarding the responsibilities of city attorneys:

- The City Attorney’s Office is committed to represent, support and provide legal advice to the Mayor and City Council, department heads and staff members of the various City departments; to aggressively defend its client in litigation; to initiate litigation at the direction of the City Council; to render timely legal advice to City boards, commissions and committees; to research and provide information on legal issues; to prepare legal documents, including ordinances, resolutions and contracts; and to review and prepare amendments to the City Charter and Municipal Code to maintain consistency with current state and federal laws.
(City of Bakersfield)
- The City Attorney’s Office provides legal advice to City government to minimize liability and ensure conformance to legal constraints. The City Attorney determines the merits of claims and defends against suits filed, while also filing suits on behalf of the City.
(City of Berkeley)
- The City Attorney is responsible for providing legal services to the City, including the City Council, the various City boards and commissions, as well as City departments and officers. The City Attorney is responsible for representing the City in all litigation to which the City is a party, either as a plaintiff or defendant; preparing and/or approving as to form all City ordinances, resolutions, and contracts; rendering legal opinions to the City Council, City departments, and City officers; and prosecuting violations of the Municipal Code.
(City of Chico)
- The City Attorney’s Office represents and advises the Mayor, City Council, certain City boards and commissions, and City officials and departments in legal matters pertaining to their office and City operations, and prepares legal opinions, ordinances, resolutions, contracts, and other documents requested by Council and City organizations; and, implements the legal aspects of various policies and programs established by the City. The City Attorney’s Office serves as counsel and represents and appears for the City and certain boards, commissions, and agencies of the City in civil and administrative proceedings. The City Attorney’s Office also handles criminal litigation as part of the Office’s code enforcement responsibilities. The City Attorney’s Office also serves as counsel for the Redevelopment Agency, and performs, often in conjunction with special counsel, the legal work involved in financing transactions for the City and the Agency. The City Attorney’s Office monitors cases assigned to contract legal counsel and ensures timely reporting to the Council on these cases as well as those handled in-house.
(City of Fresno)
- The City Attorney is the chief legal officer of the City and is appointed by, and responsible to, the City Council. The City Attorney’s Office represents the City Council and the City’s boards, commissions, officers and employees in legal proceedings in which the City is concerned or is a party. It is also the responsibility of the City Attorney’s Office to advise the City Council and all boards, commissions, officers and employees of the city regarding their official duties. The City Attorney’s Office prepares and approves ordinances, resolutions, contracts and other legal documents and prosecutes all violations of the Municipal Code.
(City of Modesto)
- The City Attorney is appointed by the City Council as the Attorney for the City and legal advisor to the City Council. The City Attorney hires subordinate attorneys to assist in the discharge of assigned responsibilities. The City Attorney’s Office defends and prosecutes or retains counsel to defend and prosecute all civil actions and proceedings to which the City is a party and prosecutes all criminal actions involving the City Code. The Office represents and advises the Council, boards, commissions, departments, and all City officials in matters of law related to the conduct of City business.
(City of Mountain View)
- The City Attorney’s Office provides legal advice to City officials and employees; drafts legal documents in order to protect the City’s interests and advance its goals; represents the City and its officers and employees; enforces City laws; and encourages compliance with and respect for the law.
(City of Santa Barbara)
- The City Attorney is appointed by the City Council. By law, the City Attorney advises City officials in all legal matters pertaining to City business, drafts or approves all ordinances and resolutions of the City Council, and prosecutes violations of City ordinances and regulations. The City Attorney may perform other legal services required or authorized from time to time by the City Council, including representation of the City in litigation and preparing agreements or other documents involving complex transactions.
(City of Vista)

B. JOB DESCRIPTIONS AND JOB ANNOUNCEMENTS

1. Job Descriptions – Outlining Basic Expectations

The primary purpose of a job description is to outline the basic skills and qualities necessary for the city attorney to perform his or her duties effectively. A secondary purpose is to outline the general performance standards the city attorney will be expected to meet. In addition, the job description outlines any needed physical or mental abilities, serving as the blueprint for compliance with the Americans with Disabilities Act.

Job descriptions for city attorneys are normally broken down into four components:

- *A brief definition of the job.*
- *Minimum qualifications needed to enter and/or retain the job.*
- *Skills and characteristics necessary to perform the job at an acceptable level.*
- *A descriptive list of typical tasks the city attorney will perform.*

These components share many of the same qualities, but a city may give different emphasis to various components reflecting the differing desires of that city.

Cities considering revising their job descriptions should, at a minimum, include these four components. Thought and care should be used in writing the job description since it is often the first document the city uses to communicate with applicants about the particularities of the position. The job description should also be the basis for an integrated evaluation system.

a. Brief Job Description

A city attorney's position is often defined in fairly nebulous language. However, most job descriptions define the position by emphasizing the broad range of generalist legal services the city attorney is expected to provide, including:

- *Legal services to the city council, city departments, and various boards and commissions; and*
- *Professional and administrative work as the chief counsel and legal representative of the city.*

Job descriptions often also say that the city attorney is responsible for representing the city in litigation, and for drafting all applicable ordinances, resolutions, and legal documents.

b. Minimum and Preferred Qualifications

The purpose of the qualification section is to clearly describe the basic minimum qualifications needed for the position. Minimum qualifications for city attorneys always include a juris doctorate degree (usually from an educational institution approved by the American Bar Association) and membership in the California State Bar. Many cities also require a minimum amount of time practicing law, ranging from three to ten years.

Beyond these basic requirements, various agencies may indicate that they prefer the city attorney to have experience in particular subject areas, such as land use, personnel, or redevelopment law.

One area of controversy is whether cities can, or should, include the requirement that the city attorney live within the city limits. Currently, cities cannot legally require that their employees do so,²³ but they can require that employees live within a certain response time from the city.²⁴ (This distinction is based on the need for personnel to respond to work in the case of an emergency.) Although such a concern cannot be phrased as a requirement in the job description, it can be a matter of contractual negotiations between a public entity and its city attorney.

Finally, the job description should specifically state that these are minimum qualifications only, in order to prevent applicants and/or employees meeting these minimum requirements from asserting that they are fully qualified for the position and are therefore entitled to the job.

c. Job Skills

The job skills component of the job description should be drafted with two thoughts in mind:

- *What are the basic, day-to-day working skills expected of the city attorney; and*
- *What are the council's expectations for communication skills, not only with the council, but also with the public and staff.*

The skills listed in the job description should reflect those that the council believes its ideal city attorney should be capable of performing. It should articulate those skills through language that is precise enough to communicate the skill required, yet broad enough to encompass the many facets of that particular skill set.

Some job descriptions require that city attorneys possess only a general knowledge of legal precepts and research skills. Many job descriptions go beyond a basic skill set common to all attorneys and require specific knowledge and even "mastery" of certain municipal law subjects, such as redevelopment, personnel and labor relations, and real estate transactions.

A growing number of job descriptions also emphasize interpersonal and communication skills. Some job descriptions simply require the ability to "maintain constructive relationships" with others, while some require the more outgoing "ability to engage" individuals or groups. The manner in which communication and interpersonal skills are described helps communicate the council's expectations.

Another frequently included skill is keeping the council informed of significant developments. Finally, many job descriptions require the attorney to be a part of the management team, yet retain the objectivity and independence that the city council relies on.

Unlike minimum qualification requirements, desired skills are sometimes qualified by language that a "combination" of some skills is required, or some skills may be designated as "preferred" versus "helpful." Cities should avoid characterizing skills as necessary, preferred, or merely extraneous. The needs of a city – and the needed skills of the city attorney – may change over time.

The "Ideal" City Attorney: A City Council Perspective

- Has experience in the broad range of municipal law including land use, redevelopment, public safety, and employment law/labor regulations.
- Stays current in municipal law, is well versed in "the art of the possible" and is not risk adverse in terms of problem solving or approaches to best meet the city's needs.
- Views the city attorney's role as being more than providing legal opinions; views the role to be an advisor, sounding board, confidant, and a resource; is easy to talk with, recognizes the importance of retaining trust and confidence and, typically, is accessible rather than being "too busy now."
- Is not naïve about politics, but doesn't "count the votes" prior to making a recommendation; can be counted on to provide his/her best professional advice on all legal issues; is politically astute, but not political.
- Will recognize what the council and/or staff are trying to achieve and helps them reach their objective as closely as possible.
- Is bright and a critical thinker who is both analytical and creative; understands details as well as concepts and is a quick study regarding issues new to him/her.
- Is confident and not afraid to assert himself/herself when necessary and has the courage of his/her convictions.
- Knows when to argue and when to settle without unnecessarily giving away city resources, and also knows when and who to ask for specialized legal assistance.
- Is an excellent communicator, including speaking, writing and listening, who can make legal issues and options understandable to lay people.

d. List of Tasks

Finally, the tasks section of a job description should outline the essential physical functions of the position. This satisfies the Americans with Disabilities Act’s requirements to articulate, in advance, the employer’s expectations for performance.²⁵ Many city attorney job descriptions are focused on sedentary activities, including the ability to perform computer and desk jobs in a repetitious manner and the ability to sit for long periods of time.

2. Job Announcements—Advertising Desired Qualifications and Qualities

Job announcements placed in professional journals and flyers are a city’s primary opportunity to describe what type of city attorney is being sought. Because the language in the job announcement may be used to legally define the employment relationship between a public agency and its attorney, any pronouncements or guarantees in these documents should be carefully phrased to avoid unrealistic expectations.

C. PERFORMANCE EVALUATIONS

Within the last ten years, many cities have instituted formal evaluation systems for their city attorneys. This trend appears to be consistent with the increasing use of formal employment contracts between cities and attorneys. It may also be attributable to the rise in litigation by public employees against their employers.

Historically, performance evaluations were rarely given to city attorneys. When they were, they were done informally, usually without the use of an outside expert. Performance feedback generally occurred only when a crisis arose or when performance shortfalls reached the level where council intervention was required. Feedback was more situational in nature and seldom geared to pre-established performance standards or encompassed within a job enhancement strategy.

Evaluation processes vary widely, from informal discussions to structured facilitated sessions that rely on feedback from department heads, especially the city manager, in evaluating the city attorney’s performance.

The advantages of a formalized performance evaluation process are many. When hired, a city attorney may receive only general direction from the council regarding performance expectations. The lack of direction may stem from the inherent structure of the attorney-client relationship

(how can the client tell the attorney how to accomplish the legal result?). A formal performance evaluation system can help the council set the legal goals it wants its attorney to achieve and direct, to some extent, how those goals are to be accomplished. Performance evaluations may also set the stage for wage and salary adjustments.

If council members are reluctant to discuss performance expectations and whether those expectations are being met, a formal evaluation process may make those discussions easier. It may also help improve communication between the council and city attorney. Performance evaluations and periodic reviews are invaluable in assisting the city council to refine its priorities.

Finally, a formalized evaluation process helps to protect the city from potential liability. It sets out what the expectations are for the city attorney and helps avoid surprises for both sides. If done correctly, it creates a paper trail documenting the city attorney’s performance that may be helpful should a question of adequate performance ever arise.

1. Evaluation Forms

A performance evaluation form is the starting point for any evaluation system. It should reflect the elements of the position as outlined in the job description and it should be tailored to accommodate any particular goals and standards that have been established between the council and the city attorney.

Formats for performance evaluation forms vary widely from agency to agency. Some stress a narrative system where comments on performance areas (such as “ability to interact with peers”) are entered. All of the comments may be given to the attorney or condensed to form a “consensus” opinion. Other formats have a highly rigid point-based system for specifically articulated goals, such as “number of municipal code provisions amended.”

Ideally, the evaluation form and job description should be drafted at the same time. Both documents define the attributes and type of attorney the council desires. The best time to think about those characteristics is before any candidate is interviewed. Drafting the evaluation form prior to hiring also allows the potential candidates to have a more in-depth sense of the council’s needs and expectations for a city attorney.

A drawback in drafting the evaluation form prior to hiring the attorney, however, is that the successful candidate is not allowed input into the process. For this reason, the form should be somewhat flexible to accommodate suggested changes from the successful candidate.

For More Information:

Sample city attorney evaluation forms can be found on the League's website at www.cacities.org/evaluations.

2. Evaluation Process

One approach to the evaluation process is to have the city attorney and each council member complete an evaluation form. A meeting would then be held to review the comments and assessment of the city attorney's performance. This process works well where a good relationship exists between the council and attorney. If, however, there are serious performance deficiencies and/or tension between the attorney and one or more council members, this process could be problematic and unproductive.

City councils may wish to consider the use of an outside facilitator, both in the creation of the performance standards and in the actual evaluation. City councils may feel/believe that they do not possess the management tools or time to properly evaluate the city attorney, especially according to current industry standards. It may be difficult to understand exactly what attorneys do on a day-to-day basis. Even those council members who are attorneys may be hard-pressed to describe what a municipal law specialist should be doing and how. The services of a neutral, knowledgeable third-party may assist the council in articulating reasonable expectations for city attorney performance and in determining whether the attorney has met industry standards for such expectations.

Finally, the services of a neutral third-party may serve to focus the performance evaluation discussion that may otherwise be charged with personal or political agendas. For these and other reasons, many city attorney contracts now contain a clause requiring the retention of a third-party to assist in the evaluation process.

3. Performance-Based Management in the Evaluation Process

Finally, a word about performance-based management and its impact on the city attorney evaluation process. As discussed in detail below, performance-based management is a method by which performance is gauged by goals with specifically measurable outcomes. It has achieved wide acclaim in public sector management circles and many agencies now require each department to establish measures and track outcomes.

Applying such principles to the work of the city attorney's office can be a challenge. This is because the city attorney plays a unique role in the city's organizational structure. His or her job is primarily to give advice and counsel, not to turn out a certain identifiable number of memoranda or win a certain percentage of cases. While such numerically definable goals may provide useful input in the evaluation process, attainment of such goals should not be the defining element of the process. It is difficult to encapsulate the factors that go into a successful attorney-client relationship into a performance-based management system and, therefore, into evaluation processes.

With these concerns in mind, councils should consider whether moving towards a numerically-based system of achievement, and incorporating that into the performance evaluation system, is at odds with the more traditional attorney-client relationship, and whether such systems are true indicators of an attorney's performance.

It is difficult to encapsulate the factors that go into a successful attorney-client relationship into a performance-based management system and, therefore, into evaluation processes.

D. CITY ATTORNEYS AND “PERFORMANCE MEASURES”

1. The Goal of Performance Measures

Accountability is important in local government. The public has a right to expect that local resources will be carefully managed, that services will be provided efficiently, and that local programs will live up to their promises. Elected leaders and managers in local government seek to reassure their constituents that these expectations are being met. Performance measurement – the documentation of departmental and program accomplishments – has become a key method of providing that reassurance and demonstrating accountability.

Local governments concerned about managing and improving employee productivity use performance measurement – also known as “benchmarking” – as a management tool. In theory, performance measures of a department or program reflect the array of services provided. A good set of measures should reveal three things:

- *The quality of the services;*
- *The efficiency with which they are delivered; and*
- *Their effectiveness in achieving their intended purposes.*

2. Types of Performance Measures

There are three types of performance measures:

- **Workload Measures:** Workload measures - also called output measures - provide information on how many units of service were provided. Such measures tell how many calls were received, how many cases were processed, how many opinions were issued, how many training programs were offered, and so on. Workload measures do not address the efficiency with which these services were provided or the quality or effectiveness of the services. Only the number of services provided is measured. Workload measures typically do not relate to the difficulty of a task – a simple case and a complex case are both counted as one.

- **Efficiency Measures:** Efficiency measures relate to outputs produced in relation to resources consumed. For example, local public agencies that report unit costs for handling cases or cases concluded per staff hour combine workload information (number of cases) with resource consumption information (costs or staff hours) to create a measure of efficiency. Other measures included in this category address efficiency by focusing on turnaround time or other aspects of process efficiency.
- **Effectiveness Measures:** Effectiveness measures – also called outcome measures – gauge the extent to which objectives are being met. Typically, this category includes measures of service quality.

3. The Difficulty of Applying Performance Measures to Law Offices

Performance measures are not universally supported in the legal arena. This stems from several factors. First, attorneys are more comfortable practicing law rather than engaging in the administrative tasks of performance measurement and tracking. Another significant factor is that much of what an attorney does consists of research, analysis, and consultation. These activities are not easily quantifiable and often do not fit within these various performance measures. In addition, the quality of legal work performed is difficult to measure in either abstract or general terms. The quality of an attorney’s performance is defined in great part by the formal as well as informal ethics by which attorneys perform their professional work. Ethics is not easily reducible to number-crunching.

At times, it may be difficult to fully understand what a city attorney does on a daily basis. Some of his or her activities are publicly visible, such as advocacy at formal hearings. Day-to-day activities, such as legal counseling, risk management, and legal assistance provided to city employees are often played out behind the scenes.

While some legal departments may not have a formal mechanism in place to determine whether their clients’ needs are being met, all of them are evaluated on some level. In a proactive manner, and believing that it is better to know the good and the bad - and sooner than later - many legal departments have established a mechanism to monitor whether city staff needs are being met. Such monitoring systems are more effective when

they encourage specific comments rather than simply relying on numerical ratings. While the quality of legal services delivered is important, it is often defined in different ways. Some clients define quality as speed at which legal services are provided - often at the expense of quality or effectiveness. But most clients would arguably prefer that the legal services provided be accurate and responsive to their needs.

City attorneys are sometimes faced with the situation of providing quality legal work when faced with a short deadline. At times like these, city attorneys must be careful not to sacrifice their ethical responsibilities in the name of expediency. Attorneys must continue to make their choices wisely and advise their clients of the risks inherent by accepting what could be defined by the attorney as less than "quality" work. Due to the significant time demands of a particular project, quality may be defined in part by speed: the best work one can provide within the time frame one has been given.

Effective performance measures cannot be established in a vacuum. The city attorney with the assistance of the city council must define what is valued by the organization in terms of legal services. It is important to clearly define what is being measured. It is critical to create a system that can be managed. The system must not be time or labor intensive, and it must be easy for staff to track. Any measures adopted should be significant within the organizational culture.

For More Information:

Performance-Based Management: A City Official's Guide to Achieving Results-Oriented Government offers an easy to follow approach to goal-setting, implementation, measurement, and evaluation of a performance-based program.

This publication is available for purchase through CityBooks by calling (916) 658-8257 or online at www.cacities.org/store.

It may be helpful to think about performance measures this way:

- *Things for show: Measures can justify a program and draw public attention to, and build public confidence in, performance.*
- *Things for dough: Measures can signal the importance of an activity to the organization or help to establish its value when competing for financing.*
- *Things to know: Measures of performance can be helpful to the internal management of a city attorney's office.*

Things For Show: Producing information about the workload and related performance conveys information about what the city attorney's office does. An example is the number of code enforcement cases currently being handled by the office. Providing information on the breadth and quantity of the workload helps all city departments understand the services provided by the city attorney.

Some performance measures may create false expectations of what is meaningful in evaluating the city attorney's performance, however. One example is the number of cases that are "won" by the office. For the most part, city attorneys do not get to pick and choose their cases. It's possible to do an excellent job, but still lose the case.

Things For Dough: One of the most difficult jobs for a city attorney is to explain to funding authorities why legal services are just as necessary and important as police and fire protection and other public services. Special interest groups and public employee unions generally do not appear at council meetings to speak in favor of the city attorney's budget. At times, a city attorney's budget may be lost in the annual budgetary fracas or targeted for reduction.

Some performance measures may create false expectations of what is meaningful in evaluating the city attorney's performance.

Measuring quantity is a simple device that can reflect trends. Some measures fall neatly within the description of output or outcome. Others reflect important information related to past and future workloads (demands) and costs (inputs). Coupled with information that shows proportionality with activities of the government, this information can be used to project and justify increased costs associated with the expansion or addition of services. Increased services and personnel additions in other departments translate into increased demands on legal services and ultimately the need for greater law office funding.

One of the more useful tools in the law office involves comparing matters handled. For example, in litigation the number of active cases carried by each attorney is a measure that potentially allows relative caseload comparisons within the office. These can be compared with the caseloads of other city attorney offices of a similar size. The comparisons may then be used to justify increased funding requests. Numbers alone often do not paint the full picture, however. While one lawyer might carry three times the caseload of another attorney, the nature of the cases may differ. The attorney handling fewer cases may actually be handling more complex and time consuming matters, or may have additional duties to perform in the office. Also, this statistic may be of little use in a city with minimal litigation.

Things To Know: Having relevant legal information can help to more effectively manage individuals, programs or budgets. This may be information that is not appropriately distributed publicly, even in the form of a performance measure. Oftentimes, measures based on transmission of legal information are too technical to be relevant to the public.

One of the most effective tools used to measure performance is that which measures individual performance. Providing staff and the public with an opportunity to give feedback on services helps in improving the accessibility and responsiveness of lawyers. When considered on a case-by-case basis, the information is critical to the legal office manager's ability to monitor and help improve the performance of individual staff. Specific data is much more useful than global statements.

4. Summary

Performance measures may be of assistance in assessing and improving city attorney's office performance. The information may be used to support decision-making, planning, and to justify resource requests. The information can inform the public and decision-makers about the city attorney's office's activities, service demands, and performance. The activities of the city attorney's office do not always receive the highest public visibility, but identifying missions, goals, and performance objectives can serve to increase public awareness and support for the city's legal operations. The actual provision of legal services, however, should not be overshadowed by administrative or other aspects of performance measurement.

Providing staff and the public with an opportunity to give feedback on services helps in improving the accessibility and responsiveness of lawyers.

CHAPTER
4

IV. Negotiating the Employment Relationship

Once a preferred candidate has been identified, the city council should determine how the employment relationship will be memorialized. An employment contract has the advantage of providing both parties with assurances as to length of employment, salary, benefits, and working conditions.

Many agreements are simply modeled after preexisting city attorney or city manager agreements. Few cities and city attorneys obtain independent legal advice regarding these agreements.²⁶ As a result, problems with employment agreements may arise. When problems arise, they often involve the interpretation of benefit provisions, enforcement of regular performance evaluations, and the establishment of specific goals and objectives.

Some councils prefer to operate without an employment contract. City attorneys in this situation often have the terms and conditions of their employment addressed through other documents, including municipal codes, resolutions, city charters, personnel rules, and/or job descriptions. Some attorneys may rely on memoranda from the council to outline some of the terms of their employment. In any case, the basic terms and conditions of employment need to be determined by the council and then negotiated with the candidate.

There is a wide divergence among cities as to who negotiates with the successful candidate. Unless the city council negotiates with the primary candidate through a subcommittee, the recruiter or human resources director should establish parameters with the city council as to what salary and benefits the council is willing to pay to obtain the services of a particular individual. The recruiter or human resources director should also determine any other working conditions the council is willing to negotiate, such as flexible work schedules or support staff.

After receiving direction from the city council, the recruiter or human resources director should put the city council's initial offer in writing. The letter should state that the offer is not final until the employment contract (if there is to be one) is executed, and the candidate has successfully completed all necessary background checks and/or medical examinations.

For More Information:

Sample employment agreement provisions for both full-time, in-house city attorneys and part-time, contract city attorneys can be found in Appendices A and B, respectively.

V. Maintenance of the Employment Relationship

An employment relationship between a city attorney and a city council may exist on several levels – that of attorney and client, that of employer and employee, and that of public official and advisor. Councils and city attorneys should spend time at the outset of the relationship – and periodically throughout – to analyze the relationship and determine what can be done to improve and maintain positive relations.

This section considers several aspects of the employment relationship that should be considered by the parties in order to maintain a positive working relationship.

A. UNDERSTANDING WHAT THE CITY ATTORNEY ACTUALLY DOES

Many city attorneys believe that their day-to-day activities are not fully understood by others. Misperceptions are understandable. For some councils and staff, their primary contact with the city attorney occurs at meetings, not through observation of the day-to-day routine of the city attorney's office.

Numerous city actions require the input and guidance of the city attorney. The plethora of rules, court decisions, and administrative regulations that govern city activities is such that city councils and staff must often consult with the city attorney for assistance on accomplishing a task. For example, a land use matter may involve some or all of the following legal issues: conflict of interest questions, annexation issues, inverse condemnation, civil rights, slander, or the drafting of a development agreement.

The plethora of rules, court decisions, and administrative regulations that govern city activities is such that city councils and staff must often consult with the city attorney for assistance on accomplishing a task.

A city attorney's role may be expanded because he or she is the individual who must devise a method to legally reach the goals sought by the council.

It is important to remember that most city attorneys are generalists in municipal law. Although municipal law used to be considered a specialized area of knowledge, it has increasingly become a field of law composed of a great number of sub-specialties. The city attorney, as chief corporate counsel for the municipality, cannot be an expert in all these areas. Rather, the city attorney should be a competent generalist with the willingness to consult with specialists when specific legal needs arise to help effectively and efficiently advance and protect the city's interests.

Thus, as a generalist, the city attorney may need to contract out some work. Situations may arise where the city needs the services of a specialist in such areas as personnel, finance, or redevelopment matters. Also, because a city's legal workload may temporarily increase, it may make financial sense to outsource overflow work to outside counsel rather than hire fulltime, long-term staff. In addition, litigation can be very consuming of both attorney and support staff time. This is another instance when it can be more cost-effective to hire outside counsel to handle litigation rather than hire additional in-house staff.

As chief counsel, the city attorney typically attends all city council meetings to provide on-the-spot advice. The city attorney or staff attorney also often attends meetings of the planning commission and other city advisory bodies. The city attorney also may serve as the parliamentarian for these bodies.

Another important aspect of the city attorney's job is to give opinions on specific legal issues. These opinions may be either formal (in writing) or informal (oral advice). Some cities require that all requests for advice be communicated in writing through department heads to ensure coordination and avoid duplication of effort. Another benefit of a request system is that it aids in tracking requests for advice for purposes of achieving performance management objectives.

Whenever there is advance notice that a legal question may be coming, the city attorney should be advised as soon as possible, even if all factors giving rise to the question are not fully known. Doing so promotes the process of giving and receiving legal advice and keeps the lines of two-way communication open. There is a reason a synonym for attorney is counselor.

City attorneys must often analyze several sets of statutes and numerous reported cases in order to render informed opinions on important legal questions. The sheer volume of law affecting cities has increased greatly during the last several decades. A reasonable amount of time should be provided to analyze any particular question, especially if the issue is novel or complex.

Along with providing counsel to the city, the city attorney is also responsible for the drafting and/or review of important legal documents, such as ordinances or contracts. The city attorney must also review ordinances that have been adopted by another agency and are suggested for consideration by the council. An ordinance that answers the needs of one agency does not necessarily fit the needs of another. Review and customization by the city attorney's office is imperative before the council gives final consideration to the adoption of a "sample" ordinance.

In the event civil litigation must be pursued or defended, the city attorney represents the city's interests. In some cities, the city attorney may also participate in criminal prosecutions of state law offenses. Many city attorneys prosecute violations of city ordinances.

Particularly in cities with full-time, in-house city attorneys, the city attorney is also a department head, responsible for the management of the city attorney's office. The role played by a city attorney as a manager often varies from city to city, with some councils placing emphasis on this and some not.

Many city attorneys view themselves not only as attorneys, but also as project managers, problem solvers, and strategists.

Many city attorneys are considered as members of the city's senior management team, although with a separate role and responsibilities. This means the city attorney is expected to attend and participate in management functions, and is sometimes turned to for advice that is more "practical" than "legal" in nature. Often, city attorneys are fully integrated members of the management team and are expected to attend and participate in management activities. Many city attorneys view themselves not only as attorneys, but also as project managers, problem solvers, and strategists. At times the overarching role of the city attorney may conflict with these management functions. The city attorney may need to recommend a different direction despite the need to participate in and foster management relationships.

B. STICKY SITUATIONS – QUESTIONABLE LEGAL BEHAVIOR, LEGAL MANDATES, AND COUNSELOR VERSUS ADVOCATE

There are times when proposed city action may not fit within applicable legal constraints. When faced with an objective that is plainly unlawful, the city attorney must deliver the news as diplomatically as possible. Adherence to clear legal guidelines is not optional; they must be followed. Most legal guidelines are imposed to further the public good, and public officials need to conform their actions because it is their ethical duty.

The city attorney's job is complicated by the fact that the law is not always clear in a given area. When this occurs, the city attorney must give his or her best judgment on the probable and possible legal consequences of a proposed course of action. The city attorney cannot make the law clear when it is not. As a result, city attorneys may often take what appears to be a narrow view of the city's prerogatives in a given situation. As the city's legal counselor, the city attorney's primary task is to provide the city council and staff with the best analysis and dispassionate evaluation of what the law requires or permits in a given situation. However, when dealing with third parties, the city attorney should step into the role of advocate and vigorously argue one perspective of the law and the facts at hand.

C. QUESTIONING THE ATTORNEY'S ADVICE

From time to time, others may question the city attorney's advice. It may be tempting to seek a second or even third opinion. This temptation should be resisted. The city attorney is the individual the city has hired (or the voters have selected) to advise the city on legal matters. The city attorney is the legal advisor who is most familiar with the laws bearing on the city's actions, particularly local ordinances, internal procedures, any charter provisions, and other internal situations that may affect a given analysis.

If the city is sued, it is the city attorney's responsibility to defend the city. If the need arises for a second opinion, the council as a whole should authorize the action. If a second opinion is authorized, it is valuable to have the city attorney and outside counsel each review the other's opinion so that both may be fully informed.

D. EFFECTIVE COMMUNICATION WITH THE ATTORNEY

Effective communication between city officials, city staff, and the city attorney is critical to the smooth operation of the city. Early and frequent communication about proposed city action can avoid frustration on the part of everyone and save the city money in the long run.

1. Shared Information

The city attorney must be kept informed of the city's activities. If not, he or she cannot give good and timely legal advice. Being "kept informed" means that the city attorney receives complete information in a prompt manner. The city attorney must be given notice of later changes in facts and policy direction, as well as potential ramifications, along with a clear explanation of the city's objective.

2. Preventive Legal Advice

The city attorney is there to give the city preventive legal advice. If he or she is unable to do this because of poor communications, the city and its taxpayers are not getting their money's worth. Worse yet, the city may end up having to spend more money on litigation and adverse judgments – money that could be better spent on other public programs.

In order to protect the city's rights and interests, the city attorney has the obligation to provide professional opinions based on the full and unbiased facts of the given situation. The city attorney's obligation to communicate includes the responsibility to say to the client what the client may not want to hear. One noted scholar and judge put it this way, "As in private practice, the attorney is never the mere hireling of government or of anyone else. He is an independent professional and must stand on what he thinks is right."²⁷

3. Avoiding Policy Advice

One subset of communication issues for city attorneys to consider is when they are asked to opine on policy issues. One of the axioms of local government is that councils make policy and city attorneys advise on the law. At times, there is a

fine line between making policy and advising on the law. For example, when a council wants to know "can we do this and if so, how," which is policy and which is law? Increasingly, the two are not distinct.

Another local government axiom is that city attorneys deal with legal issues and city managers deal with operational issues. Again, there is often a fine line between these two issues. Employee disciplinary matters, for example, are not susceptible to clear differentiation. Questions of what is policy or an operational matter and what is law are often intertwined. Councils and staff need to be sensitive to situations when the city attorney is asked to step out of the attorney role and instead provide policy advice. When these situations occur, the attorney should refrain from providing the requested advice, or, at least, clearly state that the matter is one of policy and not of law.

Ten Tips For Effective Use of City Attorneys

1. Remember the city is the client. Only the entire council can speak on behalf of the municipality.
2. Remember everyone is on the same team. When the city attorney identifies potential legal problems, it is to protect the city.
3. Consult the city attorney sooner rather than later on issues so that legal input can be meaningful.
4. Do your homework; be prepared when you speak with the city attorney so the time is well-spent.
5. Be clear about expectations and priorities.
6. Give the city attorney adequate time to research issues and answer questions.
7. Provide the legal staff with the necessary tools to do the job requested.
8. Always disclose all pertinent facts and objectives.
9. Recognize that a concrete answer is not always possible when the law is not clear-cut.
10. Understand the city attorney is an independent and objective legal advisor and not a politician.

The “Ideal” City Council Member: A City Attorney’s Perspective

1. Has experience in local government through service on commissions and/or committees at the city/county level. General experience is the key, not necessarily experience in a specific jurisdiction. Has management experience – understands how to give direction and how to delegate effectively. Is committed to developing relationships with a broad range of community groups and adjoining jurisdictions.
2. Recognizes the complexity of running a city and, therefore, accepts the reality of a learning curve for a new city attorney – sometimes a long one. Focuses on establishing well-grounded policies that are communicated to the public and staff clearly and consistently. Respects and acts within the legal process.
3. Takes time to read staff reports and other materials in order to be well informed on particular issues. Does not make “snap” judgments without taking the time to become educated about policy issues. Understands the roles of the city council, staff, and the community. Is issue-oriented, does not take policy differences personally and is open to compromise. Makes decisions after considering and weighing the legitimate competing interests of all potentially impacted parties.
4. Conducts him/her self professionally. Is respectful of fellow council members, staff, and public, both in and out of council meetings; questions the facts and rules and explores options, but does so without personalizing the issues and attacking others. Does not criticize staff in public.
5. Retains an open mind regarding issues and facts. Puts aside personal feelings to achieve the common good. Listens to and respects all points of view, even though contrary to personal points of view. Is willing to make the politically difficult decisions if the best interests of the city require; doesn’t bow to the “tyranny of the minority.”
6. Recognizes a city’s core mission is to deliver basic municipal services; makes policy decisions with this concept in mind. Allows the professional city staff to assume responsibility for the implementation of policy decisions.
7. Values needs of community over grandstanding and political expediency. Recognizes there is a tension between serving the needs of the community and enhancing revenue and is willing to make hard choices. Is a leader, not a follower. Has both a heart and a brain. Listens.
8. Understands that the city attorney represents the city as a whole and not just a member/agent of a political team; asks for and values legal advice; listens to advice before deciding whether to heed it. Is intellectually honest. Does not act arbitrarily and beyond the appropriate legal process.
9. Provides understandable and carefully considered direction on legal issues. Reads and digests attorney-client communications and asks clarifying questions of attorney about legal advice. Is able to decide difficult legal issues with integrity, considering the best interests of the city and with the courage to cope with a vocal opposition. Bases decisions on the law and not on politics. Makes an effort to appreciate the difficulty and complexity of the duties of the city attorney and the city attorney’s office; gives credit where due.
10. Respects city attorney for legal opinion and appreciates that sometimes reasonable people may differ. Informs city attorney of potential conflict of interest issues before a meeting. Respects city attorney staff and does not seek to debate city staff at a public forum. Seeks counsel before “going public” with his/her views or policy. Does not take personal dissatisfaction with the legal system as a license to beat up the city attorney in public.

VI. Separation From Employment

Every employment relationship comes to an end. Some end because of resignations to take a position with another agency and some end because of retirement. Others end through dismissals or negotiated resignations. While many city attorneys leave their prior employment on amicable terms, some do not. Those who don't are often surprised by the decision to terminate the employment relationship.

Employment relationships that end in dismissal have usually been under stress for some time. This stress can be due to performance deficiencies on the part of the city attorney. There can be interpersonal problems between the city attorney and council members or staff. Stress may also be attributable to a number of external political factors affecting legal issues in the community either through direct challenge to the city attorney by community activists or by a more indirect challenge through pressure on council members.

Regardless of how or why the decision to end an employment relationship is made, it is often an emotionally charged development that must be addressed with respect and decorum. An employment termination played out in the press or in the courts benefits no one.

A. PUT IT IN WRITING

The issues involved in terminating the employment relationship should be anticipated and dealt with in the employment contract or written conditions of employment. Potential performance issues should be addressed well in advance of the termination. These include setting out specific reasons that may lead to termination – such as the inability to perform the functions of the position or the conviction of a crime.

The issues involved in terminating the employment relationship should be anticipated and dealt with in the employment contract or written conditions of employment.

At a minimum, the employment agreement should clearly set out the notice requirements for a termination action. For instance, how many days' notice is required before the termination is effective? Is there a hold on any termination action following an election? What form of notice is required? Written? Oral? All of these issues should be outlined in the employment agreement.

When a process is in place to deal with these issues, the termination process is likely to proceed much more smoothly.

B. SEVERANCE PAY

Employment contracts should be reviewed by a lawyer well-versed in employment law to determine what severance pay might be due to terminated employees. State law limits severance pay to the monthly salary of the employee multiplied by the number of months remaining on the unexpired term of the contract.²⁸ This amount is subject to an eighteen-month cap. For example, if an employee is terminated with six months remaining on a contract, but the contract provides for twelve months' severance pay, state law may prohibit payment for the additional six months. In addition, severance pay may be limited to salary²⁹ and health benefit payments, but human resources professionals should be consulted regarding payment of specific benefits.³⁰ Cities with charters may have unique provisions as well.

C. THE TERMINATION AND THE MEDIA

When it is determined that a city attorney's services should be terminated, all procedures regarding personnel closed sessions must be followed. In general, if the termination is based on performance issues, it is acceptable to simply notice a closed session on employee performance.³¹ If the termination is based on specific complaints and charges brought by another person or employee, the city attorney is entitled to twenty-four hours notice of the closed session to hear the complaints and charges.³² He or she may, however, request a public session. Remember, whatever is said in the closed session must not be disclosed to the public.

Any press or public statement about the termination should be carefully prepared. An employment law attorney should preferably review any such statements. The city should designate one media contact person to minimize misstatements. Following these protocols not only protect both parties legally, but also help to diffuse potential jousting in the media for the upper hand.

Although a termination may be warranted, the actual separation will probably have an impact not only on the employee, but also on city staff. Be sensitive to staff perception of how the termination is handled.

For More Information:

Open & Public III, A Guide to the Ralph M. Brown Act, 2000, provides information on the open meeting laws for local governments.

This publication is available for purchase through CityBooks by calling (916) 658-8257 or online at www.cacities.org/store.

VII. Conclusion

7 CHAPTER

Building a productive employment relationship between the city attorney and the city council takes everyone's effort. The key is to understand the unique attorney-client relationship the parties share. By clearly defining the parameters and goals of this relationship in the job description and by reinforcing these standards through annual, meaningful performance appraisals, the parties can work together to provide the quality of legal service the public expects and deserves.

Endnotes

¹ Voters elect city attorneys in Albany, Compton, Huntington Beach, Long Beach, Los Angeles, Oakland, Redondo Beach, San Bernardino, San Diego, San Francisco, and San Rafael. The city manager appoints the city attorney in Berkeley, Folsom, and Shafter.

² Committee on Professional Responsibility and Conduct of the State Bar of California, Report and Recommendation on AB 363.

³ State Bar Rules Prof. Conduct, rule 3-600.

⁴ California Government Code section 900 and following.

⁵ *Roberts v. City of Palmdale*, 5 Cal.4th 363, 20 Cal.Rptr.2d 330 (1993).

⁶ State Bar Rules Prof. Conduct, rule 3-600.

⁷ California Government Code section 34090 provides, in part, that:

Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

Cal. Gov't Code § 34090.

Also, California Government Code section 34090.6 provides for the destruction of recordings of routine video monitoring and recordings of telephone and radio communications maintained by a city department with the approval of the legislative body and the written consent of the agency attorney.

⁸ California Election Code section 9280 provides, in part, that:

Whenever any city measure qualifies for a place on the ballot, the governing body may direct the city elections official to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected. The city attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.

Cal. Elec. Code § 9280.

⁹ California Civil Code section 52 (c) provides, in part, that:

Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights described in this section, and that conduct is of that nature and is intended to deny the full exercise of those rights, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint.

Cal. Civ. Code § 52 (c).

¹⁰ California Government Code section 6250 and following.

¹¹ American Bar Association Model Code of Professional Responsibility, Ethical Consideration 7-14.

¹² *Shepard v. Superior Court*, 17 Cal.3d 107, 122, 130 Cal. Rptr. 257 (1976).

¹³ *Id.*

¹⁴ *Berger v. United States*, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935).

¹⁵ California Government Code sections 825(a), 995 and 995.2.

¹⁶ California Government Code section 41801.

¹⁷ California Government Code section 41802.

¹⁸ California Government Code section 41803.

¹⁹ California Government Code section 41803.5(a).

²⁰ California Government Code section 41803.7.

²¹ California Government Code section 41804.

²² California Government Code section 41805.

²³ California Government Code section 50083 provides:

No local agency or district shall require that its employees be residents of such local agency or district.

Cal. Gov't Code § 50083.

²⁴ Article XI, section 9 of the state Constitution provides:

A city or county, including any chartered city or charter county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.

Cal. Const., art. XI, § 10, subd. (b).

²⁵ See 42 U.S.C. § 12102 and following.

²⁶ While the Attorney General has issued oral advice that a city attorney may re-negotiate a contract without violating Government Code section 1090, it is advisable that the city attorney retain a third party to conduct negotiations with the public entity.

²⁷ Weinstein, *Some Ethical and Political Problems of a Government Attorney*, 18 Maine L. Rev. 155, 162 (1966).

²⁸ California Government Code section 53260.

²⁹ *Id.*

³⁰ California Government Code section 53261.

³¹ California Government Code section 54957. See also 67 Ops. Cal. Atty. Gen. 215 (1980).

³² California Government Code section 54957.



Employment Agreement Provisions

Full-Time (In-House) City Attorney

The following is a compilation of provisions that have appeared in city attorney employment agreements. Employment agreements vary greatly in their level of detail, in the order of articles, and in their degree of formality. The following compilation is not intended to stand alone as an ideal contract. Rather, it should be adapted to each city's particular arrangement with its city attorney.

Both the city council and the attorney should consider seeking independent advice before entering into an employment agreement.

A. RECITALS

[COMMENT: It is not clear that these introductory provisions have any particular legal consequence. But they are commonly found in city attorney employment agreements. They may contribute some clarity to the substantive provisions that follow. Some of these provisions may appear in introductory language before the actual articles of the agreement.]

Model 1. THIS EMPLOYMENT AGREEMENT is made and entered into in the City of Simi Valley on this ___ day of ____, 20__, by and between the CITY OF SIMI VALLEY, a municipal corporation of the State of California, hereinafter referred to as "CITY", and _____, an individual, hereinafter referred to as "ATTORNEY" for employment beginning _____.

(City of Simi Valley, 1998)

Model 2. WHEREAS the Municipal Code of the city of Moreno Valley provides that the City Attorney of Moreno Valley, California ("City Attorney"), shall be appointed by and serve at the pleasure of the City Council of the City of Moreno Valley ("Council"), and

WHEREAS the Council desires to employ Employee as City Attorney, and

WHEREAS Employee desires to serve as City Attorney; and

WHEREAS it is the desire of the parties hereto to provide the terms and conditions by which City shall receive and retain the services of Employee and to provide for him to remain in such employment, to make possible full work productivity by assuring his morale and peace of mind with respect to future security; to act as a deterrent against malfeasance or dishonesty for personal gain on his part and to provide for terminating his services at such time as he may be unable to fully discharge his duties or when Council may otherwise desire to terminate his employ.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

(City of Moreno Valley, 1994)

B. DUTIES

[COMMENT: This section may also be titled Scope of Duties, Services to be Performed, Duties and Obligations, or some other similar title. This section often incorporates by reference those portions of the city's municipal code or charter that set forth the duties of the city attorney. The following are examples of itemized duties and limitations.]

Model 1. Duties: Attorney agrees to diligently and faithfully perform the duties of the Danville City Attorney and Danville Community Development Agency General Counsel. Specific duties include, but are not limited, to the following:

- (a) Attendance at Town Council/Community Development Agency meetings and other meetings as required;
- (b) Research, preparation and review of ordinances, resolutions, agreements, contracts, leases, written opinions and other documents of legal nature necessary or requested by the Town Council;
- (c) Provision of all legal advice on behalf of the Town to the Town Council/Community Development Agency, Town Manager, and other Town officers and employees;
- (d) Representation of the Town/Community Development Agency, members of the Town Council and other Town officers and employees in litigation as necessary;
- (e) Selection, retention, supervision and monitoring of outside counsel as required;
- (f) Commencement and prosecution of all criminal actions and civil abatements necessary and appropriate to enforce the Town's ordinances;
- (g) Monitoring and advising the Town Council and Town staff regarding legislation and case law affecting the Town.

(Town of Danville, 2000)

Model 2. Employee will focus his professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without prior consent of Council, except that:

- (1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.
- (2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.
- (3) All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

(City of Banning, 2001)

C. TERM

[COMMENT: The two most common provisions regarding a city attorney's term in office are reflected below. Pleasant Hill has a fixed term with automatic extension. Los Gatos has a fixed starting date but an indefinite expiration, subject only to the termination/separation provisions of the agreement. These two provisions are mutually exclusive.]

Model 1. Term. Employee shall be retained in this position of the City Attorney from the effective date of this Agreement through _____. This Agreement, in its entirety, will be automatically extended annually for an additional one-year period unless the City Council specifically takes action by three-fifths vote to not renew this Agreement at least one year prior to its date of expiration.

(City of Pleasant Hill, 2000)

Model 2. Term. This Agreement shall commence _____, and extend indefinitely until terminated as provided hereinafter.

(Town of Los Gatos, 1997)

D. SALARY

[COMMENT: The following sample salary provisions reflect alternative approaches to city attorney compensation. Bakersfield utilizes a traditional step system and ties future increases to those given other city management personnel. Napa links future salary increases to performance evaluations. Rancho Mirage ties future adjustments to the Consumer Price Index. And Salinas guarantees that the city attorney will maintain the same salary differential relative to certain other management employees.]

Model 1. EMPLOYEE'S base salary shall be established within the range of the following salary schedule:

Step 1 - \$_____

Step 2 - \$_____

Step 3 - \$_____

Step 4 - \$_____

Step 5 - \$_____

EMPLOYER agrees to pay EMPLOYEE for services rendered as provided herein a beginning annual base salary at Step 4, payable in installments at the same time as other employees of the City are paid. In addition, EMPLOYER agrees to adjust said salary schedule and/or other benefits of EMPLOYEE in such amounts and to such extent as the Council may determine to adjust, across the board, the salary schedules of the employees in the City's Management Group.

(City of Bakersfield, 1998)

Model 2. SALARY

- (a) City agrees to pay Employee \$_____ in salary per annum for his services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding.
- (b) Thereafter and subject to an evaluation of performance on the anniversary date hereof, City may increase Employee's salary by minute order.

(City of Napa, 1993)

Model 3. The salary for the City Attorney for the Fiscal Year _____ will be \$_____.

Annual Adjustment: In each year of employment, the City Attorney shall receive, in addition to the salary set forth above, a salary adjustment of no less than 50% of the cost-of-living index applicable to this geographical area, together with the right to be considered for a merit step increase as set forth in the Personnel Rules and Regulations, or a merit bonus as approved by the City Council. Said index shall be described as the “all Urban Consumer’s Index”, and said geographic area shall be described as the “Los Angeles-Anaheim-Riverside” area. The annual compensation review of the City Attorney shall be made at the same time or at such other time as agreed to between the parties, as similar consideration is given other employees generally of the Council.

(City of Rancho Mirage, 1998)

Model 4. Base Salary/Evaluation:

\$_____ initial salary with subsequent evaluations at six and twelve months after appointment. Salary to be increased two and one-half (2.5%) percent after satisfactory evaluation at twelve months. Performance will be evaluated annually thereafter with all future salary adjustments based on performance.

(City of Salinas, 1998 Amendment)

E. HEALTH INSURANCE

[COMMENT: The most common provision addressing health or medical insurance in city attorney employment agreements guarantees the city attorney the same benefits as other management employees.]

Model 1. EMPLOYER agrees to provide EMPLOYEE with the same health, dental, optical, and life insurance coverage as is provided other employees in the City’s Management Group.

(City of Bakersfield, 1998)

Model 2. Health Insurance: For Employee and his eligible dependents. A choice of PERS Plans and the City will contribute an amount equivalent to the highest contribution rate established for other City employees.

(City of Folsom, 2000)

Model 3. HEALTH INSURANCE: EMPLOYER agrees to pay all costs of medical, dental, vision, life and long-term disability insurance for EMPLOYEE and his dependents in accordance with the plans provided by the EMPLOYER. In addition to other insurance and benefits, EMPLOYER agrees to pay four (4) calendar months of salary in the event of the EMPLOYEE’S non self-inflicted death or disability.

(City of Vacaville, 1998)

F. RETIREMENT

[COMMENT: Many retirement provisions state that the city attorney will receive the same retirement benefits and city contributions as are provided other management employees. Some set out the benefits and contribution explicitly. While some retirement provisions include deferred compensation, others set it out in a separate section.]

Model 1. [City Attorney] will receive the same benefits such as, but not limited to, dental insurance, health care, retirement (PERS) contribution and plan, workers compensation provided to other executive management level employees.

(City of Thousand Oaks, 1985)

Model 2. Retirement:

- (1) City will pay seven (7) percent of the Employee's base salary and other compensation, as required by State law to the P.E.R.S. as the Employee share, plus the normal matching Employer's share. Such amounts will be applied to the Employee's individual account in accordance with Government Code Section 20615.
- (2) City shall pay the employer's portion of the One Year Final Compensation and Full Formula Plus Social Security PERS retirement plan.
- (3) Employee shall be eligible for 2% @ 55 PERS retirement formula.

(City of Banning, 2001)

Model 3. EMPLOYER agrees to pay for the EMPLOYEE'S portion of the contribution seven percent (7%) to the Public Employees Retirement System. EMPLOYER agrees to contribute, into a deferred compensation plan, an amount up to 5% of salary up to the maximum allowed by the Internal Revenue Service.

(City of Bakersfield, 1998)

G. DEFERRED COMPENSATION

[COMMENT: Deferred compensation often supplements retirement and frequently appears in the same contract section as retirement. As with retirement, deferred compensation is often provided on the same basis as for other management employees.]

Model 1. Deferred Compensation. City shall provide to EMPLOYEE the same deferred compensation plan and CITY contributions as provided to other Management and Confidential employees.

(City of Modesto, 1997)

Model 2. Deferred Compensation. There are currently two plans of Deferred Compensation offered and the City will contribute an equal amount to that invested by the Employee to a maximum allowed by State and/or Federal Tax laws.

(City of Folsom, 2000)

H. VACATION

[COMMENT: Many agreements simply provide vacation leave equal to other management employees.]

Model 1. Sick Leave, Vacation and Holidays. Employee shall receive the same sick leave, vacation and holiday benefits as employees in the management unit, appropriately prorated. Any accrued hours existing on the effective date of this Agreement shall be credited to Employee.

(City of Rocklin, 1996)

Model 2. Vacation Leave.

- A. City agrees, effective July 1, 1998, and each subsequent July 1st thereafter, to credit to and vest in [City Attorney] 218 hours of vacation leave.
- B. City agrees that [City Attorney], without penalty, may carry forward up to 480 hours of vacation leave as of January 1, 1999 and each January 1st thereafter.

- C. City agrees that during July of each year, [City Attorney] may redeem up to 178 hours of vacation leave then credited to and vested in [City Attorney]. City also agrees that, upon request of [City Attorney] at any time and with approval of the City Manager, [City Attorney] may redeem vacation leave hours then credited to and vested in [City Attorney].

(City of Oxnard, 1999)

Model 3. The City of Walnut Creek shall include [City Attorney] in its General Leave Program and provide him with an annual allotment of 28 days of General Leave. During the first year of employment, [City Attorney] shall be credited with 28 days on his first day of work. Should he leave the City during the first year, the payment to [City Attorney] or repayment to the City for such leave shall be on a prorated basis. Following the first year, General Leave shall be earned by [City Attorney] according to the terms of the General Leave Program. [City Attorney] may accumulate General Leave year to year to limit of 600 hours. [City Attorney] shall have the right, at any time or from time to time, to receive payment for all or any part of his accumulated General Leave at his then existing hourly rate. He may direct any such sums be paid in cash or in the form of deferred compensation.

(City of Walnut Creek, 1988)

I. MANAGEMENT/ADMINISTRATIVE LEAVE

[COMMENT: In lieu of overtime or compensatory time off - generally not available to city attorneys - many cities agree to provide time off in the form of Management or Administrative Leave. Such leave is typically in addition to vacation.]

Model 1. [City Attorney] shall receive eighty (80) hours of administrative leave per calendar year. [City Attorney] shall not have the right to accrue administrative leave from year to year. [City Attorney] shall not be entitled to any compensation, or compensatory time off, for overtime.

(City of Newport Beach, 2000)

Model 2. Employee shall receive 48 hours of administrative leave per year in recognition of the time Employee must work outside normal office hours. Employee shall use a minimum of 80 hours of leave time, in any combination of vacation or administrative leave, per year. Failure to do so will result in those hours less than 80 being subtracted from the Employee's accumulated vacation hours.

(City of Madera, 1993)

J. HOLIDAYS

[COMMENT: Most city attorney employment contracts equate city attorney holiday time off with that afforded other management employees.]

Model 1. Other Benefits. All actions taken by Council relating to fringe benefits for employees in the Executive Management classifications shall be considered actions granting the same benefits to Employee. As used herein, fringe benefits include but are not limited to vacation, sick leave, holidays, retirement (PERS) benefits and payments, the City's management package, deferred compensation, health insurance, dental insurance, long-term disability insurance, life insurance, and administrative leave. City shall also pay Employee's annual State Bar of California fees and other customary professional association fees.

(City of Moreno Valley, 1994)

K. SICK LEAVE

[COMMENT: City attorney agreements may provide for a designated amount of sick leave or a city attorney's sick leave with that of other management employees.]

Model 1. Sick Leave. City agrees, effective July 1, 1993, and each subsequent July 1st thereafter, to credit to and to vest in City Attorney 96 hours of sick leave.

(City of Oxnard, 1992)

Model 2. Leave Benefits. Except as modified herein, CITY ATTORNEY shall be entitled to all monetary and other benefits, including, but not limited to holidays, sick leave, vacation, disability insurance, and workers' compensation, as other executive management receive.

(City of San Pablo, 1990)

L. DISABILITY INSURANCE

[COMMENT: In addition to other types of health insurance, agreements often provide for short term or long term disability insurance, either by designating coverage or providing the same benefits as those received by other employees. For a separate discussion of provisions addressing the consequences of a city attorney becoming disabled, see Section L below.]

Model 1. Disability Insurance. The City will pay the premium for a disability insurance policy, provided you qualify, that will pay sixty-six and two-thirds percent (66 2/3%) of your salary during disability of greater than sixty days up to age sixty five.

(City of Burbank, 1996)

M. DISABILITY OF CITY ATTORNEY

[COMMENT: Although not a common provision, some agreements provide contractual protection for the city attorney in the event of a disability.]

Model 1. Disability. Employer shall be obligated to provide reasonable accommodation to Employee as may be required by the Americans With Disabilities Act, or to provide Employee with such unpaid leave as may be required by the Family Medical Leave Act or other applicable state or federal laws. After fulfilling such obligations, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3.

(City of Folsom, 2000)

N. AUTOMOBILE ALLOWANCE

[COMMENT: Cities often provide a designated vehicle allowance or provide a vehicle for the city attorney.]

Model 1. The City of Walnut Creek will provide the City Attorney with a monthly vehicle allowance in the amount of \$_____. The amount will be evaluated annually to consider any change in the cost of ownership, insurance and maintenance of the vehicle.

(City of Walnut Creek, 1988)

Model 2. In lieu of a vehicle allowance, the City Attorney may elect to allow the City to lease on behalf of Employee a standard size vehicle on general terms and conditions commercially available. In this case, the City shall be responsible for all lease payments, maintenance and operational costs except that Employee shall be responsible for maintenance costs when out of town on overnight or longer non-City purposes. Employee shall keep and maintain in full force and effect personal liability and property damage insurance in the minimum amounts of \$250,000 per person and \$500,000 per occurrence and property damage of \$100,000, and shall name the City of Carlsbad as additional insured.

(City of Carlsbad, 1996)

O. RELOCATION/MORTGAGE ASSISTANCE

[COMMENT: A city attorney hired from outside the city may seek some form of reimbursement or stipend for the costs of moving or assistance in obtaining a residential loan.]

Model 1. Moving Expenses. ATTORNEY shall be eligible for reimbursement from the CITY for relocating his personal residence to the City of Simi Valley. Said reimbursement, as verified by written documentation, shall not exceed a maximum of Four Thousand Dollars (\$4,000.00).

(City of Simi Valley, 1998)

Model 2. Mortgage Assistance. City Attorney's participation in the City of Sunnyvale's Mortgage Assistance Program for Newly Appointed Charter Officers and Directors, as set forth in Resolution No. 125-89, as amended by Resolution no. 160-96, shall continue.

(City of Sunnyvale, 1997)

P. INDEMNIFICATION

[COMMENT: In addition to a general provision covering reimbursement of expenses incurred in performing the job, many contracts include a guarantee that the city will indemnify the city attorney for any liability he or she may incur for actions occurring within the scope of employment.]

Model 1. INDEMNIFICATION. City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Attorney. City will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in her capacity as City Attorney, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City.

(City of Pacifica, 1997)

Q. PROFESSIONAL DEVELOPMENT

[COMMENT: Many contracts provide for reimbursement of expenses incurred by the city attorney for training, attendance at conferences and similar efforts for professional improvement. Some may also include a tuition reimbursement clause.]

Model 1. PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

(City of Madera, 1993)

Model 2. Tuition Reimbursement. Tuition reimbursement will be in accordance with current City policy that provided for seventy-five (75%) reimbursement for eligible expenses up to fifteen hundred dollars (\$1,500) annually subject to a citywide limit of \$25,000.

(City of Burbank, 1996)

R. BAR DUES

[COMMENT: Payment of California State Bar Association dues is required to practice law in California. Cities commonly pay such dues on behalf of the city attorney. Less common are provisions for the payment of voluntary dues for the American Bar Association or local bar associations.]

Model 1. Professional Associations. City shall pay Employee's annual dues for membership in the California State Bar, the American Bar Association and the Placer County Bar Association.

(City of Rocklin, 1996)

S. BONDING

[COMMENT: Cities may seek a provision requiring a fidelity or surety bond covering the city attorney. Cities generally pay the bond costs.]

Model 1. Bonding. CITY shall provide for the bonding of EMPLOYEE in an amount satisfactory to COUNCIL and shall pay the costs of such bonding.

(City of South Lake Tahoe, 2001)

T. ANNUAL PHYSICAL

[COMMENT: A provision for an annual medical examination may be sought by the city attorney as a benefit or mandated by the city.]

Model 1. Annual Physical. The City will reimburse you for an annual physical examination not to exceed \$500.00.

(City of Burbank, 1997)

Model 2. [City Attorney] shall, at City's expense, undergo an annual physical examination similar to the extent such examinations are made available to other management employees.

(City of Newport Beach, 2000.)

U. NO REDUCTION OF BENEFIT

[COMMENT: While not common, the city attorney may seek protection against a reduction of his or her salary or benefits.]

Model 1. NO REDUCTION OF BENEFITS. Employer shall not at any time during the term of this agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all employees of the Employer.

(City of Madera, 1993)

V. PERFORMANCE EVALUATIONS

[COMMENT: City attorney contracts vary greatly in the level of detail for performance evaluations. Some may describe the procedure, but say little about the substance of the evaluation. Others set forth the specific components of the evaluation.]

Model 1. Performance Evaluation. Council shall annually review and evaluate the performance of Employee during the preceding year.

(City of Pleasant Hill, 2000)

Model 2. PERFORMANCE EVALUATION PROCEDURES

- A. The EMPLOYER shall evaluate the performance of EMPLOYEE at least once per year. The first evaluation will be written and will be completed by the EMPLOYER by July 15, 1994. EMPLOYEE'S evaluation will be based on the duties and responsibilities of the City Attorney as set forth in the Charter and as assigned by the EMPLOYER.
- B. A copy of the written evaluation shall be delivered to EMPLOYEE. EMPLOYEE shall have the right to respond orally or in writing to the evaluation. Within thirty (30) days of the delivery of the written evaluation to EMPLOYEE, the EMPLOYER shall meet with EMPLOYEE to discuss the evaluation.
- C. The EMPLOYEE will be responsible to EMPLOYER for providing annual written notice to EMPLOYER of the need to complete the evaluation and for the scheduling of meetings at a mutual time for such purpose.

(City of Mountain View, 1994)

W. AT WILL EMPLOYMENT

[COMMENT: Contractual provisions can imply that the city attorney has a property right in his or her employment. It is not clear whether such a property right would contradict the professional definition of the attorney-client relationship. Many contracts resolve such doubts with an explicit statement that the attorney serves at the pleasure of the city council.]

Model 1. Nature of Relationship; Termination. It is understood by and between the parties to this agreement that [City Attorney] in providing legal services to the City of Thousand Oaks, serves at the pleasure of the City Council, and [City Attorney] shall have no right to a termination hearing, or to any vested right to his position other than as contained in this agreement.

(City of Thousand Oaks, 2000)

Model 2. Miscellaneous Provisions. Neither this agreement, nor any provision of state statute or local ordinance, rule or resolution create any property right in favor of [City Attorney] in her employment as City Attorney.

(City of Solano Beach, 1999)

X. TERMINATION/SEVERANCE

[COMMENT: The termination clause of a city attorney agreement is often the most detailed provision in an employment agreement. City councils may be concerned about creating a property right in employment while city attorneys may be concerned about summary dismissal. The following provisions are alternative approaches addressing these concerns.]

Model 1. Termination. In the event of involuntary termination of Employee, City shall pay Employee or her estate in a lump sum or in installments or other manner as Employee or the executor of her estate may demand, an amount equal to one time the then current annual salary. Involuntary termination as used in this Paragraph 5 means Employee's discharge or dismissal by the City, or Employee's resignation following a salary reduction greater in percentage than across the board reduction in salary for any other group of City employees, or her resignation following a request by the City Council, approved by majority vote, that she resign. "Involuntary termination" does not include Employee's death, incapacity due to injury, or illness (physical or mental), dismissal for willful misconduct, malfeasance, dishonesty for personal gain, or following conviction of a felony or misdemeanor involving moral turpitude, nor Employee's resignation for any reason other than that so stated in this subparagraph C.

(City of Rocklin, 1996)

Model 2. RESIGNATION AND TERMINATION.

- (b) Employee serves at the pleasure of the City and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of City to terminate the services of Employee with or without cause; provided, however, the City Council shall take no action to terminate the services of Employee within ninety (90) days after any election at which one or more members are elected to the City Council. There is no express or implied promise made to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and City.
- (c) If the Employee is terminated by the City Council while still willing and able to perform the duties of the City Attorney, the City agrees to pay Employee a single lump sum payment made on the effective day of the termination, an amount equivalent to six months aggregate salary and an amount equivalent to six months aggregate medical insurance benefit allowance. Any such payments will release City from any further obligations under this Agreement. Contemporaneously with the delivery of the severance pay herein above set out, Employee agrees to execute and deliver to City a release releasing City of all claims that Employee may have against City.

- (d) Notwithstanding paragraph 3(c) above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 3(c), if Employee is terminated because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office. Further, City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 3(c), in the event Employee voluntarily resigns without affirmative action by City to terminate, initiate termination proceedings or request resignation, for example a resignation to pursue other employment or professional opportunities.

(City of Pacifica, 1997)

Model 3. TERMINATION.

- A. Notwithstanding Section 2, above, CITY may terminate this agreement without notice or cause at any time. It is agreed that the relationship established hereby shall be "at will," except, however, that termination of this agreement by CITY is recognized by CITY to create the potential for hardship and monetary loss to CITY ATTORNEY and that such damages are, at the inception hereof, incapable of calculation. Therefore, as liquidated damages, and not as a penalty, any termination pursuant to this subsection shall require the payment by CITY of six months of CITY ATTORNEY's monthly salary and benefits. Payment of said liquidated damages shall be in lieu of any and all other remedies of CITY ATTORNEY, whether legal or equitable in nature, nor shall CITY ATTORNEY institute or assist in filing or prosecution of any complaint, charge, or accusation against CITY, its officers, or employees with any state of federal fair employment, equal employment, or similar board or commission.
- B. Should CITY terminate this agreement pursuant to A, above, CITY ATTORNEY shall have the option of payment of compensation in one lump sum or bi-weekly over the appropriate period, or some combination thereof. Compensation shall include the extension of non-salary benefits, or the monetary equivalent of CITY's cost of such benefits. (City of San Pablo, 1990)

(City of San Pablo, 1990)

Y. RESIGNATION

[COMMENT: Provisions covering a city attorney's resignation typically set forth a notice period. The consequences of a failure to provide such notice, however, is rarely specified.]

Model 1. VOLUNTARY RESIGNATION OR RETIREMENT: NOTICE OF INTENTION TO SEEK OTHER EMPLOYMENT: NO SEVERANCE: Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the EMPLOYEE to resign at any time from his position as CITY ATTORNEY or to retire from public service. In the event that EMPLOYEE voluntarily resigns his position, or retires, prior to the expiration of the term of the agreement, EMPLOYEE shall give CITY three (3) months notice in advance, unless the parties agree otherwise. Further, should EMPLOYEE begin to actively seek other employment, EMPLOYEE will notify EMPLOYER forthwith of EMPLOYEE'S intention to seek other employment. In the case of a voluntary resignation or retirement, no severance will be paid to EMPLOYEE.

(City of Vacaville, 1998)

Z. CONFLICTS/OUTSIDE EMPLOYMENT

[COMMENT: Conflict of interest provisions are common in contracts with part-time city attorneys or private firms that serve as city attorney. Some contracts also address outside employment.]

Model 1. Outside Employment: Attorney shall not engage in outside employment without the prior approval of the Town Council.

(City of Danville, 2000)

Model 2. DUTIES.

(c) Employee shall not engage in any activity that is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, the Employee must complete disclosure forms required by law.

(City of Napa, 1993)

Model 3. CONFLICT OF INTEREST PROHIBITION. It is further understood and agreed that because of the duties of the City Attorney within and on behalf of the City of Pacifica and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Pacifica, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as her personal residence or residential property acquired or held for future use as her personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Pacifica, without the prior consent of the City Council.

(City of Pacifica, 1997)

AA. RESOLUTION OF DISPUTES

[COMMENT: Dispute resolution procedure provisions are common in city attorney agreements, notwithstanding the risk of contradicting the at-will nature of the employment. Some procedures are limited to a review of the narrow issue of whether there was "cause" to terminate because of the issue of severance pay.]

Model 1. ARBITRATION. Any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be enforced as provided by California law and shall constitute Employee's sole remedy for any claim arising out of his employment relationship with the City.

(City of Concord, 2000)

Model 2. Suspension and Termination

(2) In the event Employee is terminated for cause, he shall not be entitled to any severance pay or benefits. "Cause" shall include, but not be limited to, the following reasons:

- (a) Willful breach of this Agreement as interpreted pursuant to Labor Code Section 2924.
- (b) Habitual neglect of the duties required to be performed as City Attorney as interpreted pursuant to Labor Code Section 2924 which reads as follows: An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the courts of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform.

- (c) Any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude.
- (d) Commission of any act which would constitute a crime, whether misdemeanor or felony, or which would bring disrespect to the office of the City Attorney or City.
- (e) Willful or serious violations of City policies.
- (f) Upon termination for cause, the city shall deliver to the Employee a written specification of the charges or other reasons upon which "Cause" is alleged. Employee shall then have five (5) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such five (5) day period, the Employee may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the five (5) business day period shall constitute a waiver of such right, and the Council's determination shall be final. If a hearing is demanded, such hearing shall be held before an independent hearing officer to be mutually agreed between the parties, or if no agreement can be reached, the hearing officer shall be selected from a list provided by the State Mediation and Conciliation Services (SMCS). If a written response is submitted, but no hearing is demanded, the Council shall review its decision based upon the Employee's written response. However, any determination by the Council after reviewing such a written response (where no hearing has been demanded) shall be final and without right of appeal. The mutual selection of a hearing officer shall be accomplished within ten calendar days following notice of Employee's request for a hearing. If the parties cannot mutually agree on a hearing officer within the requisite time period, then the parties shall request a list of five hearing officers from SMCS. The parties shall then take turns eliminating names from the list until one remains. The remaining name shall (sic) will (sic) then be the selected hearing officer. The fees of the hearing officer shall be advanced, in full, by the City. However, upon a finding of "cause" by the hearing officer, Employee shall reimburse the City and be responsible for payment of fifty percent (50%) of such fees. The decision of the hearing officer shall be binding and without right of appeal. The issues to be determined in the hearing shall be whether the specifications are supported by substantial evidence. The parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be no later than (sic) sixty (60) days following the City's notice of termination for cause. In the event the hearing officer concludes in favor of Employee that no cause exists, Employee shall be entitled only to the appropriate amount of severance pay and benefits as he would have received if terminated without cause pursuant to Section 4, above. It is understood and agreed that this section constitutes Employee's sole right to a hearing in connection with the termination of his employment, and he hereby waives any rights to notice, cause, or hearing otherwise provided for by City Rules, Ordinances, Resolutions or other legal authority.

(City of Banning, 2001)

BB. GENERAL/MISCELLANEOUS PROVISIONS

Model 1. GENERAL PROVISIONS

14.1 This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the CITY Council and signed by all parties.

14.2 The failure of any party to enforce against another a provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time and shall not serve to vary the terms of this Agreement.

14.3 This Agreement shall be binding upon and inure, where applicable, to the benefit of the heirs at law and executor of EMPLOYEE.

14.4 This Agreement shall not be assigned or subcontracted by either party without the consent of the other party. Consent may be denied for any reason or no reason at all.

14.5 Should any provision, section, or subsection of this Agreement be declared invalid or unenforceable by any court of competent jurisdiction, such ruling shall not affect any other provision hereof, and the unaffected provisions shall remain in full force and effect.

14.6 This Agreement may be amended only in writing.

(City of Bakersfield, 1998)

Model 2. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

(City of Pacifica, 1997)

Model 3. If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional by the decision of a competent jurisdiction, such decision shall not affect validity of the remaining portions of the resolution. The City Council of the City of Rancho Mirage hereby declares that it has passed this resolution, and each section, subsection, clause, sentence or phrase thereof, irrespective of the fact that any one or more other sections, subsections, clauses, sentences or phrases may be declared invalid or unconstitutional.

(City of Rancho Mirage, 1998)

Employment Agreement Provisions

Part-Time (Contract) City Attorney

The following sections cover representative provisions from actual employment agreements between cities and part-time city attorneys and, in some cases, with the law firms selected to represent the city. While many agreements contain the same provisions found in the employment agreements described in Appendix A, there are provisions that are unique to part-time city attorneys.

A. INDEPENDENT CONTRACTOR/AT WILL STATUS

[Comment: Many part-time city attorney employment agreements contain provisions defining the nature of the employment relationship.]

Model 1. Independent Contractor.

No employment relationship is created by this Agreement. The Firm shall, for all purposes, be an independent contractor to the City.

(City of La Habra Heights, 1993)

Model 2. Tenure and Status. Attorney shall serve at the will and pleasure of the City Council and expressly waives and disclaims any right to any pre-termination or post-termination notice and/or hearing, except as hereinafter provided. In providing services pursuant to this Agreement, Attorney is an independent contractor, and not an employee of City.

(City of Blue Lake, 2000)

B. DESIGNATION OF CITY ATTORNEY

[COMMENT: If a city council is contracting with a law firm for city attorney services, it may be desirable to identify which member of the firm will serve as the city attorney.]

Model 1. Designation of City Attorney. [Name] is designated as City Attorney and General Counsel to the Redevelopment Agency. The parties understand and agree that the Firm may, from time to time, utilize other attorneys within the Firm to assist [Name of City Attorney] in the performance of this Agreement. [Name] is designated as Assistant City Attorney. In [Name of City Attorney's] absence, [Name of Assistant City Attorney] shall have full authority to sign documents or otherwise to act on behalf of the City.

(City of Barstow, 2001)

Model 2. Services of Assistants and Paralegals

- A. The City Attorney may delegate some of his duties to other competent attorneys, paralegals, or law clerks employed by him or his law firm, provided that the City Attorney shall be personally responsible for all work performed by such assistants, and shall ensure that all work is performed in a competent and professional manner.
- B. The City Attorney, with prior notice to the City Council, may select another person or persons to act as City Attorney in representing the City in cases where the City Attorney is unable to act due to illness, vacation or other reason, or when the City Attorney requires such assistance. Such representatives will be compensated at the City Attorney's own expense. The City Council shall have the right to reject the City Attorney's choice of representative in its discretion.

(City of Campbell, 1994)

C. SCOPE OF SERVICES

[COMMENT: One of the most important provisions in a part-time city attorney agreement is a clear delineation of the services the city attorney will and will not provide. There is a direct link between the compensation and what work the city attorney agrees to perform.]

Model 1. SCOPE OF SERVICES. Attorney shall provide the following services to CITY:

- (a) Represent and advise the City Council and all City Officers in all matters of law pertaining to their offices.
- (b) Represent and appear for any City Officer and/or employee or any former City Officer and/or employee, in legal proceedings in which any such officer or employer is entitled by law to representation furnished by the CITY.
- (c) Attend all regular meetings of the City Council (2nd and 4th Tuesdays or each calendar month) and give advice or opinion in writing whenever requested to do so by the council or any of the boards or commissions of the CITY or by the City Manager.
- (d) To be promptly available for telephone consultation and to render written opinions on given issues related to CITY business in a timely manner.
- (e) Approve the form and content of all contracts made by and all performance bonds, insurance of certificates and like documents tendered to the CITY.
- (f) Prepare/review all Ordinances, Resolutions, Contracts, Deeds, Leases, and all other legal documents as requested by the City Manager.
- (g) Provide recommendation and advice when requested by the City Council pertaining to the retention of and employment of outside law specialists in complex and important cases in which the CITY may be involved.
- (h) Investigate all claims and complaints by or against the CITY and prepare civil cases and act as trial counsel as required and requested by City Manager.
- (i) Review citations for violations of City ordinances in accordance with criminal/civil law and procedures; prepare and try infractions, misdemeanors, and ordinance violations as required and requested by the City Manager.
- (j) Prepare extended legal opinions of a complex nature for the City Council, officers, boards, commissions and the City Manager as required and requested.
- (k) Generally to oversee and manage the legal affairs of the CITY and to insure that the policies, programs, and activities of the CITY and its employees and agents are carried out in compliance with all applicable law and that the best interests of the CITY are otherwise protected to the fullest extent possible.

- (l) Attend all regular agenda meetings of the City staff and to be available on agenda meeting day to provide full range of normal City Attorney services to City Manager, the staff, and the council, such as meeting with City management in preparation and/or review of routine regulations, ordinances, rules and resolution regarding general City matters and to render other service as required and agreed.

ATTORNEY shall provide the full normal range of services of the City Attorney as described above. ATTORNEY may use the City's facilities and/or staff on a mutually agreed basis to accomplish his commission. ATTORNEY shall establish and maintain services to the CITY in case of his unavoidable absence through temporary Attorney services satisfactory to the CITY. ATTORNEY will provide the CITY with education and in-service seminars as mutually agreed upon to maintain a level of education among the City Council members, staff and management in order, to the fullest extent possible, to reduce liability and (sic) increase knowledge on the part of the CITY pertaining to any and all legal matters.

(City of Dinuba, 1989)

Model 2. Quarterly Reports. To keep the Council and City Manager informed of the status of litigation involving the City, the City Attorney will submit a quarterly status report briefly outlining the status of each litigation, including code enforcement litigation. The City Attorney shall advise City Council and City Manager of significant developments in litigation involving the City as they occur. The status report shall be submitted between the first and fifteenth of the following months (April, July, October, and January).

(City of Los Altos, 2001)

Model 3. Limitation of Duties. Attorney shall not be required to provide the following services:

- a. Administration and legal representation of workers' compensation claims and litigation, except for general legal advice in the area of workers' compensation and review of settlements recommended by the CITY's contract administrators;
- b. Negotiation and interpretation of M.O.U.'s and other labor related matters, including disciplinary proceedings, except to provide general legal advice on personnel matters related to the CITY's Personnel Rules & Regulations, and at the request of the CITY, review recommendations of the CITY's contract labor attorneys; and
- c. Legal services related to the issuance of municipal bonds, certificates of participation, or other types of capital improvement financing and assessment proceedings, and specialized redevelopment proceedings, including updates and/or major amendments to the Agency Plan.

(City of Menlo Park, 1993)

Model 4. If ATTORNEY determines that the best interest of CITY would be served by retaining outside counsel ("COUNSEL") to represent CITY on a particular matter, ATTORNEY shall so inform CITY and request authorization to retain such COUNSEL. ATTORNEY shall only retain COUNSEL with prior authorization from CITY. [Name] will bill CITY for the services provided by any COUNSEL without adding on any additional markup. [Name] may charge CITY for ATTORNEY'S time spent supervising and coordinating with COUNSEL.

(City of Saratoga, 1999)

D. PRIVATE PRACTICE/CONFLICTS OF INTEREST

[COMMENT: Since the part-time city attorney typically has clients other than the city, many agreements address the issues presented by such outside work.]

Model 1. Private Practice. The City Attorney may continue a limited private practice from the office located in Cupertino provided that such practice shall not interfere with his obligations to the city. Such private practice may include representation of other public agencies, teaching, judgment on a pro tem basis, advising and representing individuals and businesses provided that such representation does not involve any real or apparent conflict of interest.

(City of Cupertino, 1993)

Model 2. Conflict of Interest. [Name of Law Firm] and [Name of City Attorney] hereby covenant that they have no interest not disclosed to CITY and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as CITY may consent to in writing prior to the acquisition by [Name of Law Firm] or [Name of City Attorney] of such conflict.

(City of Saratoga, 1999)

Model 3. RESTRICTIONS ON FUTURE REPRESENTATION. In addition to the proscriptions regarding conflicts of interest imposed on LAW FIRM by the Business and Professions Code and by the California Rules of Professional Conduct, LAW FIRM represents that no member of LAW FIRM shall appear before any board, commission, committee, or agency of CITY for the purpose of representing any other client of LAW FIRM's for a period of six months from the date of termination of LAW FIRM's employment as City Attorney.

(City of Pismo Beach, 1998)

E. COMPENSATION

[COMMENT: Most part-time city attorney agreements contain a combination of a flat retainer amount for designated city attorney work and an hourly rate for work beyond the basic work. The amounts vary greatly depending on the definition of the scope of basic services.]

Model 1. Compensation. Attorney shall be compensated by Client for legal services as follows:

3.1. Retainer Services. For a monthly retain of \$ _____ (Dollars/Cents) (the "Retainer"), Attorney shall render the following legal services on behalf of Client:

1. Attendance at regular meetings of the City Council and Agency.
2. Attendance at the monthly regular meeting of the Planning Commission.
3. Attendance at occasional meetings of the City Manager/Department Head staff on an "as needed" basis.
4. Provision of up to five (5) hours of formal and/or informal legal advice and opinions to Client or such other legal services up to the five (5)-hour maximum set forth hereinabove as requested by the City Manager.

3.2. Non-Retainer Services.

3.2.1. Except as provided in Section 5, all other services rendered by Attorney (hereinafter "Non-Retainer Services") shall be payable at the rate of \$_____ per hour for partners and associates of Attorney. Legal assistants shall be billed at their normal hourly rates which presently range from \$_____ to \$_____ and may be changed from time to time. Client shall receive notice of such change in hourly rates for legal assistants.

3.2.2. Unless the parties otherwise agree, the hourly rate charged to Client shall be increased by an amount which will not exceed the annual percentage of increase, if any, in the compensation granted to City employees in general. In other words, if the City Council were to increase the salaries of City employees by five percent (5%) in 1993-1994, Attorney's hourly rate would be increased to \$_____.

3.2.3. Non-Retainer Services shall include, but not be limited to, rendition of legal advice to Client, preparation/review of resolutions, ordinances, contracts and agreements, prosecution of violations of City codes and ordinances and the representation of Client in civil litigation matters.

3.2.4. Non-Retainer Services shall not be rendered to Client by Attorney unless and until first authorized by the City Manager or his designee. A prior written statement of the estimated cost of such services shall be rendered upon request of the City Manager.

(City of Fillmore, 1992)

Model 2. General services will be billed to the City and Redevelopment Agency at the rate of \$_____ per month, for up to seventy five (75) hours during any month. Any time expended on general services beyond seventy five (75) hours will be billed at the rate of \$_____ per hour. General services include routine non-litigation city attorney and agency attorney services and criminal prosecutions. Special projects and general litigation services will be billed at the regular hourly rate of the individual working on the matter, currently in the range of \$_____ to \$_____ per hour for attorneys and from \$_____ to \$_____ for legal assistants. A determination of whether a particular matter is a special project would be made jointly by you, as the City Manager and I, as City Attorney. General litigation services include time spent on any lawsuit filed by, on behalf of, or against the City, excluding criminal prosecution matters and major case litigation. In the event that specialized legal services are required for items such as major case litigation or specialized legal matters which involve the Firm's most senior and experienced lawyers or its legal specialists, the actual rates billed may exceed \$_____ per hour if approved by the City Manager and the firm in advance.

(City of Monrovia, 1992)

Model 3. Overhead. Except as expressly provided in this Agreement, Attorney shall pay all overhead incurred in providing legal services to CITY including but not limited to reasonable and necessary office facilities, equipment, books, supplies, secretarial services, word processing, faxes, telephone usage, insurance, office supplies, copying, telephone, etc., (except for CITY stationery and CITY business cards, which shall be provided by CITY).

(City of Menlo Park, 1993)

Model 4. Travel Time. The Town will not be billed for time spent in travel to and from the Town of Yountville. Travel time to and from places other than the Town of Yountville will be billed at the foregoing rates.

(City of Yountville, 2001)

Model 5. Multiple Matter Discount. Preferred rates shall be given CITY by LAW FIRM in public entity specialty litigation matters when CITY qualifies for a "Multiple Matter Discount." Services of LAW FIRM shall be compensated by CITY at the rates of the legal personnel rendering the services as indicated in the "Multiple Matter Discount" column of the Public Entity Specialty Litigation Rate Schedule attached when the discount is applicable. A "matter" is defined based upon an actual controversy arising out of the same transaction or occurrence between the same parties, without regard to whether the controversy results in multiple lawsuits. The term "multiple" is defined as 3 municipal law specialty litigation matters or 5 litigation matters total. Code Enforcement litigation matters shall not be counted to reach the "multiple matter" threshold.

(City of Pismo Beach, 1998)

F. BILLING STATEMENTS

[COMMENT: Since part-time city attorneys are not typically treated as employees in the payroll system, many agreements spell out the billing method of billing for their services.]

Model 1. Billing Procedures and Monthly Statements

- A. The Firm shall submit to the City, within thirty (30) days after the end of each calendar month, an itemized statement of the professional services provided and the time expended providing those services in the form customarily submitted by the Firm to clients which are billed on an hourly basis. The parties acknowledge that payment of all monthly statements is expected to be made within thirty (30) days of the billing date.
- B. The Firm will bill the City for items such as, but not limited to, long distance telephone calls, filing fees, document duplication, computerized legal research, and similar out-of-pocket expenditures. These items will be separately designated on the Firm's monthly statements as "disbursements," and will be billed in addition to the fees for professional services.
- C. Time will be charged by the Firm in increments of 1/10 of an hour (i.e., six-minute units). The rate structure in general, or the rates of particular attorneys, may be increased from time to time, after written notice to the City. To the extent feasible, such adjustments will be made so as to coincide with the beginning of the City's fiscal year.

(City of La Habra Heights, 1993)

G. FEE DISPUTES

[COMMENT: Disputes over the legal fees may be addressed in varying ways, ranging from informal consultation to lawsuits.]

Model 1. Objections to Billings. LAW FIRM encourages CITY to advise LAW FIRM promptly of charge which appears to be incorrect. LAW FIRM will assume all charges are acceptable if CITY does not express any concerns regarding a billing within thirty (30) days of its mailing. Failure to question a billing or request an adjustment within thirty (30) days from the statement will be deemed agreement by CITY that the stated charges are correct and payable in full.

(City of Pismo Beach, 1998)

Model 2. Dispute Resolution Regarding Retainer/Non-Retainer Services and/or Billings. In the event of any question or dispute regarding whether or not a specific legal service is covered by the CITY retainer, either the City Manager or the City Attorney may request that such matter be referred to the City Council for resolution. The determination of the City Council or a sub-committee authorized by the City Council to review such matters shall be final and binding.

(City of Menlo Park, 1993)

Model 3. Resolution of Fee Disputes. The City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles pursuant to the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Los Angeles County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by the Firm shall be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

(City of La Habra Heights, 1993)

Model 4. LEGAL ACTION UPON DEFAULT. If Client does not pay the balance when due or breaches any other terms of this Agreement, [Firm Name] may demand that the entire unpaid balance be paid immediately and, as provided by law, commence any legal action for collection of the balance due. Client and [Firm Name] agree that all legal proceedings related to the subject matter of this Agreement shall be maintained in courts sitting within the State of California, County of Sacramento. Client and [Firm Name] consent and agree that the jurisdiction and venue for proceedings relating to this Agreement shall lie exclusively with such courts. Further, the prevailing party in any such dispute shall be entitled to reasonable costs, including attorneys' fees.

(City of Elk Grove, 2000)

H. BENEFITS

[COMMENT: Some agreements provide for medical insurance and other traditional employee benefits for the part-time city attorney. At times, the only benefit provided may be city paid participation in the retirement program.

NOTE: CalPERS may no longer allow this for new enrollees.]

Model 1. Benefits. The City Attorney, Assistant City Attorney, and Deputy City Attorneys shall be employees of the City. As such, the City Attorney, and only the City Attorney, shall be full time and entitled to full time membership in the Public Employees' Retirement System based upon the allocation of salary to the City Attorney set forth herein. The City shall take all steps necessary to provide said PERS benefits prospectively and to assure the provision of said benefits from July 1, 1983 to the date of termination hereof, as previously agreed, or provide comparable benefits. The City Attorney shall be entitled to receive the same health, life insurance and disability benefits on the same terms and conditions available to any other management employee of the City.

(City of Poway, 2000)

Model 2. PERS. The parties recognize that ATTORNEY may be eligible for and may elect membership in the Public Employees' Retirement System, hereinafter referred to as "PERS", as provided in Government Code Section 20361. In the event that ATTORNEY notifies CITY of [his] election of membership in PERS, CITY shall contribute the employer share of required PERS contributions based on compensation for hours billed by ATTORNEY. Total monthly contributions by the CITY to PERS shall be shown as a credit against billing by [Firm] on the bill issued in the month following the contribution.

(City of Saratoga, 1999)

I. INSURANCE AND INDEMNITY

[COMMENT: Most cities require all consultants, including contract city attorneys, to maintain insurance covering their acts and omissions. Most cities also require that the consultant indemnify the city for any liability, regardless of whether insurance coverage is applicable.]

Insurance Requirements

Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For automobile insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and
- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and
- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain a claims-made professional liability insurance in an amount of \$1,000,000 per claim.

Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

Indemnification

CONSULTANT agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.



NEW LEAGUE PUBLICATION

Counsel and Council

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This new League publication is a must-have for city council members and city attorneys. *Counsel and Council* contains essential basic information defining the structure of the employment relationship between the city attorney and city council, and offers tips on how to build a productive employment relationship. *Counsel and Council* serves as a starting point for discussions about how the relationship should be viewed. It offers practical suggestions on structuring the employment relationship in an effort to achieve both parties objectives and expectations.

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UNIVERSITY OF CALIFORNIA
GUIDELINES FOR OUTSIDE COUNSEL
NON-RISK PROGRAM MATTERS

I. INTRODUCTION

The following are the standard University of California (“University”) Outside Counsel Defense Panel Guidelines. Any law firm or attorney retained by the University is expected to comply fully with all of the elements of these guidelines. You will be asked to certify annually that you and your firm are in compliance with these Guidelines. Failure to comply with the guidelines may result in reduction or non-payment of legal bills, and may subject you and or your firm to removal from the University’s list of outside counsel.

The Guidelines can be summarized as requiring: (a) proactive representation of the University; (b) solid understanding the University’s public mission; (c) efficiency in legal representation; (d) clear, open and complete reporting, particularly in advance of significant activity.

II. PHILOSOPHY AND UNIVERSITY REPRESENTATION STRATEGY

The University’s philosophy is to defend non-meritorious claims or disputes and to resolve as soon as practicable claims or disputes where liability is reasonably clear. The University takes a proactive approach to defending cases. Legal services should be directed towards collecting necessary information about the matter as quickly as possible, then making a realistic evaluation of the matter with an appropriate case handling plan. The budget for this retention, described below in these guidelines, is an important tool in managing and planning for this retention. Outside Counsel (“Counsel”) for the University is expected to take initiative in order to assess and resolve matters at their earliest practical stage. Counsel should not simply react to the opposing side or case developments.

As an integral part of implementing this philosophy and representation strategy, the University expects Counsel to master the facts, circumstances, and legal issues as early as possible and to prioritize tasks and chart a course for the matter with specific objectives and timing estimates. As the matter progresses, Counsel is expected to reevaluate the case posture and to ensure the best possible outcome, particularly as new facts, legal issues, or other matters are discovered. Successful implementation of this philosophy and representation strategy is one of the fundamental professional responsibilities of Counsel.

Early dispute resolution is a key objective for the University in any disputed matter and Counsel will be evaluated on its ability to bring matters to a rapid and successful conclusion. Initial efforts of Counsel should therefore be directed to accomplishing only those items necessary to evaluate the matter under retention and facilitate early resolution if such is warranted. In coordination with attorneys in The Regents of the University of California Office of the General Counsel (“UC Counsel”), Counsel shall pursue early dispute resolution (including informal settlement negotiations). All settlement offers/demands shall be discussed in advance with UC Counsel and the campus before being communicated. If informal settlement negotiations fail but other alternatives become at all encouraging, Counsel, in consultation with UC Counsel, shall seek the use of programs such as mediation or stipulated arbitration. UC Counsel will participate

in any resolution process. Settlement will require prior approval of UC Counsel in consultation with campus and/or Office of the President representatives and, depending upon the terms, may require approval by the University's Board of Regents. UC Counsel may elect at UC Counsel's discretion to employ separate settlement counsel for purposes of pursuing settlement negotiations while the matter progresses. In such event, Counsel will be expected to cooperate fully in supplying necessary information and work product to settlement counsel.

Counsel is responsible for gathering available records and other pertinent information at the outset, including all available records and internal reviews. UC Counsel will assist in this process, where appropriate. Counsel must be familiar with rules regarding preservation of documents and electronically stored information, and take appropriate steps, if not already taken, to meet notice and preservation requirements.

The Office of the General Counsel has recently initiated a formal diversity initiative including adopting a Diversity Statement (attached as Exhibit A). Counsel should be familiar with this Statement and be aware that OGC will be developing a program to measure and evaluate firms' diversity goals, initiatives and results.

III. ROLE OF OUTSIDE COUNSEL.

A. General Instructions:

Unless otherwise noted retained Counsel shall be the primary legal representative of the University and its employees in the matter under retention and shall be responsible for complying with all court or other dates, responding promptly to requests for information, e-discovery, correspondence and so forth, and generally responsible for the proper handling of the matter under retention.

All retentions of Counsel are made on behalf of The Regents of the University of California, Office of the General Counsel, by an attorney located at the Oakland Office, or at a campus or medical center. UC Counsel will identify appropriate campus representatives, if necessary. Since open and continuous communication between Counsel and UC Counsel is essential to ensuring efficient outside counsel work and the best possible results, UC Counsel shall be fully apprised and kept current on all developments and participate in all decisions concerning legal tactics and strategy. UC Counsel or his/her designee shall be provided with copies of all legal opinions and advice, and significant correspondence. All significant submissions shall be submitted to UC Counsel, preferably in electronic form, in time for thorough review and discussion before any court or other deadline. UC Counsel will be responsible for planning and coordination with appropriate University administrative personnel and outside consultants. UC Counsel shall be consulted prior to direct communication with other University personnel unless prior consent has been given for such communication. If other University personnel request Counsel to perform legal work, Counsel shall advise UC Counsel before proceeding and inform the University person requesting the work that Counsel is advising UC Counsel of such request. UC Counsel will make the final decision regarding tactics and/or strategy in any given matter. UC Counsel may assume other responsibilities in individual cases, including -- although rarely -- the role of lead counsel, in which case, Counsel shall assist UC Counsel as assigned.

B. Attorney E&O Coverage

Counsel firms must carry Errors & Omissions insurance with limits per individual attorney of at least \$1,000,000 per claim and \$3,000,000 in the aggregate. Certificates of insurance must be provided to UC Counsel annually by no later than July 1 of each year. Any changes in this requirement must be pre-approved by UC Counsel.

C. Establishing Legal Fees

Counsel hourly rates are approved within established ranges by the University. The University does not accept unilateral rate increases. Requests for adjustments of hourly rates should be directly raised with UC Counsel and will be approved only in writing.

D. Relationships with Opposing Counsel and the Court

As a state-wide public agency, the public expects and deserves the University and its personnel and agents to represent its interests in a professional and ethical manner. The University fully expects that Counsel will maintain the highest ethical and professional standards on behalf of the University, and will establish and maintain cordial and professional working relationships with opposing counsel, the judiciary, mediators, third parties witnesses, and any others.

E. Media Contact or Exposure

Counsel must immediately notify UC Counsel if he or she becomes aware of possible media exposure or contact by media in the retained matter so that the University may designate the appropriate spokesperson to respond to inquiries. Typically, Counsel will not will not make comments to the press, and will do so only with the prior input and approval of UC Counsel.

IV. PERSONNEL.

It is expected that the principal attorney responsible for each matter will be a partner. The assigned partner will be responsible for assigning other attorneys and legal assistants as necessary. *All of Counsel's attorneys must be pre-approved by UC Counsel.*

UC Counsel and Counsel will jointly evaluate, decide to employ and supervise expert witnesses and other consultants. UC Counsel will make the final decision on selection or termination of expert witness services in any given matter. Experts will be evaluated for selection in a given matter based on qualifications, cost, willingness to accept University form agreements and willingness to follow other University policies and procedures. Expert and consultant bills shall be reviewed and approved by Counsel prior to submitting them for payment in accordance with Section VII of these Guidelines.

Counsel shall be responsible for immediately notifying UC Counsel when any approved Counsel leaves the firm. Additionally, Counsel will ensure that all approved Counsel are licensed to practice law in California, are not presently subject to any disciplinary proceedings in the state, and have not previously been subject to any disciplinary proceedings in the state. Counsel must notify UC Counsel of any past or present disciplinary proceedings, or any change in approved Counsel's license status with any state bar organization.

UC Counsel recognizes that firms may reorganize or dissolve. These circumstances require special attention and must be reported immediately to UC Counsel. Any newly organized firm must be approved by UC Counsel to represent the University. Under no circumstances are any University files to be removed from the originally approved law firm's office without prior written permission of UC Counsel.

On rare occasions, the University may choose to discontinue its relationship with a firm. UC Counsel will review the circumstances, and make the decision whether to remove the firm from its panel. If the firm is removed, cases will be reassigned to other approved firms.

V. REPORTING REQUIREMENTS, MATTER PLANNING AND BUDGET.¹

A. Overview

Counsel must report on all significant developments as they occur, including emerging facts, shifting claims or strategies, and other changes in a matter. Report letters should be directed to UC Counsel, unless instructed otherwise by UC Counsel. E-mail attachment, and appropriate confidentiality notation, is the preferred mode of communication for required reports which are sent to UC Counsel. When e-mail is used, appropriate copy recipients must be carefully considered to avoid inadvertent waiver of attorney-client privilege and unintended distribution. Reports should be concise and well-written and analyze all of the relevant facts. Routine correspondence need not be copied to UC Counsel.

A Budget is required for each matter in which Counsel has been retained. Although budgets are intended to be estimates of the scope, cost and duration of the matter, the University will rely on these reports in planning and funding the matter. Amended or corrected Budgets should be provided immediately if Counsel becomes aware of changes in the estimation of matter costs and fees.

B. Specific Reports and Formats

Unless instructed otherwise by UC Counsel, Counsel are required to provide the following reports:

- A letter of acknowledgement as soon as a new matter is received;
- An Initial Case Evaluation Plan within the first 60 days, including a description of the matter, an estimated timeline for disposition, and discussion of early disposition potential;
- An Initial Budget within the first 60 days for litigated matters or within 45 days for non-litigated matters;
- A Revised Budget as appropriate;
- A written Status Report every 60 days or sooner if developments warrant;
- A Counsel Evaluation at least 72 hours before any conference call or meeting where settlement authority will be requested.

Compliance with timely reporting will promote timely payment of Counsel.

1. Format for Initial Case Evaluation Plan

• Summary of Facts – Briefly describe, based on review of records, discussions with campus personnel and witness interviews:

-Any relevant history of the matter;

¹ If this is a Short Term Retention, please note, the reporting obligations outlined in Sections V and VI do not apply.

- The incident that forms the subject of the matter;
- Information about other parties (if any);
- Any applicable contracts or affiliation agreements.

- Liability – Provide an opinion on potential liability against or in favor of the University (if any)
- Damages – Provide any known information on potential damages (if any)
- Legal Issues – Describe all known legal issues
- Early Disposition Potential (if any)
- Settlement History (if any)
- Plan and Timeline – Describe anticipated handling of the matter, including an estimated timeline. If any out of the ordinary expenses, such as travel outside of the local area (e.g. out of state or between Northern and Southern California) or expensive expert or consultant fees are anticipated, Counsel should include an estimate of such fees and/or costs.
- Identify consultants and potential experts by name, expertise, or specialty, sub-specialty (if any)

If plans change, please provide a written update.

2. Format for Budget Reports

An Initial Budget is required to be submitted to UC Counsel within 60 days of assignment for litigated matters and within 45 days of assignment for non-litigated matters. **No invoices will be paid until the initial budget is received.** UC Counsel must approve the Initial Budget. If estimated fees and/or costs change, Counsel must discuss a modified budget with UC Counsel and provide an updated budget report before incurring any additional expenses. If Counsel invoices exceed the current budget estimate amount, an updated budget will be required before any new invoices will be paid.

The budget should name the matter, provide a brief overview of the case, and estimate costs and attorneys' fees for the matter.

3. Format for Written Status Reports

In addition to the name and a brief overview of the matter, please use the following headings:

- Report on activity since the last status report (use sub-headings, e.g. "Interview with Witness X;" "Potential Conflicts of Interest;" etc.).
- Summary and Analysis – Briefly summarize the reported activity and analyze its impact on the matter.

4. Format for Counsel Evaluation

The Counsel Evaluation is designed to give the reader the best and most up-to-date information on a claim prior to any voluntary or mandatory settlement meeting, conference, mediation or arbitration. After a Counsel Evaluation is prepared, it must be edited for content and signed by Counsel. This report must be distributed 72 hours in advance of a scheduled conference call or any meeting where settlement authority will be requested. In cases where there is not a scheduled event providing opportunity for a Counsel Evaluation, the report must be delivered to the University promptly upon request by UC Counsel.

In addition to the name and a brief overview of the matter, please use the following headings:

- Factual Background – Provide a summary of the facts pertinent to the evaluation.
- Parties – Identify each party, including your opinion as to the strength of that party's position.
- University Parties – Identify all University employees involved in the matter, including your opinion as to the strength of that person as a witness.
- Liability – Present a thorough discussion of each party's position, including a discussion of all claims asserted and the strengths and weaknesses of those claims.
- Damages – Identify and fully discuss all monetary and non-monetary damages asserted by each party.
- Attorneys' Fees and Costs – For any statutory claims provide an estimated calculation of attorneys' fees and costs to date.
- Percipient Witnesses – Identify each percipient witness, and for each, state whether the witness is currently or has been previously affiliated with the University, as well as your opinion as to how that witness will be viewed.
- Expert Witnesses/Consultants – Describe the opinions of the experts and consultants for all parties. If experts and consultants have not been disclosed, describe any anticipated opinions.
- Settlement Discussions/Demand – Report on any settlement discussions with opposing parties. Please include any demands or statements by the attorney for any party with reference to case value.
- Matter Evaluation – In this section, summarize overall position and make recommendations for settlement and/or continued handling of the matter. A settlement range may be recommended with a maximum recommended settlement figure. Also discuss the likelihood that the opposing party will prevail or the chances for success of the University. Provide information on similar cases or settlements. Elaborate on the rationale for recommendations if necessary or useful. If settlement is appropriate, identify any obstacles to settlement and suggest a strategy for negotiations and addressing any such obstacles.
- Anticipated fees/costs through the conclusion of the matter.
- Conclusion – If additional work needs to be done, or you have additional recommendations not included previously in the report, please describe. Also state anticipated dates of completion or time constraints relevant to such additional work or recommendations.

VI. SETTLEMENTS²

Where liability is apparent, whether in favor of or against the University (including exposure to statutory attorneys' fees), early settlement frequently is the recommended course. Counsel is responsible for assessing liability exposure as soon as practicable and for recommending timely resolution strategies.

A. Settlement Demands

All settlement demands and offers to mediate or arbitrate must be immediately reported to UC Counsel.

B. Settlement Authority

Counsel may not enter into negotiation, agreement or binding settlement without first obtaining the appropriate prior authorization. Proposals for negotiations should be made to UC Counsel, who will schedule a conference call with the appropriate representatives of the University. **The written Counsel Evaluation, in the format set forth in Section V(B)(4) above must be provided to all conference call participants at least 72 hours before the scheduled call.**

Settlement authority may be provided during the conference call, but any settlement is contingent on approval by The Regents or its designee, and this fact should be communicated during any settlement negotiations. UC Counsel maintains template letters that may be sent to opposing counsel explaining the contingent nature of settlement authority, as well as allocation and tax issues related to settlement. In cases involving statutory attorneys' fees, all settlement offers including statutory offers to compromise should be structured to resolve all claims including attorneys' fees.

Counsel is encouraged to explore the settlement of cases informally with opposing counsel after obtaining the appropriate authorization. The University also encourages mediations and participation in voluntary settlement in appropriate cases. Approval to mediate a case must be given by the University through UC Counsel. A representative of the University will be present at the mediation. If a proposed settlement is reached, Counsel must emphasize that recommendations for all settlements are subject to approval by The Regents or its designee.

C. Settlement Agreements

A settlement agreement accurately reflecting the terms of a proposed settlement shall be prepared by Counsel immediately following an oral agreement. Following any mediation, it is critical to have the parties and their attorneys, at the very least, sign a written memorandum of the material terms and conditions. Counsel is responsible for assuring that the Settlement Agreement and Release ("Release") is accurate and legally enforceable. The University maintains standard, approved settlement and release language which should be used in most cases. Approval must be obtained from UC Counsel for any language modifications in the standard Releases. Upon execution of the Release by the opposing party and his/her/its counsel, the same shall be mailed by Counsel to UC Counsel to secure the necessary University signatures.

² If this is a Short Term Retention, please note, the reporting obligations outlined in Sections V and VI do not apply.

VII. LEGAL BILLING PROCEDURES.

Legal fees and related expenses represent a significant cost to the University. In most cases, the University is self-insured, which means that the institution pays for all legal fees and costs from its operating funds. As such, the University considers efficiency in the delivery of legal services as a critical component of successful legal representation and closely scrutinizes the invoices of all counsel. The University reserves the right to require backup documents to support charges and/or require that they be submitted in a format that permits the invoice information to be electronically analyzed. By representing the University, Counsel agrees to comply with such requests and to do so at firm expense. Payment of any invoice by the University, at any time, does not constitute a waiver of the University's rights to subsequently question, dispute, obtain reimbursement of, compromise or request repayment or future credit, or any bill or invoice previously paid.

A. Billing Submissions

Invoices for counsel fees and expenses must be submitted monthly and within 30 days of the end of the billing period. All invoices for work performed during a fiscal year (7/1 – 6/30) must be received by July 15th. Final invoices must be received by UC Counsel or their designee no later than 30 days from receipt of the conformed copy of the settlement agreement. If the final bill cannot be submitted within 30 days, Counsel must advise UC Counsel or their designee as soon as practical. It is Counsel's responsibility to obtain all outstanding invoices from outside vendors, including consultants and experts, before submitting the final bill. Unless there are exigent circumstances, bills submitted after the final bill will not be paid. Expenses must be substantiated with receipts.

B. Billing Format

Invoices shall identify and describe each item of service in sufficient detail to identify the persons involved and the work performed by date and time billed and the person providing the services (with the hourly rate for each such person also indicated.) Legal assistants and law clerk time shall be separated by category in the billing statement and identified as such. Statements must accurately itemize in detail all work performed on a matter in a task or activity based format. Attorneys and paralegals are to bill actual time incurred. If an activity warrants a minimum billing entry, it should not exceed 1/10th (.10) of an hour. Minimum charges for any activity in any amount above 1/10th (.10) of an hour are not acceptable.

Each bill must include the following:

- Law firm name and address;
- Date of the bill;
- Name of the UC Counsel;
- Name of involved Campus/Medical Center;
- Law firm tax identification number;
- The claim number (if any);
- Matter name(s);
- Date(s) of the task and/or activity;
- Detailed description of the task and/or activity so as to permit the University to determine the exact name, purpose and necessity of the expense;

- Actual time spent, in increments no greater than 1/10th of an hour for each entry or task.
- Summary at the end of the bill subtotaling number of hours for each specific billing rate and the name and initials of each attorney and paralegal;
- Summary at the end of the bill subtotaling fees, costs, consultants, and experts.
- Each billing entry must indicate the name or initials of the timekeeper who performed the work, the date the work was performed, the hours billed, a description of the services performed, and the total amount billed for that entry. Narrative and/or block billing is not permitted;
- Final bills should be so designated;
- Bills must reflect activity for only one case or matter;
- Billing entries on each invoice are to be structured chronologically (in order of occurrence) and not sub-divided by individual or task. Every entry must include the related work product. For example, “Researched law pertaining to jurisdiction of Florida state court over the University of California for motion.”
- If numerous tasks are undertaken in one day, each task must be separately identified with a specified time for performing that task, i.e., a telephone call, a meeting and legal research.
- Telephone calls must specify the participants and the subject matter discussed.
- Travel costs should identify the person who traveled and the reason for the travel. For example: “Airline ticket to New York for Jane Smith to interview consultant John Doe.”

Generic descriptions such as the following, without further detail, are not acceptable:

- Attention to matter;
- Review case and issues;
- Conference;
- Review correspondence/documents;
- Telephone call;
- Meeting;
- Trial Preparation;
- Motion Work;
- Work on project or case;
- Work on file;
- Prepare for meeting;
- Work on discovery;
- Research;
- Any other nondescript activity.

Vendor invoices (e.g., experts, consultants, mediators, photocopy services, court reporters, and others) in an amount up to five thousand dollars (\$5,000) should be paid by the law firm and included with the monthly attorney billing. Counsel must review and approve all vendor invoices, which are subject to the formatting and content requirements as Counsel bills.

C. Level of Work Performed

1. Firm staffing on all cases will be as lean as possible. As a general rule, there will be no more than two (2) attorneys and one (1) paralegal doing most of the work and billing most of the time on a case. These individuals are the “core” billers and must be identified in writing at the outset. They must be drawn from the group of individuals at the firm who are pre-designated to handle University work. For larger, more complex cases, UC Counsel may be consulted regarding whether additional “core” billers on the case will be allowed.

2. Firm personnel may occasionally have to work on a case because of job departures, vacations, illnesses, schedule conflicts, etc., but this is to be the exception, not the rule. These occasional billers will not record more than ten percent (10%) of the total firm time on a case. Overly-fragmented staffing produces duplication of effort and inefficiencies.

3. All billers at your firm who are working on University cases must be either members, full-time employees, or of counsel attorneys at your firm, unless you notify UC Counsel in advance to the contrary. Contract, temporary, or part-time personnel, whether attorneys or otherwise, working on University cases may be billed at a reasonable mark-up over and above the hourly rate which they are being paid by your firm to reflect associated administrative and overhead costs. However, the amount of any such mark-up must first be approved in writing by UC Counsel; mark-ups shall not exceed 20%.

4. The University will not pay for “learning” time or “orientation” time as occasional billers become involved in a matter and are brought up to speed on the facts and issues. Such time will be written off on your own initiative, and it is recommended, but not required, that UC Counsel be notified of such write offs by the notation of “No Charge” or “NC”.

5. If new or inexperienced attorneys are going to be working on a case in any capacity, the University will not pay for “training” time, i.e., time spent on research or other matters which would likely be within the knowledge of more experienced attorneys. If the University is retaining your firm for its expertise in a given field, attorneys should not need to learn that area of the law and any such time should be written off by your firm. The time of summer associates shall not be billed without the prior approval of UC Counsel.

6. As a general rule, two or more billers should not be performing the same task or activity on a case when one biller is sufficient. Unnecessary duplication of effort will be avoided, but, in certain cases, this can sometimes be a judgment call. When in doubt, please discuss such situations with UC Counsel in advance.

7. Generally, only one attorney should bill for attending mediations, arbitrations or meetings. You will advise UC Counsel in advance and get prior approval before having two or more attorneys attend such proceedings. The University reserves the right to require you to absorb all or part of any charges for the involvement of more than one attorney without prior approval.

8. While the University is willing to pay for office conferences which relate to a given case, billing should only be for the time spent by the most senior individual in attendance. The senior biller should indicate the other individuals in attendance in their time entry for the

conference. Please do not bill for the time spent by additional billers in office conferences by using alternative billing terminology, such as “strategize.” Notwithstanding the above, in certain cases two billers may be allowed to attend office conferences together, so long as that practice is pre-approved for the case. If the amount of conferencing time appears out of proportion to the total firm time spent on the case, you will be asked to justify it.

9. If there is consistent billing of more than *7 hours* in a given day or more than *150 hours per month* by a single biller on a given case, that level of billing activity must be justified.

10. Work will be assigned to those individuals who are most appropriate for the task in terms of their competency and experience. Whenever it is possible, in your judgment, to assign a certain task or activity to a less expensive biller without a loss of competency, please do so. For example, you should make liberal use of paralegals for work which does not require an attorney’s involvement, but paralegals shall not perform tasks usually performed by secretaries, clerks, and messengers (i.e., photocopying, filing and delivering materials). Also, a senior attorney should not perform work which can be handled by a more junior attorney.

11. Clerical, secretarial, and administrative work is a part of law office overhead and non-billable, regardless of who performs it. However, sometimes billable and non-billable work are intermixed, e.g., a paralegal who is examining evidentiary documents for privilege before production to the opposing party (billable activity) may simultaneously be sorting, bates-stamping, and labeling them (non-billable work). For such necessary “mixed” work you should use less expensive staff than paralegals, so long as they are not billing purely for clerical or secretarial work.

12. When the University asks you to research, analyze or brief a particular legal issue and report back, you should provide the clearest, most concise answer possible. The quicker the response, the better for University purposes, and you should provide copies (in electronic form) of all of your completed written work product in this regard. All work product should be submitted to UC Counsel directly prior to your billing the University for it, unless UC Counsel instructs you to post it on an extranet. When the document extranet is operational you must search its knowledge database and make use of any available and suitable content for all your research, analysis, drafting or briefing needs before creating and billing the University for an original new work. **The University reserves the right not to pay for any billings that do not adhere to this requirement. You must justify why you could not avail yourself of the expertise of internal lawyers or previously produced research.**

13. You must justify any document review charges which seem excessive or disproportionate for the particular task or activity involved, or which seem to involve too many billers without apparent explanation.

14. Detailed document summaries should be performed by paralegals, wherever possible.

15. Please note that the University may decide to waive or modify some or all of the above staffing and efficiency guidelines as the situation demands. **However, you are expected to adhere to these guidelines as written, unless you are specifically exempted from any of their provisions in writing.**

16. Each firm must identify means of utilizing information technology to make the provision of services to the University more efficient. Also, you are expected to cooperate with the University when it takes the initiative and proposes the introduction of efficiency-enhancing information technology. Because the University expects that all firms are introducing new information technology continuously for the general benefit of the firm, it would not be expected to pay for its use of such technology except where it was installed and utilized expressly for the University's benefit. **In such case, the University must give its approval in writing before such technology is purchased or installed if the firm expects repayment for the work or materials.**

D. Maximum Allowable Charges

The following guidelines are provided regarding maximum allowable charges:

- The University will pay only the actual costs for reasonable expenses without any premiums or markups.
- A firm may conduct research up to three hours per case. In the event more extensive research is necessary, UC Counsel should be contacted.
- Photocopy Costs: Actual cost to the law firm not to exceed \$.10 per page. Firms are expected to limit the making of photocopies and, wherever cost effective, to use the resources of designated copy services. Bill entries for photocopies must provide the number of copies made, the per page rate, and the total amount billed. The \$.10 per page rate may be exceeded only when the firm cannot control costs, such as certified copies from the courthouse.
- Telephone: Actual long distance charges only.
- FAX: For actual long distance charges only. No charge for an incoming FAX. No per-page fax charge.

E. Travel

- Travel expenses are reimbursable only to the extent permitted under the University of California travel guidelines absent specific prior approval. See Business and Finance Bulletin G-28 ("BUS-G28") at <http://www.ucop.edu/ucophome/policies/bfb/g28.pdf> for the University's travel policies.
- Prior to attending an "out of town" matter-related meeting, (e.g. out of state or between Southern and Northern California), the firm must obtain the approval of UC Counsel. Travel expenses are reimbursable only to the extent permitted under the University of California travel guidelines absent specific prior approval.
- Mileage: Reimbursement Rate provided in Appendix A to BUS-G28 at <http://www.ucop.edu/ucophome/policies/bfb/g28a.pdf>. Indicate the actual number of miles driven.
- Air travel is limited to coach or economy rate.
- Rental cars are acceptable only if such vehicles are the most economical means of accomplishing necessary business; reimbursement is limited to the mid-size class.
- When counsel is out of town overnight, reasonably priced meals and incidentals that do not exceed the dollar limits provided in Appendix B to BUS G-28 (<http://www.ucop.edu/ucophome/policies/bfb/g28b.pdf>), are allowed. Incidentals, such as movies, alcohol, and entertainment, are not allowed.

- Travel time shall be prorated if the travel includes time spent on non-University business.
- Travel for current University employees must be processed through the University and not through Counsel. Travel for former University employees will be reimbursed through the University, however, expenses will be limited according to University travel policy.
- Travel billing should indicate the actual round trip travel time, reduced by the usual commuting time from home to office or vice versa, if appropriate.

F. Disallowed Charges

The University considers the following items to be overhead and therefore, part of the basic hourly rate and will not reimburse for these items:

- Telephone calls and all cellular phone charges.
- Per-page fax charges.
- Routine postage, such as U.S. Postal Service rates for letters. Any necessary extraordinary postage charges (such as certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge. Any postage charges that are not explained will not be reimbursed.
- File opening, file organization, or other administrative charges.
- Books, magazines, subscriptions, or library charges unless prior written specific approval by UC Counsel is obtained.
- Intraoffice conferences between members of the firm, including assigning files or tasks to members of the firm.
- Case administration (e.g., reviewing status of assignments given to associates and paralegals; directing associates, paralegals or secretaries; preparing or reviewing bills).
- Clerical tasks (e.g., transcription, pulling files, photocopying documents, arranging for copying, labeling documents for production, communication with court clerks, updating master case caption, preparing proofs of service, indexing pleadings, faxing, etc.).

The University considers the following items to be inappropriate and will not reimburse for these items:

- More than one attorney/staff at arbitrations, mediations, third party meeting, conference call or any similar event without prior UC Counsel approval.
- Absent prior approval, meals, except in conjunction with University authorized out-of-town travel.
- Entertainment.
- Staff overtime charges.
- Routine or elementary legal research, including issues considered to be common knowledge among reasonably experienced counsel in the local jurisdiction (e.g., research on local rules, special verdict forms, standards for motions for summary judgment).
- Lexis/NEXIS and other database legal research search costs.

- Billing more than once for documents which are reproduced for multiple witnesses, such as subpoenas.
- Routine file review and learning time to get up to speed (even when "filling in" for personnel assigned to the file) or in-firm transfer of file reviews.
- Staffing inefficiencies caused by the unavailability of the firm's personnel.
- Unnecessary or premature summaries of medical records.
- Routine scheduling or rescheduling of depositions, hearings, and the like.
- All work customarily performed by secretaries and other administrative personnel.
- Reviewing or analyzing the firm's conflict of interest issues.
- Subscription services (e.g., Westlaw, Lexis-Nexis or other legal database charge), unless the service provides a case specific invoice for actual charges incurred.
- Time and/or expenses incurred due to change or departure of law firm resources.
- Work performed by an attorney not on approved defense panel list.
- Expenses/disbursements without supporting invoices.
- Responding to requests from University auditors.

G. Audits

The University retains the right to audit all invoices or files that are or have been the subject matter of any billing in the past. Such an audit will require the firm to produce any and all documentation that would support the billing submitted by the firm. The firm will produce any individual that has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. Each firm subject to these guidelines acknowledges, without protest, that the University may utilize either its own personnel, an outside auditing service, or such other company or service as the University designates, to perform such audits.

H. Bill Review by Counsel

The firm's responsible UC Counsel or their designee must review and verify all of the firm's bills before submitting them for payment. Each invoice should contain the following verification statement, signed by the Counsel:

I personally examined this billing statement. All entries are in accordance with the University's Guidelines for Outside Counsel – Non-Risk Program Matters and are correct and reasonable for the services performed and costs incurred. No item in this statement has been previously billed to the University of California. All work has been performed in compliance with the University of California Defense Counsel Guidelines

Counsel

I. Billing Questions

Any billing questions, discrepancies, or payments must be resolved with UC Counsel or their designee.

Attachments:

Addendum A: OGC Diversity Statement

Addendum B: University of California Requirements for Electronic Invoice Submission

ADDENDUM A

University of California Office of the General Counsel Diversity Statement

The University of California Office of the General Counsel (“OGC”) embraces the University of California Diversity Statement, which the President of the University of California endorsed on June 30, 2006, and The Board of Regents adopted on September 20, 2007.

The UC Diversity Statement describes the value of diversity to the University at large. Diversity is equally valuable to OGC’s goal of providing the institution with the best possible legal services. The University of California serves one of the world’s most diverse communities and draws its student body, its faculty, and its employees from a wide array of backgrounds, cultures, and experiences. Providing effective legal representation and advice therefore demands that the University’s legal representatives and staff are capable of understanding and communicating with individuals from many backgrounds. Diversity within OGC enhances the ability of all of the University’s lawyers and staff to stay connected to the communities we serve and to more effectively anticipate and resolve potential legal issues. Diversity of ideas, backgrounds, and experiences among OGC staff also promotes creativity in analyzing and solving legal problems. OGC’s commitment to diversity can improve the quality of its legal service by removing barriers and therefore broadening the pool of talented individuals available to serve the University both within OGC and in the ranks of retained counsel. By establishing a diverse workplace and a culture that respects individual differences, OGC can foster the qualities necessary to provide excellent legal service in a diverse community. Furthermore, the legal profession has a special obligation to ensure equal opportunity because of its privileged societal status, its commitment to law and justice, and the historical underutilization of women and minorities in its ranks. For the same reasons, OGC values a commitment to diversity in its retained counsel.

To achieve these benefits the Oakland and campus office of OGC will:

- Broaden the pool from which the office recruits to ensure inclusion of all qualified individuals, including members of traditionally underrepresented groups;
- Foster a culture of inclusion and respect for differences in the workplace;
- Evaluate and revise office policies and practices relating to employee hiring, retention and advancement to identify and eliminate barriers to diversity;
- Retain outside counsel with a demonstrated commitment to diversity.

ADDENDUM B
UNIVERSITY OF CALIFORNIA
REQUIREMENTS FOR ELECTRONIC INVOICE SUBMISSION

Invoices must be submitted electronically, in LEDES format, using Bridgeway's Corridor web portal. Secure login information and instructions will be provided under separate cover.

Each firm must complete Corridor onboarding, which involves registering for Bridgeway's Corridor portal and providing a formatted list of approved timekeepers and rates.

- Each invoice must reference the UC matter number provided to you in the CLIENT_MATTER_ID field.
- Each invoice number must be unique.
 - If re-submitting an invoice, append "-1", "-2", "revised" or some other indicator to the original invoice number.
 - Invoices resubmitted with the same invoice number will be automatically rejected by the system.
- Only one matter per invoice. If submitting invoices for multiple matters, please use separate invoice numbers and separate files.
- Billing Start and End Dates are required.
- Standard UTBMS Task Codes are required.
 - Note: Activity Codes and Phase Codes may be used, but are not required.
- Standard UTBMS Expense Codes are required.
- Descriptions are required for all Fees and Expenses.
- All invoice details must include Fee or Expense dates.
- All fees must be billed by the 1/10th (.10) of an hour.
 - E.g., billings of the .25 or .75 of an hour are not accepted.



Staff Report

TO: Board of Harbor Commissioners
FROM: Julie van Hoff, Director of Administrative Services
DATE: November 20, 2019
SUBJECT: Deputy Board Secretary Position Description

Recommendation/Motion:

Motion: Approve position description for Deputy Board Secretary.

Policy Implications:

The Harbor District Board review and approve recommended changes to position/job descriptions, organizational structure, salary schedules and benefit packages. Staff is recommending a position description for Deputy Board Secretary.

Fiscal Implications/Budget Status:

None.

Background/Discussion:

The job description for Administrative Assistant III has not been updated since 2016 and is a combination of an Administrative Assistant III and Deputy Secretary job duties. After comparing and examining the actual duties of the Deputy Board Secretary, this position description more accurately represents the duties of the Deputy Board Secretary position, which will help with future recruitment.

The position of Deputy Board Secretary reports directly to the General Manager, supporting the General Manager and the Board of Commissioners.

Staff is currently working with Teamsters Local Union for formal approval of this position.

Summary/Recommendation:

Staff recommends this Board approve the job/position description for Deputy Board Secretary.

Attachments:

1. [Draft Deputy Board Secretary Position Description](#)
2. [Administrative Assistant III Position Description](#)



DEPUTY BOARD SECRETARY

FLSA Status: Non-exempt
Bargaining Unit: Teamsters
Adopted:

Class specifications equivalent to Administrative Assistant III, level of difficulty. Specifications are not intended to reflect all duties performed within the job.

GENERAL DEFINITIONS

Under general direction, performs highly responsible, confidential and complex administrative and secretarial work for the General Manager and the Board of Commissioners; performs the most difficult, technical, complex and/or specialized office support duties which require a definable body of technical knowledge and skill.

CLASS CHARACTERISTICS

The Deputy Board Secretary reports to the General Manager and is responsible for the administration of activities in the General Manager's office. Duties include complex, responsible, confidential administrative support requiring the use of independent judgment and initiative; duties are diversified and require attention to detail. The Deputy Board Secretary demonstrates a high level of expertise in maintaining efficient and effective administrative operations.

ESSENTIAL FUNCTIONS

Essential functions may include, but are not limited to, the following:

- Performs advanced secretarial duties in support of the General Manager and the Board of Commissioners.
- Serves as Deputy Secretary to the Harbor Commission (Board).
- Attends Board meetings and coordinates meeting logistics, arrangements and other required support.
- Prepares, oversees and coordinates the production of the agenda packets for all monthly, special and committee meetings of the Board of Commissioners, overseeing distribution and delivery.
- Ensures compliance with legal requirements governing public notice of meetings and the conduct of closed sessions; drafts the official meeting minutes and prepares summaries of board meetings and other district meetings, using notes, video, or audio tapes.
- Coordinates and updates the District's Ordinance Code when required.
- Performs a variety of difficult and complex tasks requiring prioritization and the frequent use of independent judgment. Such judgment involves knowledge of District policies, programs, procedures, rules, regulations, and scope of jurisdiction while maintaining confidentiality.
- Maintains the General Manager's and Board's calendar; coordinates, arranges and confirms meetings; screens requests for appointments.
- Requires tact, diplomacy, and the use of discretion in responding to inquiries from the public, District and/or governmental officials and others.
- Prepares varied communications; including legal notifications.

- Oversees and participates in the maintenance of Board records and permanent recordation of documents.
- Acts as filing officer and filing official for Statements of Economic Interest (FPPC Form 700) for elected officials and designated positions identified in the Conflict of Interest Code; notifies elected officials and designated filers of filing obligations and deadlines for filing; processes and maintains records.
- Assists with the election process for Board.
- State of California, Secretary of State, 'Statement of Facts - Roster of Public Agencies Filing.'
- Tracks and ensures compliance by elected officials with mandatory trainings in sexual harassment prevention and ethics laws; maintain records.
- Arranges travel for General Manager and Commissioners; prepares and processes expense claim forms for the General Manager and Board members.
- Maintains well-organized electronic files following District's retention policy.
- Ensures prompt ordering of supplies and maintains proper office supply inventory.
- Attendance and punctuality that is observant of scheduled hours on a regular basis.
- Performs other duties as assigned.

MINIMUM QUALIFICATIONS

Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

High School diploma or equivalent, and 60 semester units from an accredited college or university.

Experience:

Four (4) years of general administrative experience. Experience in the public sector is preferred.

Knowledge of:

- Microsoft Office Suite; modern office practices, principles and procedures, including business correspondence, record keeping systems, computers and other office equipment.
- Principles and practices of organizational structures and administration.
- Proper English usage, grammar, punctuation, vocabulary and spelling.
- Pertinent federal, state and local laws, codes and regulations; Ralph M. Brown Act.

Ability to:

- Operate a computer using common software word processing, spreadsheets and presentation software.
- Provide advanced and complex administrative support to General Manager, Board of Harbor Commissioners and executive staff.
- Exercise good judgment, keep calm, and make appropriate decisions in unpredictable and demanding situations and under pressure.
- Communicate fluently in written and spoken English; communicate information clearly and concisely.
- Establish and maintain effective, pleasant, cooperative, and professional working relationships with employees, officials, and the general public.
- Prioritize multiple tasks and meet deadlines with little supervision.
- Take notes at Board meetings to prepare clear, concise and complete documentation, action minutes, other reports and correspondence.
- Work independently and as a team member; recognize and set priorities and meet deadlines.
- Monitor and update District website.

LICENSES AND/OR CERTIFICATES

Possession of or ability to obtain and maintain a valid Class C California driver’s license at time of employment.

PHYSICAL DEMANDS

These functions may be performed with or without reasonable accommodation:

- Use dexterity and vision necessary to operate computer equipment with a high degree of productivity and accuracy.
- Sit at a desk and in meetings on a continuous basis for long periods of time.
- Intermittently twist and bend to reach equipment in work area.
- Perform simple gripping, grasping and fine manipulation; in addition, perform repetitive keystrokes on a computer keyboard.
- Use a telephone and communicate through written and electronic means.
- Lift and carry weight of 20 pounds or less.
- See in the normal vision range with or without correction.
- Hear in the normal range with or without correction.

WORKING ENVIRONMENT

Work is performed indoors in a carpeted office environment with natural and fluorescent lighting and moderate noise level. Some movement is required from office to office and there is exposure to external environment when going to outlying offices and meetings. Work is frequently disrupted by the need to respond to in-person and telephone inquiries.

WORKING CONDITIONS

Requires work of various shifts including early mornings and evenings. This position is required to work in the evenings at least once a month.



ADMINISTRATIVE ASSISTANT III

FLSA Status: Non-exempt
Bargaining Unit: Teamsters
Adopted: March 2016

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

GENERAL DEFINITION

This is the advanced Administrative Assistant class and is distinguished from the Administrative Assistant II class in that it performs the most difficult, technical, complex and/or specialized office support duties which require a definable body of technical knowledge and skill.

ESSENTIAL FUNCTIONS

Essential functions may include, but are not limited to, the following:

- Perform a variety of difficult or complex tasks requiring prioritization and the frequent use of independent judgment. Such judgment involves a thorough knowledge of District policies, programs, procedures, rules, regulations, and scope of jurisdiction while maintaining confidentiality.
- Serve as Deputy Secretary to the Harbor Commission.
- Contact with the public, District and/or governmental officials and others requiring tact, diplomacy, and the use of discretion in responding to inquiries.
- Prepare or compose written drafts requiring discrimination and judgment in the selection of data or interpretation of laws, rules, or policies.
- Establish and maintain confidential files concerned with policy matters; record actions taken on sensitive issues; responsible for releasing information to authorized parties.
- Arrange schedule of appointments and/or travel for supervisors; exercise discretion in committing supervisor's time and in referring caller or visitor to another appropriate source of information or service.
- Locate sources of information, devise forms needed to secure data; determine proper format for finished reports; may edit draft staff reports for grammatical and punctuation errors.
- Establish, maintain, revise, and update District filing systems.
- Maintain office supply inventory; order supplies.
- Compile a variety of narrative and statistical reports and documents from notes, typed copy, rough drafts, database queries, oral instructions, memos, transcripts of minutes and reports; edit drafts for composition and grammatical structure.
- Prepare agendas for Board and Board Committee meetings and provide supportive services to Board as needed.
- Prepare minutes for Board and Board Committees using notes, video, and audio tapes.
- Develop clear and comprehensive reports.

- Understand, interpret, and apply appropriate rules, regulations and written directions to specific situations.
- Attend evening Harbor Commission meetings.
- Maintain regular attendance and punctuality in observance of scheduled hours.

QUALIFICATIONS

Knowledge of:

- Microsoft Office Suite, Desk top publishing (preferred).
- Principles and practices of organizational structures and administration.
- Modern office practices and procedures, including business correspondence, record keeping systems, microcomputer and other office equipment.
- Principles and protocols of office coordination.
- Public sector records management systems; modern principles and practices of record keeping.
- Pertinent federal, state and local laws, codes and regulations.

Ability to:

- Communicate fluently in written and spoken English.
- Comprehend and disseminate information concerning the harbor and marina environment and District policies and procedures.
- Review operations for efficiency and effectiveness; recommend procedural changes to enhance operations.
- Monitor and track contracts with vendors providing services to the District.
- Resolve contract/procurement issues with purchasing.
- Review vendor invoices for accuracy, and process payments in a timely manner.
- Operate modern office equipment including computer equipment and specialized software application programs.
- Communicate information clearly and concisely.
- Establish and maintain effective working relations with District staff, outside agencies and the general public.
- Monitor and update District webpages.
- Make sound decisions using good judgment, while performing difficult secretarial and clerical tasks consistent with the essential duties.
- Identify and correct errors in English usage, grammar, and arithmetic calculations.
- Type correspondence and other documents in a variety of formats on a personal computer from clear copy or rough drafts at a speed necessary for successful job performance.
- Use common database query tools to extract and compile data.
- Transcribe meeting minutes or notes into written format.

MINIMUM QUALIFICATIONS

Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

High School diploma or General Educational Development (GED) equivalency.

Experience:

Four (4) years of general clerical experience including two (2) years of experience comparable to that of the District's Administrative Assistant II.

LICENSES AND/OR CERTIFICATES

Possession of or ability to obtain and maintain a valid Class C California driver's license at time of employment.

PHYSICAL DEMANDS:

These functions may be performed with or without reasonable accommodation:

- Use dexterity and vision necessary to operate computer equipment with a high degree of productivity and accuracy.
- Sit at a desk and in meetings on a continuous basis for long periods of time.
- Intermittently twist and bend to reach equipment in work area.
- Perform simple gripping, grasping and fine manipulation; in addition, perform repetitive keystrokes on both a computer keyboard and 10-key adding machine.
- Use a telephone and communicate through written and electronic means.
- Lift and carry weight of 20-pounds or less of varying period of time
- See in the normal vision range with or without correction.
- Hear in the normal range with or without correction.

WORKING ENVIRONMENT:

Work is performed indoors in a carpeted and air-conditioned office environment with natural and fluorescent lighting and moderate noise level. Some movement is required from office to office and there is exposure to external environment when going to outlying offices and meeting. Work is frequently disrupted by the need to respond to in-person and telephone inquiries.

WORKING CONDITIONS:

May be required to work various shifts including early mornings and evenings.



Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager

DATE: November 20, 2019

SUBJECT: Design, Engineering, Permitting Consultant Moffatt & Nichol Professional Services Agreement Change Order Consideration for the Pillar Point Harbor Fishing Pier Rehabilitation Project

Recommendation/Motion:

Motion: 1) Authorize the Interim General Manager to implement a Change Order to the previously approved Pillar Point Harbor Fishing Pier Rehabilitation Project Professional Services Agreement with consultant Moffatt & Nichol, increasing the design, engineering, permitting and construction support total by \$13,300 and approve an increase in Capital Project Appropriations by the same amount.

Policy Implications:

Consistent with the San Mateo County Harbor District's (District) mission to provide a safe, well-maintained Harbor which is accessible to all.

Fiscal Implications/Budget Status:

A contract with consultant Moffatt & Nichol was approved at the October 18, 2017 Board Meeting for \$82,600 and will increase to \$95,900 with approval of the \$13,300 Change Order. The Change Order will be funded by available Working Capital.

Background:

The existing fishing pier is 30 years old and provides fishing activities to the non-boating public and is a vital component of the Pillar Point Harbor. The Fishing Pier was constructed in 1989 over, and adjacent to, an existing rip rap breakwater. This facility presently consists of a concrete piled timber pier structure, an access walkway structure serving the pier from shore, and the original supporting revetment breakwater that was further enhanced in 1989 for the purposes of this Fishing Pier facility. The present breakwater extends beyond the fishing pier location to provide protection for the Pillar Point inner harbor.



Along with the supporting rip rap erosion and failing timber issues, the Fishing Pier walkway and terminus platform need alteration for ADA compliance.



In October 2017 the District Board approved entering into a Professional Services Agreement with consultant Moffatt & Nichol (M&N) for \$82,600 to initiate Project design, engineering, permitting, regulatory compliance, Invitation to Bid (ITB) and construction support. Project technical specifications were completed in May 2019. To date, all permits have been obtained including the CCC CDP waiver approval.

The project ITB for construction was issued on June 5, 2019. Bids were opened on July 10, 2019 and Valentine Corporation was subsequently found to be the lowest qualified bidder. District Board approved \$427,369 for actual construction.

On October 22, 2019 M&N submitted attached Change Order proposal (Attachment 1) to increase the design, engineering, permitting, regulatory compliance, ITB and construction support total by \$13,300 due to unforeseen additional challenges with required design modifications and permitting costs. M&N will continue assisting the District with contractor Requests for Information and construction support.

Summary/Recommendation:

Staff recommends the Board authorize the Interim General Manager to implement a Change Order to the previously approved Pillar Point Harbor Fishing Pier Rehabilitation Project Professional Services Agreement with consultant Moffatt & Nichol, increasing the design, engineering, permitting and construction support total by \$13,300 due to unforeseen additional challenges with required design modifications and permitting costs.

Attachment:

- [M&N Change Order Proposal](#)



2185 N California Blvd, Suite 500
Walnut Creek, CA 94596
(925) 944-5411 Fax: (925) 944-4732
www.moffattnichol.com

October 22, 2019

(Via email: jmoren@smharbor.com)

John Moren, Director of Operations
San Mateo County Harbor District
P.O. Box 1449
El Granada, CA 94018

**Subject: Pillar Point Harbor – Fishing Pier Rehabilitation, Additional Budget Request Proposal
M&N Project No. 9673-05**

Dear John:

We are writing to request an increase to our budget for the engineering services on the Pillar Point Harbour Fishing Pier Rehabilitation Project. At this time, we have incurred costs in providing services on the project that exceed our current authorization of \$82,600. The following factors have contributed to us exceeding the authorized budget:

- **Schedule:** This project began in December 2017 and was envisioned to be constructed in the Summer of 2018 (6-8 months duration). The permitting and design phase were not completed until May 2019 (18 months duration). Some of this was due to considerable design revisions to the guardrail and lighting.
- **Permit Effort:** The effort to obtain the project permits exceeded the contract budget, and included a cost of \$1,500 for the Water Board application fee we were requested to pay but was not in our original budget.

We are requesting an increase in our authorization of \$13,300 (for a contract total of \$95,900). If acceptable, these services will be included as part of the existing contract.

We appreciate the opportunity to be of continued service on the Pillar Point Harbor Fishing Pier rehabilitation project. Please feel free to contact me or Brad Porter should you have any questions about this proposal.

Sincerely,

MOFFATT & NICHOL

A handwritten signature in blue ink, appearing to read "Neil Nichols".

Neil Nichols, P.E.
Project Manager



Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager

DATE: November 20, 2019

SUBJECT: Board Direction to Staff Regarding an Amendment to the San Mateo County Harbor District Ordinance Code Section 3.35.020 - Marina/Harbor Parking Ordinance

Recommendation/Motion:

Motion: Direct staff to publish notice in a newspaper of general circulation within the District, for not less than 20 days prior to Ordinance Code amendment adoption, and place the Resolution to amend the District Parking Ordinance Code Section 3.35.020 for consideration on the agenda for the December 18, 2019 District Board Meeting.

Policy Implications:

Consistent with the District's mission to provide clean, safe, well-managed, and environmentally pleasant marinas.

Fiscal Implications/Budget Status:

No new fiscal implications.

Background:

The San Mateo County Harbor District currently allows all berthing tenants in good standing to receive parking permits for two vehicles. The parking permits are intended for the convenience of our berthing tenants, to ensure they have ample parking as close to their slips as possible. Regretfully, we have found some berthing tenants are actually storing large commercial vehicles for off-site business use at District facilities, claiming the large vehicles are their allowed personal vehicles allotted with berthing rental, which is not the intent of the parking permits. This illicit use of parking spaces displaces those berthing tenants that are trying to park to truly use their vessels. In addition, some berthing tenants are sleeping in large box trucks and conducting business from within them, without authorized Commercial Activity Permits. The attached proposed Parking

Ordinance amendment restricts this illicit use so staff can better ensure parking is available for actual berthing tenant needs.

Pursuant to Harbors and Navigation Code Section 6070.2, which requires a minimum twenty (20) day notice period for public review and comment on proposed ordinance code adoptions and revisions, staff will notice the proposed amendment accordingly. Staff will bring any comments received to the Board's attention prior to final consideration at the December 18, 2019 District Board Meeting.

Summary/Recommendation:

District staff recommends the Board direct staff to publish notice in a newspaper of general circulation within the District, for not less than 20 days prior to Ordinance Code amendment adoption, and place the Resolution to amend the District Parking Ordinance Code Section 3.35.020 for consideration on the agenda for the December 18, 2019 District Board Meeting.

Attachments:

1. [Draft Amendment to District Parking Ordinance Code Section 3.35.020](#)
2. [Draft Public Notice of Amendment to District Parking Ordinance Code](#)

3.35.020 Parking.

A. Parking shall be permitted in designated areas for periods of time established by resolution of the Board of Harbor Commissioners and notice thereof duly posted. Parking of vehicles for over four (4) hours may be restricted to certain parking lots, which shall be clearly posted.

B. Parking in violation of the posted limits shall be an infraction subject to a fine as provided in Cal. Harb. & Nav. Code § 6309.4.

C. Vehicles parked for periods of time in excess of the posted time or in violation of this code may be towed from the area and stored at the owner's expense. Prior to release of said vehicle, all fees for towing and storage shall be paid.

D. Permission must be obtained from the Director of Operations or designee prior to parking any vehicle, trailer or boat in the parking areas ~~at, in or~~ within the District facilities for a period exceeding seventy-two (72) consecutive hours. If ~~permission~~ authorization is not requested ~~or and~~ granted in writing, the vehicle, trailer or boat will be removed and stored at the owner's expense. Prior to release of said vehicle, all fees for towing and storage shall be paid.

E. Vehicles with boat trailers attached shall be parked in the designated parking area. Boat trailers without vehicles attached shall not be parked ~~anywhere in designated parking or storage areas only~~ within District facilities without written authorization from the Director of Operations or designee.

F. The use of any vehicle for eating or sleeping for over four (4) hours per day while parked in the Harbor or marina parking areas is prohibited without written permission from the Director of Operations or designee. If ~~permission~~ written authorization is not ~~obtained prior requested and granted~~, the vehicle may be removed and stored at the owner's expense. Prior to release of said vehicle, all fees for towing and storage shall be paid.

[Res. 31-16; amended through codification process of 1995, Ord. 74-96; Ord. 70-92 § 1, 1992. Code 1996 § 3.7.2; prior code § 5.202.]

G. A maximum of two Berthing Parking Permits per account may be obtained by boat owners assigned a slip or mooring in good standing, allowing permitted vehicles to park in designated permit parking areas not to exceed posted hours. Boat owners assigned a slip or mooring may only obtain Berthing Parking Permits for personally owned passenger vehicles with current DMV registration in their name.

H. Any commercial vehicle having a manufacture's gross vehicle weight of ten thousand pounds or more; or any commercial vehicle, or combination of vehicles twenty-two feet or more in overall length, or any vehicle, load, or any portion of said vehicle over eight feet-five inches in overall height, measured from the surface upon which the vehicle stands, may not park on property operated or owned by SMCHD for more than four hours without prior written authorization from the Director of Operations or designee.

DRAFT



Board of Harbor Commissioners

Virginia Chang Kiraly, President
Nancy Reyerling, Vice President
Nancy Reyerling, Secretary
Tom Mattusch, Treasurer
Sabrina Brennan, Commissioner
Edmundo Larenas, Commissioner
John Moren, Interim General Manager
Trisha Ortiz, District Counsel

PUBLIC NOTICE ***INTRODUCTION OF AMENDMENT TO DISTRICT ORDINANCE CODE***

This notice is published pursuant to Harbors and Navigation Code Section 6070.2, which requires a minimum twenty (20) day period for public review and comment on proposed ordinance code adoptions and revisions. The San Mateo County Harbor District introduced Ordinance Code 3.35.020 at its November 20, 2019 meeting of its Board of Harbor Commissioners, an Ordinance Code revision pertaining to issuance of Parking Permits and authorization/prohibition of oversize vehicle parking for the public and tenants at Oyster Point Marina and Pillar Point Harbor. The District is now considering adoption of this Ordinance Code revision.

Ordinance 3.35.020 revision is available for inspection by the public at the following address, to which written comments may also be sent: San Mateo County Harbor District, PO BOX 1449, El Granada, CA 94018, or can be hand delivered or by courier to 504 Avenue Alhambra, El Granada or hand delivered to the Harbormaster offices at Oyster Point Marina and Pillar Point Harbor during regular business hours. The San Mateo County Harbor District Board of Harbor Commissioners will meet on Wednesday, December 18, 2019 in Half Moon Bay to consider adoption of said Ordinance Code.

Dated: Thursday, November 21, 2019
Contact: Debbie Gehret, Deputy Secretary to the Board
dgehret@smharbor.com
(650) 583-4400



Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager

DATE: November 20, 2019

SUBJECT: Direction to Staff Regarding New District Administration Office

Recommendation/Motion:

Recommendation: Direct staff on how the Board desires to move forward with the architectural design, engineering, permitting and construction support for constructing a District administration office building on the newly purchased District owned Portola Avenue property.

Policy Implications:

Consistent with the District's mission to provide safe and well-managed and financially sound marinas.

Fiscal Implications/Budget Status:

No new fiscal implications. Current FY 2019/20 approved budget allocates \$80,000 for architectural design, engineering, permitting and construction support for constructing a District administration office building on the newly purchased District owned Portola Avenue property.

The District has historically had a committed reserve of \$1,526,217 for a new District Admin Office. The Portola Ave property was purchased for \$1.3 million from this committed reserve. The proposed new Five-Year CIP Program allots \$80,000 for design/engineering in FY 2019/20 and \$2 million in FY 2020/21 for construction. Actual costs for design/engineering will not be known until RFP responses have been evaluated. Likewise, actual construction costs will be unknown until a final design has been decided upon and an engineering estimate can be calculated.

The District currently rents office space at an annual cost of \$91,200, which will be eliminated when the new office is constructed and occupied. Debt financing for eventual construction would cost approximately \$6,000 annually for every \$100,000 of debt.

Background:

Relieving the District of the burden of lease payments and securing a permanent home for the District administration office are clearly long held goals of the District, as evidenced below. The District has had many false starts on this project and the District continues to pay in excess of \$90,000 per annum in rent. The initial term of the lease ended on May 31, 2018, and has three one-year options to extend, with the last one expiring May 31, 2021, by which time the monthly rent will be \$8,500 per month, or \$102,000 for the last year.

Summary of History:

2005: Bid of \$1.9 million for new building across from Harbormasters' office rejected.

2007: Consideration was given to development of a site at Oyster Point Marina and a Request for Proposals (RFP) was issued to prepare tentative and final parcel maps. Since that time, the City of South San Francisco (SSF) prepared a Precise Plan for the area, completed an Environmental Impact Report (EIR), executed a Disposition and Development Agreement (DDA) with the District lessee at the time, Oyster Point Ventures (OPV). Concurrently, in 2011, the District and SSF executed an MOU regarding the implementation of the DDA. Options are clearly limited to an increasingly limited portion of Oyster Point Marina, as development moves forward. Additionally, any available space at OPM should ideally be directed to visitor serving and /or marine related commercial uses to support the marina operation.

2009: The District pursued two possible sites in Princeton, but neither moved forward.

2011: Consideration was given to possible sites: Public meeting(s) were held, with public opposition to the location of a building on Perched Beach.

2012: The District moved forward with preliminary planning for development of a new building, on the 'B Lot' at Pillar Point Harbor. The District commissioned a massing study, and in April authorized issuance of an RFP for architectural services. The RFP was not issued.

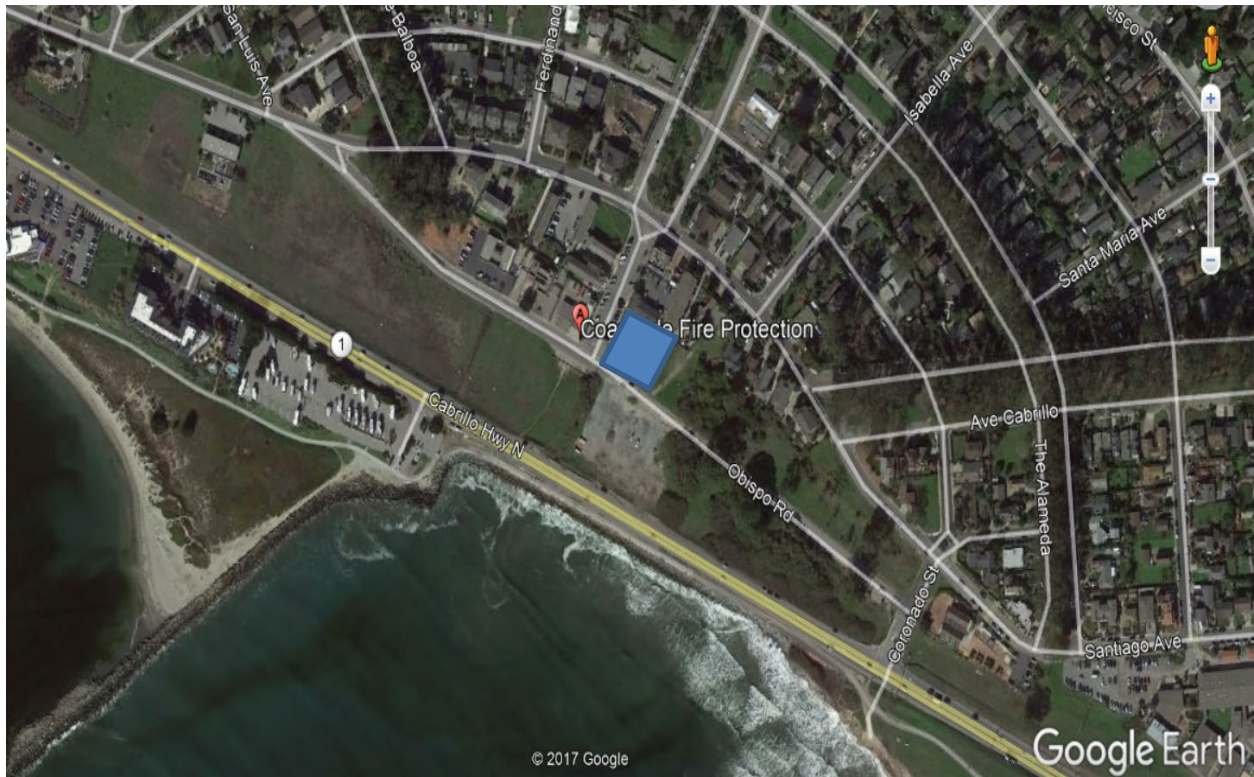
2015: The District considered purchase of the El Granada building in which Administration offices are currently located but did not follow through.

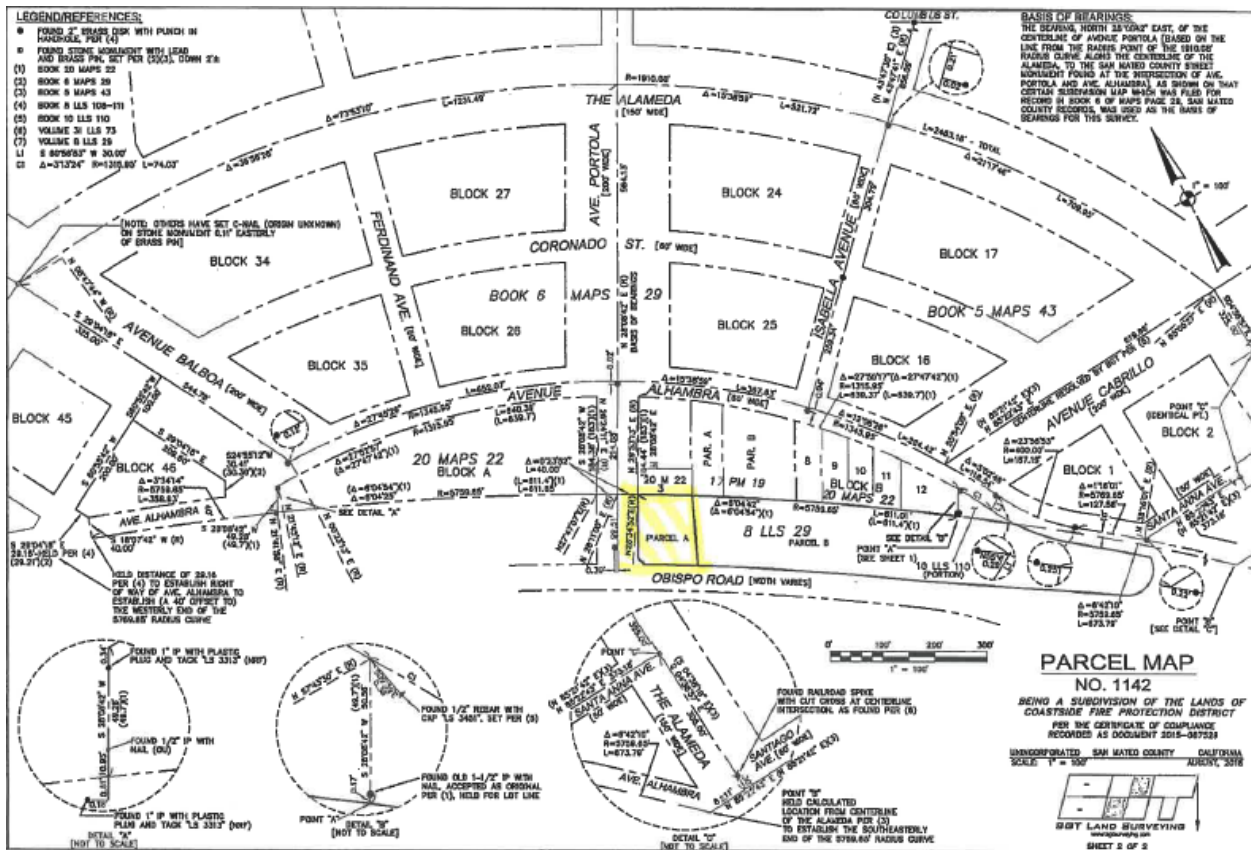
2015: The District administration offices moved from South San Francisco to El Granada in leased space at an initial cost of \$7,000 per month.

2017-2018: The District considered additional vacant lot and improved property purchases to no avail.

June 6, 2019: At Board direction, District finalized purchase of the .31-acre Portola Avenue vacant lot property.

The land parcel on Obispo Road, on which the new Coastside Fire Protection District (FD) headquarters is in the process of being built, was subdivided into two parcels and it came to the attention of the District that the western parcel would be made available to be developed. The parcel is identified as APN # 047-261-030-2, located at the corner of Obispo Road and Portola Avenue, a location thought to be ideal for a new District administration office. The District's offer of \$1.3 million was subsequently accepted and, after substantial due diligence, and at full Board direction, the District closed on the .31-acre vacant lot property on June 6, 2019.





OWNER'S STATEMENT

I HEREBY STATE THAT I AM THE OWNER OF OR HAVE SOME LEGAL TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP, AND I AM THE ONLY PERSON WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY, AND THAT I HEREBY CONSENT TO THE MAKING AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE OBSERVABLE BORDER LINE.

OWNER: COASTSIDE FIRE PROTECTION DISTRICT DATE: _____

BY: SIGNATURE _____ PRINT NAME _____

OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF _____

ON _____ DAY OF _____ 2018, BEFORE ME,

PERSONALLY APPEARED _____

WHO PROMISED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/ THEY DESIGNED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTUMENT THE PERSON(S) ON THE ENTITY UPON WHOM(S) OF WHICH THE PERSON(S) ACTED, ASSUMED THE LIABILITY.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL

SIGNATURE: _____
PERSONAL COUNTY OF BUSINESS: _____
COMMISSION EXPIRES: _____
COMMISSION # OF NOTARY: _____

COUNTY SURVEYOR'S STATEMENT

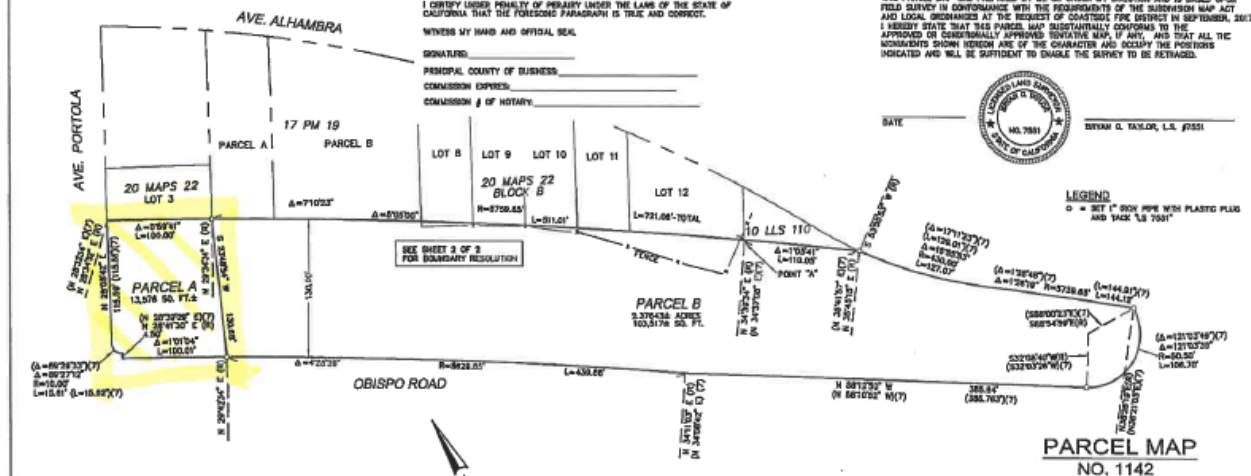
I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP AND HAVE FOUND THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REGISTERED, AND ANY APPROVED ALTERNATE VERSIONS THAT ALL THE PROVISIONS OF THE CALIFORNIA SUBDIVISION MAP ACT AND THE SAN MATEO COUNTY ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REGISTERED, HAVE BEEN COMPLIED WITH; AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATE: _____ BY: D. IAN NELSON
COUNTY SURVEYOR
L.S. #7053

SURVEYOR'S STATEMENT

THIS PARCEL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF COASTSIDE FIRE DISTRICT IN SEPTEMBER, 2017. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR GENERALLY APPROVED TENTATIVE MAP, IF ANY, AND THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETIRED.

DATE: _____ BY: BRIAN G. TAYLOR, L.S. #7881



CLERK OF THE BOARD STATEMENT

I HEREBY STATE THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66043 AND 66443 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATE: _____

CLERK OF THE BOARD OF SUPERVISORS
SAN MATEO COUNTY, STATE OF CALIFORNIA

BY: _____
DEPUTY

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2018, AT _____
IN VOLUME _____ OF PARCEL MAPS, AT PARCEL(s) _____ AT THE RESIDE OF BRIAN G. TAYLOR.

FILE NO. _____ MARK GHOROL, SAN MATEO COUNTY RECORDER
FEE _____ \$0 _____ DEPUTY

PARCEL MAP NO. 1142

BEING A SUBDIVISION OF THE LANDS OF COASTSIDE FIRE PROTECTION DISTRICT FOR THE CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT 2018-287839

UNINCORPORATED SAN MATEO COUNTY CALIFORNIA
SCALE 1" = 30'
AUGUST, 2018

BY: _____
DEPUTY

On June 19, 2019, after the District had successfully purchased the lot, a District Admin Office Design Ad Hoc Committee, comprised of two Board members, was created and populated to direct staff in advising the full Board on the best alternative to move forward with new building design and to discuss potential partnering with the Granada Community Services District (GCSD), who had already formed a like Ad Hoc Committee for this purpose. GCSD had expressed interest in potentially partnering with the District in some manner, as they too are renting office space and desire to develop a permanent home with sufficient community meeting space. If possible, it is believed that the two Districts partnering in the site development would be the most efficient use of public funds, benefit both Districts and the public.

On August 15, 2019 and September 30, 2019, the District and GCSD Ad Hoc Committees met to discuss potential partnering, still unsure if feasible, as GCSD is considering several alternatives.

An RFP for architectural design, engineering, permitting and construction support for constructing a District administration office building on the newly purchased District owned Portola Avenue property was advertised. The RFP successfully concluded on September 27, 2019 with five qualified firms responding. The District Ad Hoc Committee suggested that staff place all responses on a Drop Box link, so that all Commissioners could review them, then give an opportunity for a Special Meeting to be held if more than two Commissioners wished to interview the respondents, provide an opportunity for more than two Commissioners to assist in making a recommendation to the full Board.

Subsequently, three Commissioners notified staff that they wished to have the full Board direct staff on how to move forward, thus today's request for staff direction.

The Board may elect to vote on one of the below motion alternatives, modify any of them, or direct staff in any manner so desired.

- Motion Alternative 1- Direct staff to arrange a Board Special Meeting so that any Commissioners that wish to participate in interviewing the five RFP respondents can do so, then bring a recommendation to the full Board.
- Motion Alternative 2- Direct staff to arrange an Admin Office Design Ad Hoc Committee meeting so that the two assigned Commissioners can interview the five respondents and make a recommendation to the full Board at a subsequent regularly scheduled Board meeting.
- Motion Alternative 3- Reject all five RFP response proposals and put the Project on hold until the District Master Plan is developed.

Summary/Recommendation:

Staff recommends the Board direct staff on how the Board desires to move forward with the architectural design, engineering, permitting and construction support for constructing a District administration office building on the newly purchased District owned Portola Avenue property.



Staff Report

TO: Board of Harbor Commissioners

FROM: John Moren, Interim General Manager

DATE: November 20, 2019

SUBJECT: Pillar Point Harbor KN RV Lot and New Public Restroom Coastal Development Permit Compliance, Conditions of Approval and RFP Response Selection for Architectural Design, Engineering, Permitting and Construction Support

Recommendation/Motion:

Staff recommends District Board appoint an Ad Hoc Committee comprised of two Harbor Board Commissioners to; i) review KN lease terms, ii) review California Coastal Commission/City of Half Moon Bay Coastal Development Permit Conditions of Approval, and iii) review responses to an RFP for architectural design, engineering, permitting and construction support for a new public restroom, green space and increased ADA parking at the Pillar Point Harbor KN RV Park.

Policy Implications:

Consistent with District's desire to provide the public with restroom/parking amenities and comply with California Coastal Commission's (CCC) Coastal Development Permit (CDP) requirements.

Fiscal Implications/Budget Status:

No new fiscal impact at this time.

Background:

In 1987, the District received a “Use Permit” from the City of Half Moon Bay (HMB) for an unimproved parking area for recreational vehicles (RVs).

- 1 In 1998 HMB affirmed that the Use Permit was still active
- 2 The District entered into a lease with Keet Nerhan, KN Properties (KN) for improvements to the site and operation of an RV park
- 3 The District communicated with the Department of Boating and Waterways (DBW) regarding the lack of necessity for DBW approval of the lease
- 4 KN subsequently received necessary building permits from HMB for development of the site
- 5 On December 12, 2016, the District and KN received the attached CDP Compliance Order from HMB, requiring the application for a CDP for the RV Park

In order to issue a CDP, a city must have an adopted Local Coastal Plan (LCP). Otherwise, a CDP is issued directly by the Coastal Commission. HMB adopted its LCP after the KN RV Park had been developed.

Currently, KN operates the Pillar Point RV Park, under the terms of its lease with the District. The lease was initially effective on October 1, 1998, with a term of 25 years and an option to extend for an additional 25 years. Currently the lease expires September 30, 2023.

The District has worked in good faith with KN and HMB to resolve the CDP compliancy issue. While the installation of a new restroom at the site is not a specific requirement of the CDP, the District and HMB agreed that a new restroom, outdoor shower, drinking fountains, green space and additional ADA parking at this site would benefit the public and be favorable in the CDP application process.

In an effort to professionally move forward with design alternatives for a new public restroom at the KN leased RV Park, in order to comply with the required CDP, and to facilitate grant opportunities, staff received Board approval at the June 19, 2019 Board meeting to move forward with a design consultant to produce minimal design renderings necessary to support a grant application HMB was assisting the District with. The District’s Board of Harbor Commissioners desired to move forward with the Project, staff made clear they would work with HMB, KN Properties and other stakeholders to seek grant funding and cost share and that any grant opportunity that is approved or if significant proposed design changes were required that they would be brought back to the full Board for consideration.

Pursuant to Board direction at its December 20, 2017 meeting and subsequent June 19, 2019 meeting, HMB has worked with the District to identify potential grant opportunities to fund this project and has found that the Priority Conservation Area (PCA) grant has a likelihood for success in funding up to \$298k of the project costs, see attached.

The District and HMB had worked together to present site improvement alternatives to the public and, based on public input, had developed a preferred alternative. The HMB Planning Commission reviewed the District's plans and has made substantial required changes in order to meet the Conditions of Approval, see attached.

Along with several other requirements, the new Conditions of Approval have strict progress timelines. In order to move forward quickly, staff issued an RFP and has received three responses from qualified architectural design firms.

Due to the complexity of the lease terms enforcement, time sensitivity, significant public concern and substantial potential project costs involved, Staff believes the Board should consider appointing an Ad Hoc Committee to review all documents, review the RFP responses and make a recommendation to the full Board on way forward.

Summary/Recommendation:

Staff recommends District Board appoint an Ad Hoc Committee comprised of two Harbor Board Commissioners to; i) review KN lease terms, ii) review California Coastal Commission/City of Half Moon Bay Coastal Development Permit Conditions of Approval, and iii) review responses to an RFP for architectural design, engineering, permitting and construction support for a new public restroom, green space and increased ADA parking at the Pillar Point Harbor KN RV Park.

Attachments:

1. [HMB Compliance Order](#)
2. [KN/District Lease Agreement](#)
3. [Potential PCA Grant](#)
4. [CCC/HMB CDP Conditions of Approval](#)

December 14, 2016

Via Certified Mail, Return Receipt Requested

Keet Nerhan, KN Properties
210 San Mateo Rd Suite 201
Half Moon Bay, CA 94019

COMPLIANCE ORDER

Re: Violation of the Half Moon Bay Municipal Code-Failure to Obtain Coastal Development Permit Pursuant to Half Moon BAY Municipal Code Section 18.20.025 for Pillar Point Recreational Vehicle Lot at 4000 Cabrillo Highway North, Half Moon Bay, Ca.

Dear Mr. Nerhan:

Please be advised that the City received a citizen complaint contending that Pillar Point RV Park failed to obtain a mandatory Coastal Development Permit (CDP) prior to installing an RV Park. The City reviewed its own records and could not find any evidence that a CDP was obtained. On August 11, 2016, the City sent the San Mateo County Harbor District (SMCHD) a letter inquiring as to whether SMCHD had any documentation which demonstrated SMCHD had obtained the required CDP. During several discussions, SMCHD verbally indicated that no CDP was issued. As such, the City has concluded that the Pillar Point RV Park is operating without a required CDP. This is a violation of Half Moon Bay Municipal Code (HMBMC) Section 18.20.025 (Permit required). On December 6, 2016, the City received a letter from the San Mateo County Harbor District. This letter indicates that you are the party responsible for Code Compliance. (See attachment).

This Compliance Order requires you to timely correct the violation. If you do not take corrective action and follow the abatement instructions by the deadlines specified hereunder, administrative citations and fines may be issued, and the City may choose to pursue its legal remedies.

HMBMC Violations at 4000 Cabrillo Highway N.

1. Unpermitted Development – HMBMC 18.20.025

Based upon research and discussions with SMCHD, the absence of any City's records demonstrating that SMCHD obtained a CDP, SMCHD verbal indications that they believed no CDP had been issued, the City has determined that no CDP was issued for the development.

Under HMBM Section 18.20.025, unless otherwise exempted, all development (as defined in Section 18.20.020) in the city of Half Moon Bay requires a coastal development permit. The coastal development permit was to be approved prior to the commencement of development.

Corrective Action/Abatement Instructions

1. Obtain a retroactive coastal development permit for the aforementioned Pillar Point RV Lot from the City of Half Moon Bay as set forth below.

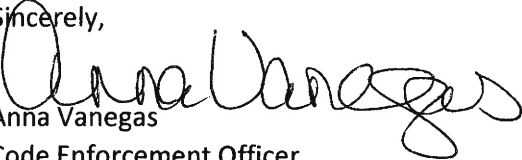
Deadline for Compliance

You must submit a complete application for a coastal development permit no later than January 27, 2017. The City will expedite review and processing of the application to the extent feasible. As the applicant, you must diligently pursue the CDP documents in a timely manner.

Failure to **submit a complete CDP application by the aforementioned deadline** will result in the issuance of administrative citations and fines pursuant to HMBMC Chapter 4.16 and the City may thereafter pursue all of its available legal remedies, which can include criminal enforcement (i.e. the issuance of a criminal misdemeanor citation) and civil actions. Any extensions of the deadlines set hereunder are at the City's sole discretion and must be confirmed in advance, by writing, by the Community Development Director.

If you have any questions or would like further clarification please contact me at 650-726-8253.

Sincerely,



Anna Vanegas

Code Enforcement Officer
City of Half Moon Bay

Lease Agreement

This Lease is made and entered into by and between the San Mateo County Harbor District, a public agency, located in the County of San Mateo, State of California, hereinafter referred to as "Lessor", and Keet Nerhan, dba KN Properties, hereinafter referred to as "Lessee".

IT IS AGREED between the parties hereto as follows:

1. LEASE DOCUMENTS

This Lease includes the Lease General Conditions (71 Pages), revised February 27, 1992 and the following Exhibits, which are also made a part hereof:

- Exhibit A - Parcel Map of San Mateo County Harbor District, Pillar Point Harbor.
- Exhibit B - Pillar Point Harbor Specific Plan.
- Exhibit C - Booklet entitled "Design Criteria for Construction by Lessees of the San Mateo County Harbor District - 1980"
- Exhibit D - Site Plan.

2. PROPERTY LEASED

District hereby Leases to Lessee and Lessee hereby Leases from Lessor, the property located at Pillar Point Harbor, El Granada, County of San Mateo, State of California, described as follows: The premises depicted in Exhibit A, a portion of Parcel 047-263-010, consisting of approximately 203,590 square feet of space (approximately 4.6 acres), together with the non-exclusive right of ingress and egress over such other properties of District not leased to or occupied by other lessees for purposes of access to and from the subject premises.

3. TERM OF LEASE

3.1 FIXED COMMENCEMENT AND TERMINATION DATES:

The term of this Lease ("Lease Term") shall commence on the earlier of (a) the first day of the month following the month in which the City of Half Moon Bay has issued the last of any necessary discretionary land use approvals permitting construction of all Improvements to be constructed by Lessee on the Premises or (b) October 1, 1998, and expire at midnight on the same day twenty-five (25) years subsequent, subject to any options to extend. Promptly following commencement of the Lease Term, Lessor and Lessee shall execute an amendment confirming the commencement and expiration dates of the Lease Term which amendment shall be recorded.

3.2 OPTION TO EXTEND LEASE TERM:

Provided Lessee is not then in default under any of the terms and conditions of this Lease, to the extend permitted by law, Lessee shall have the option to extend the Lease Term for an additional period of twenty-five (25) years from and after expiration of the original term upon the same terms and conditions contained in the Lease, as amended to date, including the rent.

To exercise this option, Lessee shall give written notice to Lessor no earlier than three hundred sixty days (360) and no later than one hundred eighty days (180) prior to the expiration of the original lease term. Failure to give said notice of exercising option shall result in relinquishing and forfeiting all further rights under this agreement. Termination of the lease term or any option period shall also cut off any further rights or options under this section.

4. USES AND SERVICES

4.1 USE OF PREMISES

4.1.1 Lessee shall have an exclusive right to operate and maintain an overnight camping area for recreational vehicles- ("the facilities") - including all activities related thereto, and a vehicle parking area for day use visitor parking only.

4.1.2 Subject to the prior written approval of the District, Lessee may provide additional uses and services which are ancillary to, and compatible with the required uses and services, and not incompatible with other uses and services allowed or required for other Lessees at Pillar Point Harbor.

4.1.3 The above listed uses and services, both required and optional, shall be the only uses and services permitted. Lessee agrees not to use the demised premises for any other purpose nor to engage in any other business activity within or from the demised premises.

4.1.4 The parties acknowledge that District is obligated, both generally and under its proposed Master Plan for Pillar Point Harbor, to control the volume and use of its facilities, particularly with respect to vehicular traffic, parking, and the use of other facilities. In that regard, the District reserves the right to make a finding that the availability of berthing and/or parking, and/or the public safety, is threatened due to third-party use of the facilities under this Lease. In that event, the District may limit the use of Lessee's facilities by third parties by providing a written thirty (30) day notice to the Lessee and to any known third-party users of said limitations.

4.1.5 The General Manager shall from time to time, or when specifically requested, report to the Board of Harbor Commissioners on the volume of activity and general use of and access to, the facilities, by pedestrian, vehicles and by vessels, with specific reference to and whether the facilities and access to them, and parking, are adequate for the volume, and whether the parking, vessel use, berthing use, and traffic flow can be controlled safely, or should be restricted,

4.1.6 Notwithstanding the provisions of this Lease, or any other regulation, lease, rule or document to the contrary, the parties agree that based on the considerations and reports referred to above, the District reserves to itself the right to restrict Lessees' customer parking by quantity and/or location, to accommodate all tenants and users of District controlled facilities.

4.1.7 Whenever the District, pursuant to Section 4.1 of this Lease, limits the normal activities of Lessee or of third parties being charged for goods and services by Lessee, District and Lessee shall negotiate a temporary adjustment of rental for the Premises. This said adjustment shall bear a reasonable relationship to the loss of revenue occasioned by Lessee.

4.2 SERVICE

4.2.1 Lessee shall not use or permit the leased premises or any part thereof to be used in whole or in part for any use in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority, including the San Mateo County Harbor District, and Lessee hereby expressly covenants and agrees at all times during the term of this lease, at Lessee's own cost and expense, to keep, maintain, use and operate all property owned, used or placed by Lessee in or on or about the leased premises and all property and equipment placed in or on or around the leased premises at Lessee's request in a clean, wholesome and sanitary condition and Lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted (or which shall during the term hereof be adopted) by federal, state, local or other governmental bodies or departments, including the San Mateo County Harbor District.

4.2.2 Lessee shall not use or occupy nor permit the leased premises or area, or any part thereof, to be used or occupied for any unlawful business, use, or purpose. In that connection, Lessee agrees to conduct its business and operations upon the leased premises and to use all necessary equipment so as to reduce to the minimum that is reasonably practicable the emanation from Lessee's facilities and operations of fumes, toxic substances, and odors, and to take all necessary precautions to avoid pollution.

4.2.3 Lessee shall not perform any acts or carry on any business or operations that may injure or damage the leased premises or be a nuisance or menace to the users of the San Mateo County Harbor District.

4.2.4 At all times, Lessee shall keep the leased premises allocated for the use of Lessee, clean and free of rubbish, trash, and debris. In the event, Lessee shall fail to keep said premises clean and free from rubbish trash and debris, Lessor reserves the right, among other remedies, to give written notice to Lessee of such obligations and upon failure of Lessee, within three (3) days of such written notice, to so clean the leased premises, service areas and the like allocated for the use of Lessee. Lessee may, at its option and with prior authorization by the Harbormaster, engage Harbor District personnel to clean the area and Lessee agrees to pay for the reasonable cost of said work. Lessee shall pay Lessor for the entire amount of such additional lease fee(s) for the cost of such cleaning work done by Harbor District personnel.

5. OPERATING SCHEDULE AND CONTROLLED PRICES.

5.1 Lessee shall provide full services on Leased premises as specified in paragraph 4.1.1 of this Agreement during regular business hours not less than six (6) days each week, with a minimum of eight (8) hours per day, of the Lease term, with the exception of New Year's Day, Thanksgiving Day, and Christmas Day. Lessee shall provide District with a schedule of operating hours and a revised schedule if changes are made. If Lessee requires to be closed for an extended period of time, then Lessee shall request in writing to Lessor, and at least thirty (30) days prior to closure, for permission to close the business.

5.2 Lessee shall, at all times maintain a schedule of prices to be charged for all products and services supplied to patrons on or from the Leased premises; whether the same are supplied by Lessee or by sublessees; assignees, concessionaires, permittees, or Lessees, and shall make said schedule available to the District.

5.2.1 All rates and charges to patrons served on or from the Leased premises shall be reasonable and consistent with the quality of services and facilities offered, and shall be no more than rates and charges for comparable services and facilities in the counties of San Francisco, Santa Clara, San Mateo, and Santa Cruz, which shall be annually reviewed by Lessor.

5.2.2 The fees charged to third parties shall be reviewed by Lessee and by the parties every six (6) months during the term of this Lease, and shall be adjusted, if necessary.

5.3 This Lease hereby specifically reserves to the San Mateo County Harbor District the power to fix and determine the rates to be charged by the Lessee for the use by the public of facilities developed or leased by the Lessee, as required by Harbors and Navigation Code, Sections 72 and 72.2. Consistent with the provisions of Harbors and Navigation Code, Sections 72 and 72.2, if and when the District exercises its right to fix and determine the rates to be charged by the Lessee, the District shall take into account comparable rates within the San Francisco Bay Area, Lessee's costs for providing the facilities and services at the Premises, and the amount of rent being paid by Lessee to the District.

6. LEASE RENTS

6.1 MINIMUM RENT

6.1.1 Commencing from the date of execution of the Lease until the commencement of operation of the Premises or the issuance of a Certificate of Occupancy for the Premises, whichever comes first, but in no case longer than nine (9) months from execution of the Lease, Lessee shall pay the Minimum Rent of one thousand dollars (\$1,000.00) per month to Lessor in equal monthly installments. Minimum Rent shall be paid in advance on or before the first day of each calendar month.

6.2 MINIMUM ANNUAL RENT

6.2.1 Minimum annual rent shall be paid to Lessor in equal monthly installments as follows:

\$15,000 per year or three percent (3%) of the gross annual revenues, whichever is the larger, for the first three (3) years commencing from the commencement of operation of the facilities following completion of physical improvements or six (6) months from execution of the lease, whichever comes soonest.

\$20,000 per year or three percent (3%) of the gross annual revenues, whichever is the larger, for the next five (5) years.

\$25,000 per year or three percent (3%) of the gross annual revenues, whichever is the larger, for the next ten (10) years.

\$30,000 per year or three percent (3%) of the gross annual revenues, whichever is the larger, for the next seven (7) years.

6.2.2 Minimum annual rent shall be adjusted annually thereafter each March 1st based on the CPI (SF-Oakland) for the previous calendar year.

6.3 PERCENTAGE RENT

6.3.1 Percentage rent for the demised premises shall be three percent (3%) of total gross receipts from business operations conducted on or from the demised premises and may be adjusted in accordance with the provisions of the Lease General Conditions.

Lessee shall pay the percentage rent to Lessor if the percentage rent exceeds the minimum annual rent at the conclusion of the calendar year. In any case, the minimum annual rent shall be the minimum paid to Lessor. Lessor shall make the adjustment to Lessee's account at the conclusion of the calendar year.

6.4 DUE AND PAYABLE

6.4.1 Minimum annual rent (adjusted or unadjusted) shall be due and payable in advance, in equal monthly installments, on or before the first day of each month for the term of this Lease.

6.4.2 Percentage rents shall be payable as follows:

6.4.2.1 At the end of each quarter, i.e. March 31, June 30, September 30, and December 31, percentage rentals shall be computed for the prior quarter and the differences between the minimum annual rent for said quarter shall be due and payable on the 30th day following the end of said quarter.

6.4.2.2 The percentage rent based upon receipts shall be recomputed at the end of each year using the applicable percentages and the balance of rents as computed for each year shall be due and payable on or before March 30 of the following year. Any overpayment of rent shall be credited toward future rents.

7. GROSS RECEIPTS

7.1 Gross receipts are the gross income derived, received, or charged by any sub-lessee, sub-tenant, concessionaire, Lessee, assignee, permittee or any other person, all of which are referred to hereafter as "sub-tenants"; or by Lessee, for sales for charges for service, for use of space made in or on Leased premises, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the Leased premises; whether from sub-tenants, customers, or otherwise, whether for cash or credit, and whether payment is actually made or not.

7.2 Gross receipts shall include, without limitation, all:

7.2.1 Deposits not refunded;

7.2.2 Orders taken on or from the Leased premises to be filled or paid for elsewhere;

7.2.3 Sales or charges for all services performed, whether such sales are made, or such services are rendered at or arranged through occupied space at the Leased premises by long-distance communication, and whether initiated, performed, or completed at another location;

7.2.4 Consideration received by Lessee for value directly from customers, and from sub-tenants, including sub-rents.

7.3 Each sale or charge for service or use of space on credit or installments shall be treated as a sale or charge for the whole price in the calendar year for which the sale or charge is made, whether or not any payments are made within that year.

7.4 The following matters only may be excluded or deducted from gross receipts at the time they are ascertained, and where not ascertainable during the period covered by a statement of gross receipts, from time of subsequent statement when they are known:

7.4.1 Gratuities such as tips retained by employees, lessee or sub-tenant, for their personal benefit;

7.4.2 All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law be added to the total purchase price, whether now or hereafter in force, to be collected from customers and paid by Lessee or sub-tenant;

7.4.3 Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee or any sub-tenant; if such transfers or exchanges are made solely for the convenient operation of Lessee's or sub-tenant's business and not for the purpose of consummating a sale previously made at, on or from the Leased premises or for the purpose of depriving District from the percentage of gross receipts of a sale that otherwise would be made at, on, or from Leased premises;

7.4.4 Merchandise returned to shippers or manufacturers;

7.4.5 All refunds made on any sale or charge for service or use of space previously included as gross receipts;

7.4.6 All cash or credit received in settlement of any claims for loss or damage;

7.4.7 Gift certificates or like vouchers, if not issued for value, until converted into a sale by redemption;

7.4.8 Bulk sales made by Lessee or sub-tenant not in the ordinary course of business and subject to prior written approval of District

7.4.9 Any income or receipts, under generally accepted accounting principles, which are derived from sale or disposal of any capital assets (excluding any assets normally sold during business conducted on Leased premises) or from retirement of any indebtedness; or from lessee's or sub-tenant's investments of any funds not invested in the Leased premises or the operation of Lessee's or sub-tenant's business on Leased premises;

7.4.10 Percentage rent collected by Lessee from sub-tenants for District's benefit.

7.4.11 Any income or moneys generated from the sale of fishing licenses or stamps on behalf of the State of California Department of Fish and Game.

7.5 None of the above exclusions or deductions from gross receipts shall be excluded or deducted if in substance it is a typical sale, charge for Service, or other source of gross income ordinarily the subject of percentage rent, but arranged only to avoid such rent, or if actually contracted for elsewhere on other premises such as a typical sale, charge for service or other source of gross income which is ordinarily the subject of percentage rent, but such sale, charge for service, or other gross income is for the Lessee's or sub-tenant's business benefit.

8. IMPROVEMENTS AND INVESTMENTS

8.1 All design and construction shall conform with the applicable requirements as set forth in "Design Criteria for Construction by Lessees - 1980", (Exhibit C.), adopted by District, all applicable codes and ordinances, including but not limited to District, City of Half Moon Bay, County of San Mateo, State and Federal. No construction shall be commenced without prior written approval of the District, including approval of all plans, and the granting of a permit by the City of Half Moon Bay for construction. Completion of construction will be in accordance with the time schedule submitted as part of the proposed construction approval by District.

8.2 Lessee shall design and construct or cause to be designed and constructed physical improvements to the Premises for a forty (40) space recreational vehicle overnight parking and camping facility and day use parking facility as stated in the following schedule and as set forth in "Site Plan" (Exhibit D):

1. Repair and extension of the existing restrooms to acceptable health and safety standards including Americans With Disabilities Act (ADA) standards and requirements including roof and partition replacement;
2. Installation of electrical service to the restrooms;
3. Pave and stripe the overnight parking and camping area;
4. Construct overnight camping sites to include numbered bollards, parking, picnic tables, barbecue pits and fire rings for overnight camping spaces;
5. Pave and stripe the day use parking area;
6. Construct barbeques, water fountains and trash receptacles for day use area;
7. Construct wheelchair-accessible access trail from Beach Hotel to "Surfer's Beach";
8. Install underground utilities to campsites as well as new drainage;
9. Install new fences, signs and lighting;
10. Landscape the entire Premises to Lessor's standards.

8.3 Lessee shall be responsible for and pay in full all costs of design and construction and associated permit and other costs for all physical improvements provided on the Premises pursuant to this Agreement.

9. SUBLEASE/ASSIGNMENT OR SALE OF LEASEHOLD

9.1 Article XVI of the General Conditions pertaining to Assignment, Subletting and Hypothecation are incorporated into this section.

9.2 Notwithstanding any other provision of this Lease to the contrary, should Lessee, or any affiliate of Lessee be allowed by District to sublet, assign or sell any portion or all of said Lessee's interest in this Leasehold to any other person, entity or group, said Lessee shall pay the District a minimum of \$1,000.00 to reimburse the District for the costs of effecting the transfer, or ten percent (10%) of the gross sales price, including the value of any traded property, Leasehold, equipment or services involved in the "purchase", whichever is greater, as a return to the District for the general maintenance, construction, improvement, advertising, and expansion of the Pillar Point Harbor area.

9.3 The "gross sales price" in the Sale of any above described interest in this Leasehold shall not include the sale of any fishing vessels or equipment on those vessels, nor any standard and removable stock on hand or other personal property which may normally be removed by a tenant at the end of a Leasehold, not having attained the status of fixtures. The "gross sales price" shall include the value of the Leasehold, any generalized goodwill associated with the Leasehold on the premises, the right to complete the terms of the Lease and utilize the structure involved, and any and all fixtures in place on site which are not excluded above.

9.4 It is contemplated by all the parties that Lessee may, in order to raise capital for the business, sell stock of the corporation should such entity exist or be created for this purpose by Lessee. Any transfer of shares, whether upon formation of corporation or subsequent thereto, which would result any single investor acquiring more than fifty-one (51%) of the equity and voting shares in the corporation shall be considered a transfer or assignment for purposes of this lease, and shall require the prior written consent of Lessee; and unless released in accordance with the provisions below or otherwise Lessee shall remain personally responsible for the obligations under this lease in accordance with California law.

10. LATE PAYMENTS

10.1 Payments not paid by the due date shall bear interest at 10.00% per annum until paid. Lessee shall have the right to charge interest to sub-tenants for monies not paid promptly when due and payable.

11. NON-SUFFICIENT FUNDS

11.1 Lessee shall be charged a fee pursuant to Section 1719 of the Civil Code for the State of California for each check that is returned to Lessor for lack of sufficient funds.

12. SECURITY DEPOSIT

12.1 Lessee shall be required to post a security deposit of \$5,000, which may be used by the District for payment of any Lease moneys, rents, fees or other charges due and payable to the District, but in arrears for over ninety (90) days.

12.2 The security deposit shall take one of the forms set out below and shall guarantee Lessee's full and faithful performance of all the terms, covenants, and conditions of this Lease:

1. The assignment to District of a savings deposit held in a financial institution in San Mateo County acceptable to District. Such assignment shall consist of delivery to District of the original passbook for such savings deposit and execution and delivery of a written assignment of said deposit and execution and delivery of a written assignment of said deposit to District on a form approved by District.
2. A renewable Time Certificate of Deposit from a financial institution in San Mateo County wherein the principal sum is made payable to District on order. Both the financial institution and the form of the certificate must be approved by District.
3. A renewable instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are guaranteed for payment, and agreeing that said funds shall secure Lessee's performance, and that all or any part shall be paid to District upon demand. Both the financial institution(s) and the form of the instrument(s) must be approved by District. The instrument of credit shall be renewed within thirty days of its expiration date; otherwise, the Lessor shall withdraw the funds to hold as a cash security deposit.

12.3 Lessee may change the form of security deposit only within thirty (30) days after any anniversary of the Lease term. Regardless of the form in which Lessee elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to District for correcting any default or breach of this Lease by Lessee, his successors or assigns, or for payment of expenses incurred by District as a result of the failure of Lessee, his successors or assigns, to faithfully perform all the terms, covenants, and conditions of this Lease.

12.4 Should Lessee elect to assign a savings deposit to District, provide a Time Certificate of Deposit, or provide an instrument of credit to fulfill the security deposit requirements of this Lease, the depository or issuer therein shall incur no liability because of the payment of any or all of the principal sum to District upon demand. The agreement entered into by Lessee with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate, as provided above, may allow the payment to Lessee of interest accruing on account of said deposit.

12.5 Lessee shall maintain the required security deposit throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of the Lease. If any portion of the security deposit is withdrawn by Lessor for payment of default monies owed Lessor, Lessor shall notify Lessee in writing and Lessee shall have thirty days to replenish the security deposit to its full amount.

12.6 The security deposit shall be rebated, reassigned, released or endorsed to Lessee to order, as applicable, at the end of the Lease term, provided Lessee is not then in default and has performed its obligations required to be performed upon termination of this Lease.

13. MAINTENANCE AND SERVICES TO PREMISES

13.1 Lessee shall during the term of this lease, at Lessee's own cost and expense, maintain the leased premises, and every part thereof, and including the exterior and interior of any structure leased or constructed and leased for the use of Lessee, all landscaping, and all trade fixtures, machinery, equipment, and other property situated in or upon the leased premises, owned, operated, installed or caused to be installed, or to be at, on or upon the leased premises by Lessee, including all utilities and fixtures, and appurtenances, owned, operated, installed or caused to be installed on or upon the leased premises in good, clean, safe and sanitary condition and repair.

13.2 Lessor shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the leased premises, or any part thereof, during the term of this lease.

13.3 If during the term of this lease any additions, alterations, repairs or improvements in or to the leased premises or any of the improvements thereon or equipment, machinery and other property in or on the leased premises, owned, operated, installed or caused to be installed by Lessor are required by any governmental authority or by any law, ordinance, or governmental regulation, it shall be made by Lessor at the sole cost and expense of Lessor.

13.4 Lessee shall maintain equipment leased from the District in good order, and shall repair leased equipment as necessary to keep it in good operating order. Any leased equipment Lessee replaces due to normal wear and tear becomes Lessee's property. The Lessor may by mutual consent purchase such equipment from the Lessee. All equipment under control of Lessee shall remain under control of Lessee and any third party shall not use said equipment without a prior agreement with the Lessor, Lessee, and the third party. Equipment that is rendered unusable due to Lessee's failure to properly maintain it shall be replaced by Lessee and shall belong to the District.

13.5 Upon termination of the lease agreement, Lessee shall return all equipment, machinery and other property of Lessor to Lessee in the original condition in which it was received except for normal wear and tear.

13.6 Lessee shall be responsible for the payment all utilities and services in connection with the Premises including the following:

- Garbage and trash disposal
- Electricity
- Water
- Sewer
- Telephone service
- Landscaping maintenance

14. LESSOR'S ACCESS

14.1 The duly authorized officers or representative of Lessor shall have the right to enter the leased area and premises during normal business hours and in emergencies at all times:

14.1.1 To inspect the area and premises for compliance with the terms of this lease;

14.1.2 For any other lawful purpose.

15. INSURANCE

15.1 Lessee, at Lessee's sole cost and expense, shall provide and maintain a Comprehensive General Liability policy with Broadform Endorsement (or comparable coverage) in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. Said policy shall insure Lessee's leased premises and operations for death, bodily injury, and property damage and name Lessor as an Additional Insured. In addition, where applicable, Lessee shall provide and maintain insurance for Workers' Compensation, United States Longshore and Harbor Workers' Compensation, Maritime Law Benefits, Pollution, Liquor Liability, and any other coverage the Lessor may require.

All policies, limits, and coverages are subject to the approval of Lessor and may be revised at any time if the circumstances so warrant.

15.2 During the lease term, or any renewals or extension thereof, Lessee shall at Lessee's own cost and expense, maintain in full force and effect a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of California, that will insure Lessee and Lessor and Lessor's officers, agents, members of the governing body of Lessee and its employees, against liability for injury to persons and property and for death of any person or persons occurring on or about the leased premises or connected with Lessee's use and occupancy of the leased property or any of Lessee's operations or business conducted on, from or near the leased property, including operation of any vessels.. Said amount may include coverage by any umbrella liability coverage. Lessee shall provide the Lessor with a duplicate copy of such insurance policy or policies, including in each instance an endorsement providing that such insurance shall not be canceled except after thirty (30) days prior written notice to the Lessor. Notwithstanding any other provision in this section, this lease shall not take effect, nor shall Lessee take or maintain possession of the leased premises or commence or continue operations until Lessee provides proof of insurance to Lessor.

15.3 Notwithstanding the provisions above, no more than once every five (5) years during the term of this lease and any extensions thereof, Lessor may demand the amount of insurance coverage be renegotiated and thereafter adjusted to reflect any changes in needs due to inflation or potential liabilities contemplated within the following five (5) years. If Lessor and Lessee cannot agree on an amount of insurance to be carried, or they cannot otherwise agree to a method for determining the amount of said coverage, then either party is free to invoke the arbitration provisions of this lease to determine the amount of insurance coverage that is appropriate.

15.4 Lessor shall not be liable to Lessee or to any other person whomsoever for any damage occasioned by the bursting, exploding, or leaking of any tank, pipe or chamber in or about Pillar Point Harbor or for any damage, including pollution, arising from any acts or neglect of the public or of other Lessees, users, fishermen, or occupants of the San Mateo County Harbor District area and property.

15.5 Lessor shall not be liable in damages or otherwise for any failure to furnish, or for any interruption of service of any water, gas, or other utility services, or damage caused by fire, flood, rising water, tidal wave, tsunami, accident, riot, strike, labor disputes, acts of God, or for other acts, events, causes or conditions beyond the control of Lessor.

15.6 In that connection Lessee expressly represents and agrees that Lessee has thoroughly inspected and examined the site and area to be leased, used and occupied by Lessee and all risk or loss or damage to Lessee's equipment, machinery, personal property and supplies shall be and is hereby assumed by Lessee.

16. MECHANICS LIENS

16.1 PROHIBITION AGAINST MECHANICS LIENS

16.1.1 Lessee shall not suffer or permit to be enforced against the leased premises, or any part thereof, any mechanic's, materialman's, contractor's, or subcontractor's liens arising from construction, repair, restoration, replacement, or improvements furnished at Lessee's request, or any other claim or demand created by Lessee's act or omission. The Lessee shall pay or cause to be paid all of such liens claims or demand, or in the alternative supply a bond in the amount of one and one-half times the amount of the claim, before any action is brought to enforce the same, and Lessee agrees to indemnify and hold Lessor harmless, and the leased premises free and harmless from any liability for any and all such liens, claims, and demands, and to pay Lessor's attorneys fees and all costs and expenses incurred by Lessor in connection therewith. Lessor shall approve all construction, repair, restoration, replacement, or improvements furnished by Lessee prior to their execution.

16.1.2 Nothing in this lease shall be deemed or construed in any way as constituting the consent or request of Lessor, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman, for the performance of any labor or the furnishing of materials for any specific improvement, alteration, or repair of or to the leased premises, any buildings or improvements thereof, or any part thereof.

No construction work, repair, restoration, replacement, or improvements shall be allowed without prior written consent of Lessor and Lessor shall have the right to post notice of non-responsibility on the premises.

17. PROPERTY INSURANCE

17.1 LESSEE TO MAINTAIN INSURANCE

17.1.1 Lessee shall provide or cause to be provided, at Lessee's own cost and expense, insurance against any and all loss or damage to Lessor's property.

17.1.2 In the event the above described insurance is secured then Lessee agrees to deliver to the Lessor a duplicate policy or policies evidencing such insurance coverage, or to furnish certificates of insurance to the Lessor, evidencing that such insurance is in effect, and renewal policies, certificates or binders evidencing the renewal thereof shall be delivered to the Lessor by the Lessee not less than thirty (30) days prior to the expiration of such policy or policies. In the event any insurance coverage or policy is canceled or reduced, the Lessee shall, within thirty (30) days after receipt of written notice from the insurance company of such cancellation or reduction in coverage, file with the Lessor a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies satisfactory to the Lessor. Any such policy shall provide that the policy shall not be canceled except upon thirty (30) days advance written notice to Lessee.

18. WORKERS' COMPENSATION INSURANCE

18.1 Lessee shall maintain in full force and effect during the term of this lease, Workers' Compensation Insurance and other employee insurance consistent with good business practices and as required by law with respect to Lessee's employees, including USL&H coverage. Evidence of such insurance coverage shall be filed with Lessor from time to time as requested. Lessee shall further maintain in full force and effect during the term of this lease, such other employee insurance as required by applicable federal and state laws.

19. INDEMNITY, LIABILITY AND OTHER INSURANCE

19.1 EXEMPTION OF LESSOR FROM LIABILITY

19.1.1 The Lessor and the Lessor's officers, agents and employees, including members of the Board of Harbor Commissioners of the San Mateo County Harbor District, shall be free from any and all liabilities and claims for damages or suits for or by reason of any death or injury to any person or persons or damages to property of any kind whatsoever, whether the person or property of Lessee, its agents or employees, Lessees, customers, contractors, or third persons, including property owned or controlled by or in the possession of the Lessor, any of its officers, agents or employees, that may in whole or in part arise from or be caused by any of the following:

- 19.1.1.1 The use, operation, maintenance or occupation of the leased property or any part thereof, or any surface areas above the leased premises;
- 19.1.1.2 The acts, omissions or negligence of Lessee, its officers, agents, employees, representatives, permittees or Lessees; or
- 19.1.1.3 The failure of Lessee to observe and comply with any of the terms or conditions of this lease or any applicable law, ordinance, rule or regulation.

19.1.2 Lessee shall indemnify, relieve, protect, defend and save harmless the Lessor and each of its officers, members of the governing body of Lessor, and employees from such liability and claims arising during the lease term and during any periods of occupancy by Lessee, or during any periods of holding over by Lessee, its agents, officers, employees or permittees beyond that expiration or other termination of this lease.

19.1.3 Lessor shall be named as an additional insured on all insurance policies of Lessee which are taken out under this Lease Agreement.

20. DAMAGE OR DESTRUCTION

20.1 DESTRUCTION DUE TO RISK COVERED BY INSURANCE

20.1.1 If a total destruction (the rendering totally unusable fifty percent (50%), or more of Lessee's improvements on the leased premises), or a partial destruction [less than fifty percent (50%)] occurs to Lessee-owned improvements, the loss is covered by the insurance described in this lease, Lessee shall within ninety (90) days thereafter commence and diligently prosecute the repair, restoration, or replacement such that the completed work, which may be different in design, shall be equal in value, quality and use to the condition of the improvements before the event giving rise to the work.

20.2 DESTRUCTION DUE TO RISK NOT COVERED BY INSURANCE

If any of the Lessee-owned improvements are damaged or destroyed by any casualty not covered by the insurance provisions of this lease and if the leased premises are hereby rendered unfit for the uses prescribed herein, Lessee shall have the option of clearing the land and returning it as it was at any time of the inception of this lease, in which event Lessee may terminate this lease, or of rebuilding the structure(s) in such a way that it would be comparable in use and value (but not necessarily design- to the structure(s) which had existed prior to the casualty.

21. DEFAULT AND REMEDIES

21.1 DEFAULT OF LESSEE

21.1.1 The Lessee has until March 31, 1999, to acquire and obtain all required permits for the operation and conduct of business associated with this lease. In the event permits are not obtained by this date, Lessee shall be relieved from this lease without any remedy owed to Lessor.

21.1.2 The Lessor may, at its option and without limiting Lessee in the exercise of any other right or remedy the Lessor may have on account of a default or breach by Lessee, exercise the right and remedies specified herein if:

21.1.2.1 The Lessee defaults in the payment of any money agreed to be paid by Lessee to the Lessee, for lease rent or otherwise, or to be paid by Lessee for taxes and utilities or for any other purpose under this lease, and if such default continues for thirty (30) days after written notice by the Lessor to the Lessee;

21.1.2.2 The Lessee defaults in the performance of any other of its agreements, conditions, or covenants under this lease and such default is not corrected as soon as practicable to do so, in no event more than thirty (30) days, after written notice thereof;

21.1.2.3 Lessee has not reinstated or otherwise replaced any insurance coverage, required under this agreement, that is canceled or not renewed prior to the earlier of: (a) lapse of the insurance coverage; or (b) twenty (20) days after written notice from Lessor.

21.2 REMEDIES ON DEFAULT

21.2.1 On any breach, or default, the Lessor may exercise any of the following rights after the periods of time stated in the foregoing section.

21.2.1.1 Lessor can continue this lease in full force and effect, and the lease will continue in effect as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect lease rent when due. No act by Lessor allowed by this paragraph shall terminate this lease unless Lessor notifies Lessee that Lessor elects to terminate this lease.

21.2.1.2 Lessor can terminate Lessee's right to possession of the premises at any time Lessee is in default. No act by Lessor other than giving notice to Lessee shall terminate this lease.

21.3 NO WAIVER OF DEFAULT:

21.3.1 The Lessor's failure to take advantage of any default or breach of covenant or agreement on the part of Lessee during the lease term or during any previous dealings between the parties shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may be established between the parties hereto in the course of administering this lease be construed to waive or to lessen the right of the Lessee to insist upon the performance by Lessee of any term, covenant, or condition hereof, or to exercise any rights given Lessor on account of any such default. A waiver of the particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of lease rent hereunder shall not be, or be construed to be a waiver of any term, covenant, or condition of this lease.

21.4 REMEDIES AND CUMULATIVE:

21.4.1 The rights, powers, elections, and remedies of the Lessor contained in this lease shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair the Lessor's right to exercise any other.

22. SURRENDER AND REMOVAL

22.1 Ten (10) days after the expiration of the term of this lease or any earlier termination thereof, Lessee shall surrender to Lessor possession of the leased premises.

22.2 Upon expiration of this lease, or any earlier termination, Lessee may remove, or cause to be removed, all of Lessee's movable structures, trade fixtures, docks, rafts, machinery, equipment, and other personal property placed or installed on the leased premises. Any of said property, including any structure or building that Lessee may construct or install, that is not removed from said premises by expiration of the lease term shall belong to Lessor without the payment of any consideration.

22.3 Notwithstanding language in the preceding subsection, if Lessor shall terminate this lease agreement pursuant to provisions herein prior to the natural expiration of the lease term, Lessee's property shall not automatically belong to Lessor pursuant to the above subsection until thirty (30) days after termination of the leasehold interest. During the thirty (30) days, Lessee shall be allowed reasonable access to remove his property. Nothing in this lease shall in any way be construed to limit the Lessor's rights under law to seek a Writ of Attachment or other legal measures to enforce any rights it might have against said property as a result of any amount that Lessee may owe Lessor at that time.

23. ENVIRONMENTAL PROTECTION PROVISIONS

23.1 In addition to all other duties and obligations imposed upon Lessee by this lease with respect to care and maintenance of the leased premises, and the conduct of Lessee's business thereon, Lessee, by signing this lease agreement, further expressly covenants and agrees to comply with all applicable provisions of and amendments to governmental laws and regulations related to environmental protection, including any laws or regulations that may impose requirements upon the San Mateo County Harbor District as a governmental agency.

24. NONDISCRIMINATION

24.1 Lessee covenants and agrees for itself and for its successors and assigns that, in the use and occupancy of the leased area, property and premises and in the conduct and operation of Lessee's business, it shall not enter into any agreement which would restrict the leased area or any part thereof or the leasehold interest therein or Lessee's business, upon the basis of race, sex, religion, color, creed, national origin, or ancestry in the use and occupancy of the leased area, property, and premises or in the conduct and operation of Lessee's business.

24.2 Lessee further covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, age, sex national origin, or ancestry in the use, occupancy, tenure, or enjoyment of the leased area and premises and property herein leased; nor in the operation of Lessee's business thereon; nor shall the Lessee itself or any person claiming under or through the Lessee establish or permit any such practice or practices of discrimination in the use, occupancy, tenure, or enjoyment of the leased area and premises, or in the conduct or operation of Lessee's business; nor shall the Lessee itself, or any person claiming under or through the Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection of Lessee's employees with respect to the use, occupancy and enjoyment of the leased premises, or in the conduct and operation of Lessee's business on the leased property and premises.

24.3 Lessee further agrees that the leased premises shall be open, to the extent the leased premises and Lessee's facilities thereon are open to the public, to all persons without discrimination on the basis of race, color, creed, age, sex, national origin, or ancestry, and there shall be no discrimination in public access and use of the leased area and premises or Lessee's business to the extent that it is open to the public.

25. ARBITRATION

25.1 If any question, dispute, controversy, or misunderstanding arises under or in connection with this lease, other than disputes with respect to the payment of lease rent, and Lessor and the Lessee cannot agree, then such questions, dispute, controversy, or misunderstanding shall on written request of one party served on the other be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 et seq., as then in effect, of the California Code of Civil Procedure.

25.2 The parties may agree upon one arbitrator, but in the event that they cannot agree, there shall be three, one named in writing by each of the parties within five (5) days after demand for arbitration is given with notice of such appointment to the other party and a third chosen by the two appointed.

25.3 If the two arbitrators fail to select a third arbitrator within ten (10) days of their appointment, upon application of either party, the third arbitrator shall be promptly appointed by the then presiding Judge of the Superior Court of the State of California in and for the County of San Mateo, acting in his individual and not official capacity. The party making such application to such Judge shall give the other party to this lease five (5) days notice of his application.

25.4 The arbitrators shall proceed with due dispatch. If there is only one arbitrator, his decision shall be binding and conclusive on the parties. The decision of any two of the three arbitrators shall be binding, final, and conclusive on the parties to this lease. Such decision shall be in writing and delivered to the parties, and shall be in such form that a judgment may be entered on the decision in the Superior Court of the State of California in and for the County of San Mateo.

25.5 If either party fails to appoint an arbitrator as provided by this Section, then such arbitrator not so appointed shall be appointed by the presiding Judge of the Superior Court of the State of California in and for the County of San Mateo.

25.6 The expense of any such arbitration shall be borne in equal amounts by Lessor and Lessee.

25.7 In the event the subject matter of the arbitration involves any payments by Lessee then such payments shall be paid by Lessee when due but Lessee shall have the right to have such dispute or question resolved by arbitration pursuant to the foregoing provisions of this section.

26. PARTIAL INVALIDITY

26.1 If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

26.2 Lessor and Lessee enter into this agreement in the belief and with the expectation that Lessor is fully authorized and empowered to hire out the leased premises for the purposes, and under the terms, set forth herein. If for any reason Lessor is not, or during the term or any extension provided herein is no longer, authorized to continue the lease substantially as provided herein, Lessor may terminate this agreement without penalty. Lessee may not terminate this agreement without penalty.

27. RELATIONSHIP OF THE LESSOR AND LESSEE:

27.1 Nothing contained in this lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the Lessor and the Lessee, and neither the method of computation of lease rent nor any other provisions contained in this lease nor any acts of the parties shall be deemed to create any relationship between the Lessor and Lessee, other than the relationship of Lessor and Lessee.

28. INTERPRETATION AND DEFINITIONS:

28.1 The language in all parts of this lease shall in all cases be simply construed according to its fair meaning and not strictly for or against lessor or lessee, unless otherwise provided in this lease. Unless the context otherwise requires, the following definitions and rules of construction shall apply to this lease:

28.1.1 Number and Gender. In this lease the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes corporation, partnership, firm, or association wherever the context so requires.

28.1.2 Mandatory and Permissive. "Shall," "Will," and "Agrees" are mandatory, "May" is permissive.

28.1.3 Captions. Captions of the articles, sections, and paragraphs of this lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this lease.

28.1.4 Term Includes Extensions. All references to the "term" of this lease or the lease term shall include any extensions of such term

28.1.5 Parties. Parties shall include the lessor and lessee named in this lease.

28.1.6 Sublessee. As used herein, the word "sublessee" shall mean and include in addition to a sublessor and sublessee, a lessee, concessionaire, or other occupant or user of any portion of the leased premises or buildings or improvements thereon.

29. ATTORNEY' S FEES:

29.1 In the case of arbitration, the prevailing party shall be entitled to attorney's fees as determined by the arbitrators.

30. MODIFICATION

30.1 This lease may be modified only by written agreement by the Lessee and Lessor's Board of Harbor Commissioners.

31. FINAL APPROVAL

31.1 Approval of this lease shall be subject to final approval by the California Department of Boating and Waterways, or its successor; and approval of this lease by the District shall become final only after the Lease has been approved by said Department pursuant to the applicable provisions of the Harbors and Navigation Code.

32. NOTICES AND PAYMENTS

32.1 All notices, payments, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, and any other communications required under this lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by Certified Mail, Return Receipt Requested, postage prepaid, and addressed as follows:

32.1.1 All notices and payments to District shall be given or mailed to:

General Manager
San Mateo County Harbor District
One Johnson Pier
P.O. Box 39
El Granada, CA 94018

32.1.2 All notices and payments to Lessee shall be given or mailed to:

Mr. Keet Nerhan
KN Properties
P.O. Box 158
Half Moon Bay, CA 94019

32.2 Either party may designate a different address by giving notice as set forth in this section.

32.3 All notices and communications referred to herein shall be deemed given on the date of service, if served personally; or on the date of delivery if such delivery is documented by a certified mail receipt; or the fifth day following date of mailing, if utilizing ordinary, first class mail.

32.4 If Lessee is not a resident of the County of San Mateo or is an association or partnership without a member or partner resident of said county, or is a foreign corporation, Lessee shall file with District a designation of agent, who must reside in San Mateo County. Said designation shall include the name, residence and business address of the agent, and shall designate the person as an agent of Lessee for the service of process in any court action between Lessee or Encumbrance Holder and District, arising out of or based on this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

33. ENTIRE AGREEMENT

This agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreement or understandings (whether oral or written) between the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

34. AGREEMENT JOINTLY PREPARED

This lease shall conclusively be presumed to have been drafted jointly by the parties hereto. This lease, consisting of twenty-three (23) pages, plus Exhibit "A", "B", "C", and "D", has been executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

Approved and executed this twelfth day of May 1998.

LESSOR:
San Mateo County Harbor District

LESSEE:
Keet Nerhan, dba
KN Properties



Peter Grenell
General Manager



Keet Nerhan
Owner

APPROVAL:

DEPARTMENT OF BOATING AND WATERWAYS:

Don Waltz

Date

AMENDMENT TO LEASE AGREEMENT

BETWEEN SAN MATEO COUNTY HARBOR DISTRICT AND KEET NERHAN dba RV LOT

Paragraphs 6.3 and 6.4, are amended as follows, pursuant to Resolution 36 — 99 adopted by the Board of Harbor Commissioners on November 17, 1999:

6.3 PERCENTAGE RENT

6.3.1 Shall read as follows: Percentage rent for the demised premises shall be three percent (3%) of total gross receipts from business operations conducted on or from the demised premises and be adjusted in accordance with the provisions of the Lease General Conditions.

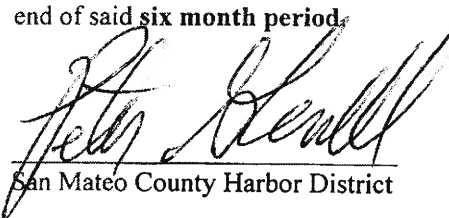
Lessee shall pay the percentage rent to Lessor if the percentage rent exceeds the minimum annual rent **calculated at the conclusion of every six (6) months of the calendar year.** In any case, the minimum annual rent shall be the minimum paid to Lessor. Lessor shall make the adjustment to Lessee's account at the conclusion of the calendar year.

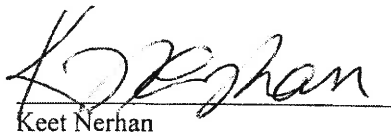
6.4 DUE AND PAYABLE

6.4.1 Minimum annual rent (adjusted or unadjusted) shall be due and payable in advance, in equal monthly installments, on or before the first day of each month for the term of this Lease.

6.4.2 Percentage rents shall be payable as follows:

6.4.2.1 Shall read as follows: At the end of each **six month period**, i.e. June 30 and December 31, percentage rentals shall be computed for the prior **six month period** and the differences between the minimum annual rent for said **six month period** shall be due and payable on the 30th day following the end of said **six month period**.


San Mateo County Harbor District 1/26/00
Date


Keet Nerhan 1/26/00
Date

**AMENDMENT TO AGREEMENT GRANTING RIGHT TO
NEGOTIATE LEASE**

Pursuant to Paragraph 13 of the Agreement between The Harbor District and KN Properties, the Harbor District hereby extends the period of exclusive negotiations for a period not to exceed 90 days from the date of expiration of this Agreement.

SAN MATEO COUNTY HARBOR DISTRICT

KEET NERHAN, doing business as
KN Properties

BY P. Parravano
Pietro Parravano, President

BY Keet Nerhan
Keet Nerhan

ATTESTED Beverly Fontana
Beverly Fontana, Deputy Secretary

AMENDMENT TO LEASE AGREEMENT

**BETWEEN SAN MATEO COUNTY HARBOR DISTRICT AND
KEET NERHAN dba RV LOT**

Paragraphs 6.3 and 6.4, are amended as follows, pursuant to Resolution 36 — 99 adopted by the Board of Harbor Commissioners on November 17, 1999:

6.3 PERCENTAGE RENT

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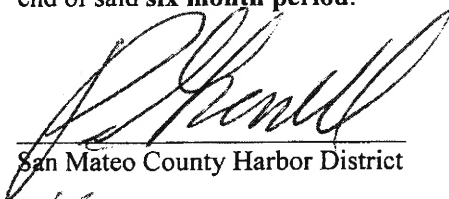
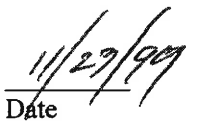
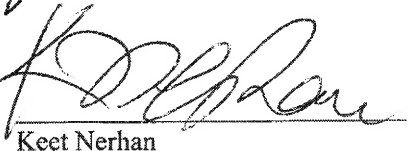
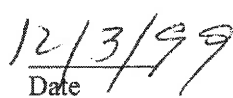
Lessee shall pay the percentage rent to Lessor if the percentage rent exceeds the minimum annual rent **calculated** at the conclusion of **every six (6) months of the** calendar year. In any case, the minimum annual rent shall be the minimum paid to Lessor. Lessor shall make the adjustment to Lessee's account at the conclusion of the calendar year.

6.4 DUE AND PAYABLE

6.4.1 Minimum annual rent (adjusted or unadjusted) shall be due and payable in advance, in equal monthly installments, on or before the first day of each month for the term of this Lease.

6.4.2 Percentage rents shall be payable as follows:

6.4.2.1 Shall read as follows: At the end of each **six month period**, i.e. June 30 and December 31, percentage rentals shall be computed for the prior **six month period** and the differences between the minimum annual rent for said **six month period** shall be due and payable on the 30th day following the end of said **six month period**.

 San Mateo County Harbor District	 Date
 Keet Nerhan	 Date



Resolution 36 — 99

Approving Amendment to Lease with Keet Nerhan d.b.a. KN Properties and the San Mateo County Harbor District

Therefore, be it resolved by the Board of Harbor Commissioners that the Third Amendments to the Lease between the San Mateo County Harbor District and Keet Nerhan d.b.a. KN Properties, a copy of which is attached hereto and by this reference made a part hereof is hereby approved, and the General Manager is authorized to sign the same on behalf of the San Mateo County Harbor District.

Approved this seventeenth day of November 1999 at a regular meeting of the Board of Harbor Commissioners by a Recorded vote as follows:

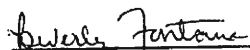
For: Parravano, Campbell, Tucker, Padreddii, Lundie


Against: None

Absent: None

Attested

BOARD OF HARBOR COMMISSIONERS


Beverly Fontana
Deputy Secretary


Pietro Parravano
President

COASTAL CONSERVANCY

Staff Recommendation
October 17, 2019

**PRIORITY CONSERVATION AREA GRANT PROGRAM
ROUND 2**

Project Manager: Brenda Buxton

RECOMMENDED ACTION: Recommend to the Metropolitan Transportation Commission that sixteen resource protection and public access projects be included in the Priority Conservation Area Grant Program.

LOCATION: Counties of Alameda, Contra Costa, Santa Clara, San Mateo, and San Francisco

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

Exhibit 1: [Project Location Map](#)

Exhibit 2: [Priority Conservation Area Grant Program Call for Proposals](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Section 31160-31165 of the Public Resources Code:

“The State Coastal Conservancy hereby recommends to the Metropolitan Transportation Commission that the following projects (in geographic order) and recommended grant amounts totaling \$7,397,000 be included in the Priority Conservation Area Grant Program:

1. One million dollars (\$1,000,000) to the City of Richmond to construct a 1.25-mile, Class 1 segment of the San Francisco Bay Trail connecting Point Molate Beach Park to the Winehaven Historic District in Contra Costa County.
2. One million dollars (\$1,000,000) to East Bay Regional Park District to construct a 1.25-mile, Class 1 segment of the San Francisco Bay Trail connecting the Richmond-San Rafael Bridge to Point Molate Beach Park in Contra Costa County.
3. Nine hundred fifty thousand dollars (\$950,000) to the John Muir Land Trust for construction of trails, bridges, overlooks and other public access amenities as part of the Pacheco Marsh (Lower Walnut Creek) Restoration Project in Contra Costa County.

4. Four hundred thousand dollars (\$400,000) to the City of Livermore to complete an existing 1.4-mile gap in the Arroyo Road Trail in Alameda County.
5. Three hundred twenty-one thousand dollars (\$321,000) to Alameda County to prepare preliminary engineering and a programmatic environmental impact report for the Niles Canyon Trail Project which will include a project-level analysis for Phase 1 (the 1.8 miles from Niles to Palomares Road) in Alameda County.
6. Two hundred fifty-one thousand dollars (\$251,000) to the City of Albany to implement the Albany Hill Access Improvements Project, which will complete a new 480-foot trail to the summit, improve existing trails, provide access amenities such as log seating, bike racks, and a foot bridge over El Cerrito Creek, provide ADA parking, and remove non-native trees to improve butterfly habitat in Alameda County.
7. One million dollars (\$1,000,000) to the Santa Clara Valley Open Space Authority to acquire the Tilton Ranch in Santa Clara County.
8. Four hundred thousand dollars (\$400,000) to the Santa Clara Valley Open Space Authority to prepare final designs, obtain permits, and construct trailhead facilities including bike and vehicle parking, a restroom, an interpretive/educational station, signage, overlooks and other amenities serving the 6.8-mile trail network on the Coyote Ridge Open Space Preserve in Santa Clara County.
9. Three hundred seventy-nine thousand dollars (\$379,000) to Point Blue Conservation Science to restore a three-quarter linear mile of stream habitat and provide hands-on environmental education opportunities to over 1,000 students and community members in the Pajaro River watershed in Santa Clara County.
10. Two hundred twenty-three thousand dollars (\$223,000) to the City of San Jose to advance two trail planning and design projects as follows: \$140,000 for the Singleton Road Crossing 65% design plans and \$83,000 for a master plan of a 1.4-mile former railway route now called the Five Wounds Trail in Santa Clara County.
11. Five hundred twenty thousand dollars (\$520,000) to the City of Menlo Park to improve the existing San Francisco Bay Trail segment to separate it from the entrance road, reconstruct the park entrance to improve visibility as well as make the park more resilient to sea level rise, and improve the stormwater runoff water quality at Bedwell Bayfront Park in San Mateo County.
12. Two hundred ninety-eight thousand (\$298,000) to the City of Half Moon Bay to construct a restroom, parking, and other amenities to serve the Coastal Trail and Surfer's Beach in San Mateo County.
13. One hundred fifty-one thousand dollars (\$151,000) to Midpeninsula Regional Open Space District to refine the alignment, to evaluate potential parking areas and the Highway 1 crossing, and to conduct stakeholder outreach for eventual construction of the Purisima-to-the-Sea Trail and Parking Area Project in San Mateo County.

14. Two hundred thousand dollars (\$200,000) to the Golden Gate National Parks Conservancy for the community engagement element of the National Park Service's Rancho Corral de Tierra Ranch Unit Plan in San Mateo County.
15. One hundred ninety-four thousand dollars (\$194,000) to the City of San Francisco to prepare a concept plan and preliminary designs for improved pedestrian and bike connections to McLaren Park in San Francisco County.
16. One hundred ten thousand dollars (\$110,000) to the City of South San Francisco to conduct the Colma Creek Adaptation Study which will assess the feasibility of creek restoration, sea-level rise adaptation, flood management, and improved public access along the creek and to the Bay and Bay Trail."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

The proposed authorization is consistent with Section Chapter 4.5 of Division 21 of the Public Resources Code, regarding the Conservancy's authority to address the potential impacts of climate change and the resource and recreational goals of the San Francisco Bay Area Conservancy Program."

PROJECT SUMMARY:

Conservancy staff requests that the Conservancy recommend sixteen projects (see Exhibit 1 for locations) for inclusion in the Priority Conservation Area (PCA) Grant Program, a program of the Metropolitan Transportation Commission (MTC). If MTC accepts the Conservancy's recommendation, MTC and the Conservancy will consider authorizing grants for these projects in accordance with their respective grant processes. This recommendation to MTC does not commit the Conservancy to funding any of these projects, but it indicates that at a future date, the Conservancy will consider funding several of these projects. The basis for recommending these 16 projects for inclusion in the PCA Grant Program is that each project will help further the goals of San Francisco Bay Area Conservancy Program.

The purpose of the recommended projects is to acquire, enhance, or improve open space areas identified as PCAs in Plan Bay Area 2040. PCAs are areas through-out the Bay Area that provide agricultural, natural resource, scenic, recreational, public health and/or ecological values and ecosystem functions. PCAs were identified through a public planning effort that involved many Bay Area agencies, including the Conservancy. Plan Bay Area 2040 is the integrated long-range transportation and land-use plan for the San Francisco Bay Area. Administration of the PCA Grant Program in the North Bay counties (Marin, Napa, Solano, and Sonoma counties) is via their respective Congestion Management agencies. This staff recommendation focuses on the remaining Bay Area Counties (Alameda, Contra Costa, San Francisco, San Mateo, and Santa Clara Counties), for which the PCA Grant Program is anticipated to be jointly funded by both the

Conservancy and the MTC. The Conservancy is working with MTC to implement this program because it furthers the San Francisco Bay Area Conservancy Program statutory goals of addressing the Bay Area's resource and recreational goals in a coordinated, comprehensive, and effective way.

The PCA Grant Program was initiated by MTC in 2013 to provide funding to cities, counties, park districts, utility districts, and other agencies and non-profits to acquire, enhance, or improve designated PCAs. MTC has sought to take advantage of the Conservancy's expertise in funding projects that enhance or improve open space resources by requesting that the Conservancy recommend projects for inclusion in the program. In 2014, the Conservancy recommended 13 resource protection and public access projects for inclusion in the PCA Grant Program. MTC subsequently provided \$4,500,000 in federal transportation funds for these projects and the Conservancy provided \$2,450,000 in state bond funds.

For this phase of the program, MTC has made \$8,200,000 million available and Conservancy staff has agreed to recommend that the Conservancy disburse up to \$1,800,000 million, contingent upon the Conservancy's future authorization of funding for individual projects. A call for proposals to be funded through the PCA grant program (Exhibit 2) was widely distributed on January 7, 2019, followed by two February public workshops for potential applicants. Letters of interest were due on February 25th and a total of 37 project ideas were submitted requesting over \$19 million in grant funding. Conservancy and MTC staff reviewed the letters and invited full proposals for 26 projects that most closely met the guidelines in the call for proposal. Twenty full proposals were received requesting approximately \$9.8 million in funds; five applicants decided not to submit full proposals for various reasons, and one applicant combined its two proposals. Conservancy, MTC, and ABAG staff reviewed the full proposals and recommend 16 projects (originally 17 but the two San Jose trail planning projects have been combined) for inclusion in the grant program, for a total of nearly \$7.4 million in potential grant funding. Three projects were determined to not meet the eligibility requirements. Conservancy and MTC staff anticipate having an additional grant round for the balance of the funds from this second grant round. A map of the local of all sixteen recommended projects is attached as Exhibit 1.

In addition, based upon available funding, Conservancy priorities, and project management needs, Conservancy staff and MTC staff have tentatively divided the projects between MTC and the Conservancy for future funding consideration. Thirteen projects would be considered for funding solely with MTC's local revenues or federal transportation dollars and three projects would be considered for funding solely with the Conservancy's state bond dollars. All sixteen projects should be viewed as a package, however, implementing the goals of the Conservancy and MTC, with a mix of public access and trail improvements (with a strong focus on the Bay Trail and Ridge Trail), open space protection, and natural resource enhancement.

The 13 projects that MTC would consider for funding are below. If these projects are included in the PCA Grant Program, MTC will review and possibly approve grants for the projects. MTC staff will work with grantees to ensure the projects meet the requirements of the federal and state transportation funds.

1. One million dollars (\$1,000,000) to East Bay Regional Park District to construct a 1.25-mile, Class 1 segment of the San Francisco Bay Trail connecting the Richmond-San Rafael Bridge to Point Molate Beach Park in Contra Costa County.
2. Nine hundred fifty thousand dollars (\$950,000) to the John Muir Land Trust for construction of trails, bridges, overlooks and other public access amenities as part of the Pacheco Marsh (Lower Walnut Creek) Restoration Project in Contra Costa County.
3. Four hundred thousand dollars (\$400,000) to the City of Livermore to complete an existing 1.4-mile gap in the Arroyo Road Trail in Alameda County.
4. Three hundred twenty-one dollars (\$321,000) to Alameda County to prepare preliminary engineering and a programmatic environmental impact report for the Niles Canyon Trail Project which will include a project-level analysis for Phase 1 (the 1.8 miles from Niles to Palomares Road) in Alameda County.
5. Two hundred fifty-one thousand ninety dollars (\$251,000) to the City of Albany to implement the Albany Hill Access Improvements Project, which will complete a new 480-foot trail to the summit, improve existing trails, provide access amenities such as log seating, bike racks, and a foot bridge over El Cerrito Creek, provide ADA parking, and remove non-native trees to improve butterfly habitat in Alameda County.
6. One million dollars (\$1,000,000) to the Santa Clara Valley Open Space Authority to acquire the Tilton Ranch in Santa Clara County.
7. Four hundred thousand dollars (\$400,000) to the Santa Clara Valley Open Space Authority to prepare final design, obtain permits, and construct trailhead facilities including bike and vehicle parking, a restroom, an interpretive/educational station, signage, overlooks and other amenities serving the 6.8 mile trail network on the Coyote Ridge Open Space Preserve in Santa Clara County.
8. Three hundred seventy-nine thousand three hundred ninety-four dollars (\$379,000) to Point Blue Conservation Science to restore three-quarter linear mile of stream habitat and provide hands-on environmental education opportunities to over 1,000 students and community members in the Pajaro River watershed in Santa Clara County.
9. Five hundred twenty thousand dollars (\$520,000) to the City of Menlo Park to improve the existing San Francisco Bay Trail segment to separate it from the entrance road, reconstruct the park entrance to improve visibility as well as make the park more resilient to sea level rise, and improve the stormwater runoff water quality at Bedwell Bayfront Park in San Mateo County.
10. Two hundred ninety-eight thousand (\$298,000) to the City of Half Moon Bay to construct a restroom, parking, and other amenities to serve the Coastal Trail and Surfer's Beach in San Mateo County.
11. Two hundred thousand dollars (\$200,000) to the Golden Gate National Parks Conservancy for the community engagement element of the National Park Service's Rancho Corral de Tierra Ranch Unit Plan in San Mateo County.

12. One hundred ninety-four thousand dollars (\$194,000) to the City of San Francisco to prepare a concept plan and designs for improved pedestrian and bike connections to McLaren Park in San Francisco County.
13. One hundred ten thousand dollars (\$110,000) to the City of South San Francisco to conduct the Colma Creek Adaptation Study which will assess the feasibility of creek restoration, sea-level rise adaptation, flood management, and improved public access along the creek and to the Bay and Bay Trail in San Mateo County.

MTC and Conservancy staff identified three projects that best met the Conservancy’s selection criteria and strategic plan objectives and would be the most suitable for direct Conservancy funding. The three projects listed below will be presented to the Conservancy for future funding authorization in staff recommendations that will describe the projects in greater detail; describe consistency with enabling legislation, strategic plan objectives, and project selection criteria; and include CEQA findings.

1. One million dollars (\$1,000,000) to the City of Richmond to construct a 1.25-mile, Class 1 segment of the San Francisco Bay Trail connecting Point Molate Beach Park to the Winehaven Historic District in Contra Costa County.
2. One hundred forty thousand dollars (\$140,000) to Midpeninsula Regional Open Space District to refine the alignment, to evaluate potential parking areas and the Highway 1 crossing, and to conduct stakeholder outreach for eventual construction of the Purisima-to-the-Sea Trail and Parking Area Project in San Mateo County.
3. Two hundred twenty-three thousand dollars (\$223,000) to the City of San Jose to advance two trail planning and design projects as follows: \$140,000 for the Singleton Road Crossing 65% design plans and \$83,000 for a master plan of a 1.4-mile former railway route now called the Five Wounds Trail in Santa Clara County.

Conservancy staff will provide this resolution, if approved, to the MTC for consideration in November 2019. If the recommended projects are included within the PCA Grant Program, MTC will likely commence its grant processes in November 2019, and MTC could potentially provide funds to grantees in December 2019 and early 2020. Conservancy staff anticipates that it will present funding recommendations for PCA Grant Program projects to the Conservancy starting in December 2019 and early 2020.

PROJECT FINANCING

Coastal Conservancy	\$1,374,000
Metropolitan Transportation Commission	\$6,023,000
Grantee Matching Funds	\$14,794,000
Project Total	\$22,191,000

The anticipated sources of Conservancy funding for PCA Grant Program projects (to be authorized in subsequent Conservancy actions) are FY17 and FY19 appropriations of “Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006” (Proposition 84); and FY18 and FY19 appropriations to the Conservancy from the “California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018” (Proposition 68, Public Resources Code Division 45, Chapters 1-13, Sections 80000-80173).

Proposition 84 funds are available for San Francisco Bay Area Conservancy Program projects consistent with Public Resources Code, Division 21, Chapter 4.5. Participation in the PCA Grant Program leverages Conservancy funding and enables the Conservancy to “address the resource and recreational goals of the San Francisco Bay area...in a coordinated, comprehensive, and effective way” (Section 31160).

Proposition 68 allocates funds for projects that enhance and protect coast and ocean resources including projects that are consistent with the purposes of the San Francisco Bay Area Conservancy Program at Division 21 of the Public Resources Code. (Pub. Res. Code sections 80120(d)). As defined by Proposition 68, the term “protection” includes actions that will improve access to public open-space areas and actions to allow the continued use and enjoyment of property and natural, cultural, and historic resources. (Section 80002(l)). Thus, Proposition 68 can be used for proposed trail projects that are consistent with the San Francisco Bay Area Conservancy Program and that will improve public access to, and enjoyment of, San Francisco Bay.

Proposition 68 requires that at least 15% of the total funds available under Chapter 9 be used for projects that serve severely disadvantaged communities (SDACs), defined as a community with a median household income less than 60 percent of the statewide average. (Sections 80002(n) and 80008(a)(2)). As stated in funding guidelines for expenditure of Proposition 68 adopted by the Conservancy on December 6, 2018 (“Guidelines;” See Pub. Res. Code section 80010), the Conservancy interprets “serving” an SDAC to mean the project is located within an SDAC, located within a mile of an SDAC, or provides other benefits to an SDAC. Upon detailed project review, it is anticipated that some of the proposed projects may serve an SDAC.

MTC’s funding totals \$6,023,000 million for 13 projects and is derived from local revenues provided through MTC’s regional exchange program. In addition, federal transportation funding may be provided to qualified projects. PCA projects receiving federal transportation funds will work with Caltrans’ Local Assistance Program to access and meet the requirements of those funds. MTC will work with PCA project sponsors to determine the appropriate source of funding.

MTC and the Conservancy required a 2:1 minimum match requirement for PCA grant program funds, with any non-PCA funding being an eligible source of match, including Conservancy funds provided outside of this PCA grant program. For any project using federal funds, there is also a requirement that at least 11.47 percent of total project costs be funded by non-federal sources. Both of these minimum match requirements have been met by the grantees and have resulted

in a highly leveraged grant program, with a total of nearly \$15 million in matching funds applied to the sixteen projects funded by the Conservancy and MTC.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The recommended projects for the PCA Grant Round 2 will help achieve the Conservancy’s goals for the nine-county San Francisco Bay Area as set forth in Sections 31160-31165 of the Public Resources Code for the following reasons:

The majority of the PCA projects are primarily either planning or implementation projects that will create or enhance public access, such as through the San Francisco Bay Trail or Bay Area Ridge Trail. These projects will help achieve two of the Conservancy’s goals under Section 31162. These two goals are to improve public access to, within, and around the bay, coast, ridgetops, and urban open spaces, consistent with the rights of private property owners, and without having a significant adverse impact on agricultural operations and environmentally sensitive areas and wildlife; and to promote, assist, and enhance projects that provide open space and natural areas that are accessible to urban populations for recreational and educational purposes. The proposed public access planning or construction projects are located entirely within the nine-county San Francisco Bay Area and are consistent with the rights of private property owners because the improvements are on publicly owned lands. The projects will improve public access to and around the bay and several will provide access to open space and natural areas. Thus, the public access projects will directly accomplish the two goals or, in the case of planning projects, makes significant progress in the planning and design stage that proceeds construction.

Another project, the Pajaro River watershed project will restore riparian habitat as part of a hands-on environmental education program. This will help achieve the Section 31162 goal to protect, restore, and enhance natural habitats and connecting corridors, watersheds, scenic areas, and other open-space resources of regional importance. In addition, two of the public access projects will incorporate habitat improvements into the project. The Coyote Creek Singleton Crossing project will not only improve access by designing a stream crossing removal – it will take out a barrier for migrating anadromous fish in Coyote Creek. The Albany Hill public access improvements will also include selective removal of non-native trees to expand and improve monarch butterfly habitat.

The acquisition of Tilton Ranch will accomplish several of the goals identified in Section 31162. The acquisition will preserve the habitat and wildlife corridors in the highly threatened Coyote Valley and eventually create a new park that is accessible to adjacent urban populations.

The Colma Creek planning project is also consistent with Section 31162 goals. This project seeks to assess the feasibility of restoring or improving habitat and public access along Colma Creek in South San Francisco in order to enhance the open space resources for the community and to enable the creek corridor to better withstand the impacts of sea-level rise and climate change.

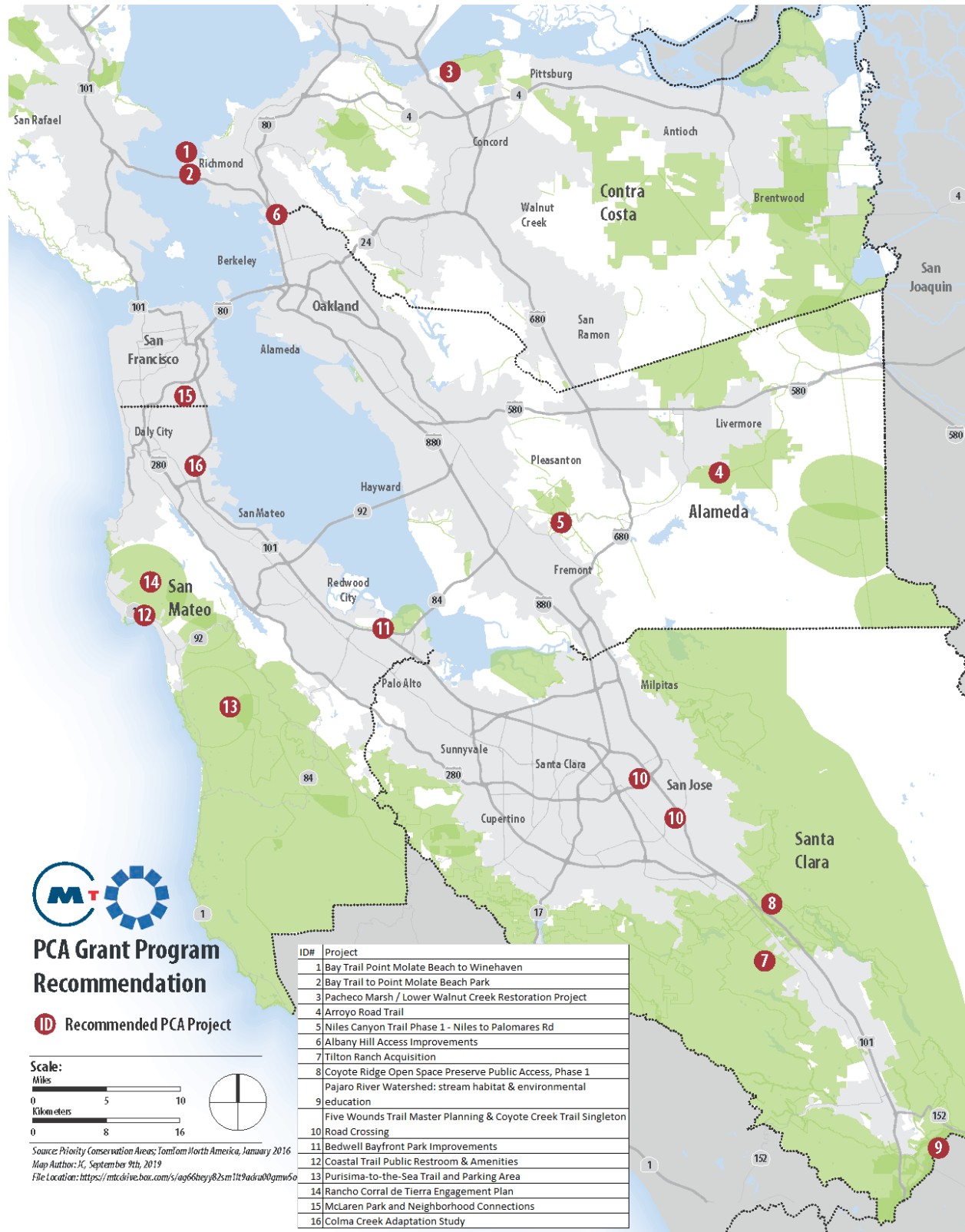
Finally, the proposed projects are appropriate for prioritization under the selection criteria set forth in Section 31163(c) for the following reasons:

- (1) All of the proposed projects are supported by adopted local and regional plans. In the grant application, each project was required to identify local plans and policies in order to be eligible.
- (2) The proposed projects serve regional constituencies by enhancing Priority Conservation Areas, which are resources of regional significance in the nine counties of the San Francisco Bay Area.
- (3) The proposed projects can be implemented in a timely manner. Applicants have demonstrated that their projects can be commenced immediately after funding and can be completed within three years.
- (4) The proposed projects provide benefits that could be lost if the project is not quickly implemented.
- (5) The proposed projects leverage matching fund since the applicants met the 2:1 matching requirement.

CEQA COMPLIANCE:

The proposed resolution recommends projects for inclusion in a grant program. The recommendation does not commit the Conservancy or MTC to fund any project and does not foreclose alternatives or mitigation measures for any particular project. CEQA review will occur before MTC or the Conservancy authorizes funding for any particular project. Therefore, considering the balancing described in the CEQA Guidelines at California Code of Regulations, title 14, section 15004, it is appropriate to undertake CEQA compliance at the time of a decision to fund a project rather than at the time of this recommendation.

Exhibit 1 Recommended PCA Grant Project Locations



Plan
Bay Area
2040

Bay Area Priority Conservation Area Grant Program
2019 Competitive Grants Guidelines and Call for Proposals



Photo: Noah Berger



In cooperation with

ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION

The State Coastal Conservancy (SCC), in cooperation with the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), is pleased to issue a call for proposals focused on the Bay Area's Priority Conservation Areas.



The SCC is a state agency with a vision of a beautiful, restored, and accessible coast for current and future generations of Californians. The San Francisco Bay Area Conservancy is a program of the SCC focused on protecting regionally-significant lands, restoring habitats for wildlife, providing regional trails, and connecting urban populations to natural areas.

MTC is the transportation planning, financing and coordinating agency for the nine-county San Francisco Bay Area. In collaboration with ABAG, MTC develops the regional long-range transportation plan and Sustainable Communities Strategy, also known as Plan Bay Area 2040.

ABAG is a council of local governments that works to strengthen cooperation and collaboration among government agencies, and to implement innovative solutions for issues involving land use, housing, climate change, earthquake and disaster resilience, and economic equity.





Photo: Karin Betts

INTRODUCTION

The Priority Conservation Area (PCA) Grant Program funded through the One Bay Area Grant (OBAG) program, was initiated by MTC in 2013 to provide funding to cities, counties, park districts, utility districts and other agencies and non-profits to acquire, enhance or improve designated PCAs.

PCAs are open spaces that provide agricultural, natural resource, scenic, recreational, public health and/or ecological values and ecosystem functions. These areas are identified through consensus by local jurisdictions and park/open space districts as lands in need of protection due to pressure from urban development or other factors. PCAs are categorized by four designations: Natural Landscapes, Agricultural Lands, Urban Greening, and Regional Recreation.

In November 2016, MTC set aside \$16.4 million within the One Bay Area Grant (OBAG 2) framework for a second round of grant funding for the PCA Program. Similar to the first round, the OBAG 2 PCA Program is split into two components:

- 1. Peninsula, Southern, and East Bay Counties Program (Alameda, Contra Costa, San Francisco, San Mateo, and Santa Clara Counties):** This program is administered by the SCC in partnership with the MTC and ABAG, and is the subject of this call for projects. MTC directed \$8.2 million in OBAG 2 PCA Program funds to this regional competitive program, combined with additional funding from SCC, for a total of up to \$10 million available.
- 2. North Bay Program (Marin, Napa, Solano, and Sonoma Counties):** This program is developed by the four North Bay county congestion management agencies to implement locally identified PCA priority projects. MTC directed \$8.2 million to the OBAG 2 North Bay PCA program, which is managed separately from this call for projects.

Plan BayArea 2040

The PCA Program is an important component of Plan Bay Area 2040, the integrated long-range transportation and land-use plan for the San Francisco Bay Area. Plan Bay Area 2040 includes the Bay Area's Regional Transportation Plan, which MTC updates every four years, and ABAG's demographic and economic forecast, which is updated every two years.

Plan Bay Area 2040's core strategy is to focus growth in existing communities along the existing transportation network. This strategy provides the best "bang for the buck" in achieving key regional economic, environmental and equity goals: it builds upon existing community characteristics, efficiently leverages existing infrastructure and mitigates impacts on areas with less development. Key to implementing the focused growth strategy are Priority Development Areas (PDAs) and Priority Conservation Areas (PCAs) which are identified, recommended, and approved by local governments.

Priority Development Areas (PDAs)

Plan Bay Area 2040 focuses growth and development in nearly 200 PDAs along the region's core transit network. These existing neighborhoods are served by public transit and have been identified as appropriate for additional compact development.

Priority Conservation Areas (PCAs)

The Plan also helps preserve over 160 regionally significant open spaces which have broad consensus for long-term protection but which face nearer-term development pressures.

PCAs and PDAs complement one another

By promoting compact development in established communities with high-quality transportation access, there is less development pressure on the region's vast and varied open spaces and agricultural lands.

ABAG manages the designation process for new PDAs and PCAs.



Photo: Karl Nielsen



Photo: Karl Nielsen



Photo: Courtesy of the Ridge Trail

Maps of PCA locations and designations are available at:

[Priority Conservation Area Maps](#)



Photo: Public Domain

CALL FOR PROPOSALS

Available Funds

MTC has provided \$8.2 million in local and federal funds for this program.¹ In addition, SCC will contribute up to \$1.8 million in state resource bond funds to augment the program, for a total of \$10 million available. Grants may range from \$100,000 to \$1 million. Grant requests greater than \$1 million will be considered on a case-by-case basis, for projects of extraordinary regional significance.

Geographic Scope

Projects must be located in the counties of Alameda, Contra Costa, San Francisco, San Mateo, or Santa Clara. Multi-county projects are allowed and encouraged.

Eligible Applicants

Local governments (cities, towns, and counties), congestion management agencies, tribes, water/utility districts, resource conservation districts, park and/or open space districts, land trusts and other land/resource protection nonprofit organizations are invited to apply.

Applicants are strongly encouraged to collaborate and partner with other entities on project applications.

Eligible Projects

Projects must consist of one or more of the following activities within, or connected to, an existing PCA:

- 1. Protection or Enhancement of Natural Resources, Open Space, or Agricultural Lands:** Acquisitions or easements of natural landscapes, habitats and ecosystems, agricultural lands, parks and open space and natural resources. Enhancements for parks and open space, staging areas, environmental facilities, or natural resources such as listed species, identified priority habitat, wildlife corridors, watersheds, or agricultural soils of importance. Land acquisition projects must involve willing sellers.

1. Up to \$8.2 million in local funds are available; however, federal transportation funds may be awarded to projects that are eligible and well-suited to receive federal transportation funding – for example, the construction of a bike/pedestrian trail.

2. Pedestrian and Bicycle Facilities: Pedestrian and bicycle trails, on-road bicycle facilities, sidewalks, bicycle infrastructure, pedestrian and bicycle signals, pedestrian and bicycle bridges, traffic calming, lighting and other safety-related infrastructure, improvements to trails to improve accessibility for people with disabilities, and conversion and use of abandoned rail corridors for pedestrians and bicyclists.

3. Urban Greening: Protection or enhancement of potential or existing green spaces in urban areas to increase habitat connectivity, improve community health, capture carbon emissions, and address stormwater.

4. Planning activities: Planning associated with the program goals: natural resource protection or enhancement, public access to open space and parklands, support for the region's agricultural economy, and provision or enhancement of urban parks and green spaces.

5. Visual Enhancements: Construction of turnouts, overlooks and viewing areas.

Screening and Evaluation Criteria

Proposed projects must meet the following criteria and will be ranked on how well they meet these criteria:

- **PCA Designation:** The project must be within, or connect to, an existing PCA. Maps of existing PCAs are available at: [Priority Conservation Area Maps](#).
- **Regional Significance:** Projects should serve a greater-than-local need. Indicators of regional significance include a project's consistency with and contribution to existing regional habitat, agricultural or open space plans (such as the Conservation Lands Network at [bayarealands.org](#)), countywide plans, bicycle/pedestrian plans, or ABAG's PCA designations.
- **Open Space Protection:** If the project does not include acquisition or easements, the project should link to, or be located in, an area protected from development by policy (e.g. zoning or urban growth boundaries) or by public land ownership. Land acquisition or easement projects for purposes of open space protection are permitted in areas without open space protection in place.





Photo: Karl Kroeber

- **Match:** There is a 2:1 minimum match requirement for PCA funds, or a 66.6% match. Matching funds can be from any non-PCA source, including federal funds, but must be applicable to the current scope proposed, and not from previous work. Applicants are encouraged to have the full match secured or pending when submitting a letter of interest; the full match must be secured by the time the grant is awarded. Match can include staff time spent on the project. Prior grant awards on fully funded project elements cannot count toward the match.
- **Program Goals:** Projects need to meet one or more of the program goals:
 - Protect or enhance critical habitats, ecosystems, watersheds, and resource areas as defined in California Government Code Section 65080.01
 - Provide or enhance bicycle and pedestrian access to regional parks, trails, open spaces and recreation areas. Notable examples are the San Francisco Bay Trail and Bay Area Ridge Trail systems.
 - Protect farmland, grazing lands and timberlands or otherwise support the agricultural economy of the region.

- Provide or enhance parks and green spaces in urban areas to improve community health, increase habitat connectivity, capture carbon emissions, and address stormwater.

In addition to the criteria above, the application review committee will consider other factors in ranking projects, including quality of the proposal, cost effectiveness, partnerships, support for the project, capability of the project partners to implement the project, and geographic distribution of grant funds.

- **Fund Type Considerations:** After the evaluation, the application review committee will consider suitability of projects to receive federal, local, and/or state bond funding. Considerations for each fund source are detailed in Appendix A.

Environmental Clearance

Project sponsors are to comply with the requirements of the California Environmental Quality Act (CEQA). Additionally, projects with federal funds must also comply with applicable federal environmental requirements (National Environmental Protection Act, NEPA).

Application Timeline and Review Process

2019

January 7	Issue Call for Proposals
February	<p>Workshops for Potential Applicants</p> <p>Workshop 1 February 5, 2019, 1-3 PM, 1515 Clay St., Room 10 Oakland, CA 94612</p> <p>Workshop 2 February 7, 2019, 10 AM-12 PM 700 Alma St., Oak Room Menlo Park, CA 94025</p>
February 25	Letters of Interest Due
March	Evaluation Committee Review (MTC/SCC staff)
April 8	Invitations to Apply Sent
July 1	Full Applications Due
July / August	Evaluation Committee Review (MTC/SCC Staff) Staff recommendation for Program of Projects
October	SCC Program Action Approval of PCA Program, SCC recommendation to MTC
November	MTC Program Action Approval of PCA Program, MTC adopts MTC-funded projects
2020	
January → onward	Funds provided to sponsors on a reimbursement basis, according to availability of funds

APPLICATION PROCESS

The PCA Program follows a two-step application and evaluation process that will be overseen by an evaluation committee consisting of staff from SCC and MTC.

STEP ONE: All interested applicants must submit a Letter of Interest not to exceed three pages that includes the following:

- Identify the project title, name of applicant, project manager, and contact information.
- Name the project partners and supporters.
- Describe the proposed project, its regional significance, and how it meets the program goals and evaluation criteria.
- Describe how the project falls within at least one of the five eligible activities.
- Indicate the PCA(s) the project is in or touches.
- Describe status of CEQA and/or NEPA review.
- Identify the total cost of the project, the amount of PCA funding requested, and the amount and source of any secured and pending matching funds.



Photo: M. Bruce Grosjean

- Applicants are also asked to provide a weblink their project generated through the Bay Area Greenprint (bayareagreenprint.org). The Bay Area Greenprint brings together a wide range of conservation data through an easy-to-use tool, through which applicants will be able to download a standardized and shareable set of data that identifies and measures the existing natural characteristics of the project location and potential multiple benefits from the project. Data reported by the tool include biodiversity and habitat, agriculture, water, carbon, recreation, urban greening, hazards, and climate change.
- The Bay Area Greenprint is being tested as a potential tool to show the multiple benefits of a given project and it will be used only in an advisory role for the application process. The PCA project evaluation team may follow up with applicants to help assess the viability of using the toll in future grant opportunities. See Appendix B for further information on Bay Area Greenprint.

Does not count toward three-page limit:

- Attach a map of the project area and a photo, if appropriate (no more than two additional pages).

STEP TWO: Letters of Interest will be evaluated by an evaluation committee of SCC and MTC staff. The committee may contact applicants, as needed, for additional information, clarification, or modification. Based upon its review, the evaluation committee will select a limited number of applicants with the most promising projects and invite them to continue the

application process by submitting a more detailed proposal for further evaluation. The more formal proposal will include: Applicant Information, Project Information, Project Description, Scope of Work and Budget, Schedule, Additional Questions, GIS Shapefiles, and Maps and Photos.

Letter of Interest and Proposal Submittal

Letters of Interest and formal proposals (if invited) must be submitted electronically to the PCA Evaluation Committee at PCAgants@bayareametro.gov

Attachments to emails cannot be larger than 5 MB.

2019 Regional Workshops	
<p>SCC and MTC will host two workshops to provide prospective applicants with an overview of the PCA Program.</p>	
<p>Workshop 1 February 5, 2019 1 PM - 3 PM</p>	<p>California State Building 1515 Clay Street, Room 10, Oakland, CA 94612</p>
<p>Workshop 2 February 7, 2019 10 AM - 12 PM</p>	<p>Arrillaga Family Recreation Center 700 Alma St., Oak Room Menlo Park, CA 94025</p>



Photo: MTC Archive

Program Process and Project Delivery

The PCA Program Evaluation Committee will develop project recommendations, including the recommended fund source for each project. The SCC Board will then consider approval of the PCA Program of Projects. Projects recommended to receive MTC funding (federal or non-federal) will subsequently be approved by the MTC Commission.

Non-federal grant awards will be administered by SCC following the program approval by SCC Board and MTC. Grant awardees receiving non-federal funds will need to enter into a grant agreement with SCC, provide a board resolution authorizing execution of the grant agreement, and meet other grant conditions (provision of a workplan, budget, and schedule, proof of insurance, landowner agreements if needed, proof of permits, a sign plan, etc.).

Additional project screening for state bond-fund eligibility may be required. Following program approval, projects may need to return to the SCC Board for specific funding authorizations, particularly if CEQA has not been completed prior to program adoption. SCC will act as a responsible agency under CEQA and make CEQA findings. Funding will be provided on a reimbursement basis, generally with 10% withheld until successful completion of the project.



Photo: J. Brosnan

Contact Information

Questions about the grant program or potential project ideas should be directed to the PCA Evaluation Committee at:

PCAGrants@bayareametro.gov



Photo: Noah Berger

APPENDIX A - ADDITIONAL FUNDING CONSIDERATIONS

FEDERAL TRANSPORTATION FUNDING

Projects that are eligible and well-suited to receive federal transportation funds (such as a bicycle or pedestrian facilities) may be selected to receive federal funding. Projects recommended for federal transportation funds must be approved by MTC and included in the region's Transportation Improvement Program (TIP).

Grantees receiving federal funds must go through the Caltrans federal-aid process.

For additional information and questions on the programming and delivery of federal-aid projects contact Mallory Atkinson at matkinson@bayareametro.gov or 415-778-6793.

LOCAL FUNDING

Projects recommended for local funds provided by MTC must be approved by MTC and included in the regional TIP for tracking purposes. Grant awardees receiving non-federal funds will need to enter into a grant agreement with either MTC or SCC, provide a board resolution authorizing execution of the grant agreement, and meet other grant conditions (provision of a workplan, budget, and schedule, proof of insurance, landowner agreements if needed, proof of permits, a sign plan, etc.).

STATE BOND FUNDING

Grant awardees receiving state bond funds will need to enter into a grant agreement with SCC, provide a board resolution authorizing execution of the grant agreement, and meet other grant conditions (provision of a workplan, budget, and schedule, proof of insurance, landowner agreements if needed, proof of permits, a sign plan, etc.).

The SCC will use additional evaluation criteria when determining whether to provide state bond funds for a project. In addition to meeting PCA program criteria, projects that receive state bond funds will need to advance the Goals and Objectives in the SCC's 2018-2022 Strategic Plan, which is available here: scc.ca.gov/about/plan/.

Projects will also be evaluated using these Project Selection Criteria and Guidelines to determine SCC funding awards:

Required Criteria

- Promotion of the Conservancy's statutory programs and purposes
- Consistency with purposes of the funding source
- Promotion and implementation of state plans and policies
- Support from the public
- Location (must benefit coastal, ocean resources, or the San Francisco Bay region)
- Need (desired project or result will not occur without Conservancy participation)
- Greater-than-local interest

- Sea level rise vulnerability (Consistent with Executive Order S-13-08, for new projects located in areas vulnerable to future sea level rise, planning shall consider a range of sea level rise scenarios for the years 2050 and 2100 in order to assess project vulnerability and, to the extent feasible, reduce expected risks and increase resiliency to sea level rise)

Additional Criteria

- Urgency (threat to a resource from development or natural or economic conditions; pressing need; or a fleeting opportunity)
- Resolution of more than one issue
- Leverage (contribution of funds or services by other entities)
- Conflict resolution
- Innovation (for example, environmental or economic demonstration)
- Readiness (ability of the grantee and others to start and finish the project timely)
- Realization of prior Conservancy goals (advances previous Conservancy projects)
- Return to Conservancy (funds will be repaid to the Conservancy, consistent with the Conservancy's long-term financial strategy)
- Cooperation (extent to which the public, nonprofit groups, landowners, and others will contribute to the project)
- Minimization of Greenhouse Gas Emissions (project design and construction methods include measures to avoid or minimize greenhouse gas emissions to the extent feasible and consistent with the project objectives)

APPENDIX B - BAY AREA GREENPRINT

Project applicants will be asked to generate a project report through the Bay Area Greenprint. The Bay Area Greenprint provides an easy-to-use tool to gather standardized and shareable location data for all PCA grant applications. The Greenprint also provides a range of data about existing characteristics of the project location and potential multiple benefits from the project. The application review committee is evaluating whether such data could be used in future grant solicitations, but it will not be used for scoring projects in this call for projects.



Photo: Karl Nielsen

Quick Report How-to

1. Go to bayareagreenprint.org/report/
2. Identify the location of your project by drawing it manually, uploading an existing file, or selecting a predefined area.
 - a. Under **Draw an Area**, you have three options to identify your project location:
 - If your project is best defined by a polygon, use **Draw an Area Freehand** to capture the project coverage area. Example projects include land acquisitions or a new green space in an existing urban area.
 - If your project is best represented by a point location, use **Select a Point or Address**, select an appropriate buffer size (1/8 mile buffer recommended), and either manually drop a pin at the location or enter in the address. Example projects include staging areas or bicycle and/or pedestrian bridge.
 - If your project is linear, use **Draw a Path and Buffer**, select an appropriate buffer size (1/8 mile buffer recommended), and draw the extent of the project. Example project types include a trail project or creek restoration.
 - b. Use **Upload a File** if you have a Shapefile (GIS) or KML (from Google Earth) of your project area.
 - c. Use **Choose an Area** if your project is city- or county-wide or is best defined by an entire watershed or the entire coast or baylands.
3. After identifying the project location, click the green **Get Report** at the top right of the screen. Give the report a project name and then submit.
4. After generating the report, scroll to the bottom of the screen and click on the **Share & Compare** button. This generates a project unique weblink that can be pasted into your grant proposal.
5. Include the project weblink directly into your Letter of Interest.

Contact Information

Technical questions related to Bay Area Greenprint should be directed to Adam Garcia at: agarcia@greenbelt.org

EXHIBIT B
CONDITIONS OF APPROVAL
Planning Commission Resolution P-19-18
PDP-18-006

A. The following Conditions shall apply to the entire subject site:

1. CONFORMANCE WITH APPROVED PLANS. Development of the site shall conform to the approved plans entitled "New Public Restrooms for San Mateo County Harbor District" with a City date stamp of May 31, 2019, except for any revisions required by this permit. The Community Development Director shall review and may approve any deviation from the approved plans that is determined minor in nature. Any other change shall require approval of a major modification per Title 18. (Planning)
2. CONFORMANCE WITH CONDITIONS OF APPROVAL. The permittee(s) shall construct and operate this Project in full conformance with these Conditions of Approval. The Community Development Director shall review and may approve any deviation from the Conditions of Approval that is determined minor in nature. Any other change shall require approval of a major modification per Title 18. (Planning)
3. CONFORMANCE WITH THE MUNICIPAL CODE. No part of this approval shall be construed to permit a violation of any part of the Half Moon Bay Municipal Code. (Planning)
4. LIGHTING. All exterior lighting shall be fully shielded and downcast so that no light source is visible from outside the property, except as otherwise expressly approved. (Planning)
5. SITE MAINTENANCE AND LIABILITY. It shall be the duty of the Property Owner and Lessee to reach an agreement on operations and maintenance responsibilities as it relates to the following components of the subject site:
 - a. The proposed restroom and associated amenities including water fountains, an outdoor shower, benches, and educational signage;
 - b. Landscaping and fencing;
 - c. Signage;
 - d. Lighting;
 - e. California Coastal Trail segment;
 - f. Existing restroom facility;
 - g. Public parking area;
 - h. RV parking area; and
 - i. Utilities. (Planning)
6. PUBLIC TRAIL MAINTANENCE AND LIABILITY. It shall be the duty of the Property Owner(s) to maintain the public trail segment in a safe and non-dangerous condition. Trail maintenance shall include removal and replacement of concrete to eliminate tripping hazards; and pruning and trimming of trees, shrubs, ground cover and other landscaping within the public trail area. The Property Owner has the primary and exclusive duty to

- fund and perform such maintenance and repair, whether or not the City has notified the property owner of the need for such maintenance or repairs or has performed similar maintenance or repairs in the past, pursuant to §12.18.020 and §12.18.030 of the Half Moon Bay Municipal Code. (Engineering)
7. LANDSCAPE MAINTENANCE. The permittee(s) shall ensure that all landscaped areas and/or fences are continuously maintained, and all plant material is maintained free of refuse and weeds and in a healthy growing condition. (Planning)
 8. RV PARK OVERNIGHT STAY LIMITS. The RV Park shall be operated such that each RV space is rented for no longer than fourteen (14) consecutive days and no more than thirty (30) days in any one (1) calendar year, with the exception of the permanent on-site host/manager. (Planning)
 9. OVERNIGHT STAY LIMIT MONITORING. The RV Park on-site host/manager shall monitor and maintain records of tenancy and length of stay of the RV Park patrons for one year. One year from the date of permit approval, a report with the records of tenancy and length of stay shall be provided to the Community Development Director for review and determination of need for any further action such as enforcement of length of stay, amendment to the permit to revise the maximum length of stay, or further monitoring. (Planning)
 10. TRANSIENT OCCUPANCY TAX. Transient Occupancy Tax (TOT) shall be collected from the RV Park operation pursuant to City requirements. (Planning)
 11. NEW SIGNAGE. Any new signage related to the RV Park business and its operations shall require submittal of a new sign program, subject to review and approval by the Planning Commission. Educational and wayfinding signage is not considered to be business signage; however, it is subject to City review. (Planning)
 12. TEMPORARY PUBLIC RESTROOMS. The Harbor District may maintain temporary portable public restrooms at the subject site until such time that the new restroom facility has been constructed. (Planning)
 13. FUTURE ASSESSMENT FOR COASTAL HAZARDS. If the adjacent Coastal Trail becomes regularly impassible due to sea level rise and/or wave action, the Property Owner shall assess the vulnerability of the restroom structure to coastal hazards including wave run-up, inundation, and erosion, including an assessment of the need to relocate the restroom structure such that it is safe from these coastal hazards. (Planning)

B. The following Conditions shall apply to construction of the *new restroom facility and associated site improvements*, and shall be fulfilled prior to the issuance of building permits:

1. SIGNED CONDITIONS OF APPROVAL. The permittee(s) shall submit a signed copy of the conditions of approval to the Planning Division prior to issuance of a building permit. (Planning)
2. FINAL PLANS. **Within 180 days of approval of this coastal development permit**, the permittee(s) shall submit final project plans that include the following:

- a. Final site plan with the following details:
 - i. A maximum of 40 RV parking spaces;
 - ii. A minimum of eight standard vehicle public day-use parking stalls to be replaced within the subject site between the existing RV Park restroom facility and the northern side of the access drive, or at an alternative location as deemed more appropriate by the Harbor District;
 - iii. A minimum of one EV charging station to serve two standard vehicle parking stalls with signage for a maximum time limit to ensure adequate charging time and sufficient turnover (e.g. 2-4 hours);
 - iv. A minimum of one van-sized pick-up and drop-off parking space with signage for a maximum 30-minute time limit, intended to serve coastal recreation groups such as surf schools;
 - v. A minimum of seven ADA-compliant public day-use parking stalls;
 - vi. A minimum of one dedicated car-share space in a standard vehicle day-use parking stall, if applicant coordination with a car-share company determines this to be a feasible use;
 - vii. Trash collection bins including recycling and compost as available by the applicable solid waste service provider, and a pet waste station;
 - viii. Signage that provides wayfinding to nearby free public beach parking areas and information on appropriate use of the trash collection bins; and
 - ix. A bicycle parking rack;
- b. Final grading and drainage plan with the following information:
 - i. Design details and supporting calculations for storm water detention on-site for the additional run-off from a ten-year frequency storm of two-hour duration;
 - ii. Elevation details showing how the paved parking areas will properly drain to an approved BMP facility, and how the finished grades on the property relate to the existing grades on adjacent property; and
 - iii. Pad elevation, finished floor elevation, site high and low points, drainage swales, area drains, and existing grade at adjacent property. The permittee shall provide appropriate measures to discharge the flood waters from any unfinished floor areas;
- c. Final elevations of the proposed restroom facility with the following information:
 - i. Maximum building height of 14.5 feet from finished grade;
 - ii. Final exterior colors and materials, including non-reflective roof materials and neutral colors compatible with the coastal setting;

- iii. Locations and cut sheets of any exterior lighting fixtures; and
 - iv. A reduced wall height at the location of the proposed information board and adjacent bench such that it is maximum 3 feet tall;
- d. Final landscape plans, including a drought-tolerant coastal native palette for the new landscaped area between the ADA parking area and the trail.

Final plans shall be in substantial conformance with the approval conceptual site plan and elevations, and shall be subject to review and approval of the Community Development Director. The final parking plan shall indicate if the public day-use parking spaces will be time-limited and/or have a day-use fee. Final building, fencing, and landscaping heights shall be reviewed for their compliance with sight distance requirements at the Highway 1 access driveway. (Planning)

3. **CONSTRUCTION PLANS.** File Number PDP-18-006 and the Conditions of Approval for this project shall be provided on the cover page of the building permit application plan submittal. All plans, specifications, engineering calculations, diagrams, reports, and other data for construction of the building and required improvements shall be submitted with the appropriate permit application to the City's Building and Engineering Divisions for review and approval. Computations and back-up data will be considered a part of the required plans. Structural calculations and engineering calculations shall be prepared, wet-stamped and signed by an engineer or architect licensed by the State of California. The plans must show the location of the sewer connection, and a property line sewer cleanout must be installed prior to Building Permit approval. (Planning)
4. **WATER CONSERVATION IN LANDSCAPING.** The permittee(s) shall submit a detailed landscape plan to the satisfaction of the Community Development Director prior to issuance of a building permit for the project. If the project includes 500 square feet or more of irrigated landscaping (new or rehabilitated) the permittee shall submit landscape and irrigation plans and an Outdoor Water Efficiency Checklist that demonstrate compliance with the City's Water Conservation in Landscaping Ordinance (Chapter 13.04 of the Municipal Code) prior to issuance of building permits to the satisfaction of the Community Development Director. This submittal shall be in a form approved by the City and prepared and signed by a qualified landscape and irrigation design professional. (Planning)
5. **SURVEY REQUIRED.** Submit a detailed topographic/site boundary survey certified by a licensed surveyor with building application plans. The survey shall include a baseline elevation datum point on, or close to the construction site, indicating existing grade of the datum. This datum point shall be permanent, marked, shall remain fixed in the field, and shall not be disturbed throughout the building process. Examples of datum points include: fire hydrants, manhole covers, survey markers, and street curbs. This datum point shall be shown on all site plans including revised/resubmitted plans. The survey must show the footprint and roof plan of the proposed residence and identify the existing grade elevations at the corners and roof ridgeline of the residence. (Building)

6. GEOLOGICAL REPORT REQUIRED. Prior to the issuance of building permits, the permittee shall submit a geological report for the site of the proposed restroom structure. The report shall contain all applicable information, evaluation criteria, and recommendations as required by Municipal Code Section 18.38.045(B). Any major project changes necessitated by the results of the geological report shall require approval of a major modification per Title 18. (Planning/Engineering)
7. EVIDENCE OF WATER CONNECTION CAPACITY. Prior to the issuance of building permits, the permittee shall submit a letter from Coastside County Water District certifying that the subject site has an adequately-sized water connection for this approved project. (Building)
8. EVIDENCE OF SEWER CONNECTION CAPACITY. Prior to the issuance of building permits, the permittee shall demonstrate issuance of a sewer permit from the Sewer Authority Mid-Coast. (Building)
9. CONSTRUCTION PLANS. Construction plans submitted for building permit(s) shall include a plan sheet showing utility connections, trench restoration details, and other applicable improvements in the public right-of-way meeting City standards. (Engineering)
10. CONSTRUCTION STAGING AND STORAGE PLAN. Prior to issuance of building permits, the permittee shall submit a final construction staging and storage plan. The plan shall show how any construction vehicles, materials, staging and storage areas will be located to avoid impacts to the public trail area during construction.
11. LOT GRADING, MATERIALS, EQUIPMENT AND VEHICLE STORAGE. No lot site grading, preparation, storage, or placement of construction materials, equipment, or vehicles shall take place prior to issuance of a building permit. Any earth movement on or off the site in excess of 50 cubic yards shall require the submittal of a grading plan for review by the City Engineer and issuance of a grading permit. Lot Grading includes, but is not limited to, any leveling, scraping, clearing, or removal of lot surface area. Materials, Equipment, and Vehicles include, but are not limited to:
 1. All masonry, wood, and steel construction materials;
 2. All construction-related equipment and storage containers; and
 3. All construction-related vehicles, including temporary trailers. (Engineering)
12. STORMWATER MANAGEMENT/TREATMENT. Construction plans submitted for building permits shall include a storm water management/treatment plan in coordination with the after-the-fact approval of the RV Park, showing implementation of at least one of the six Low Impact Development (LID) measures listed below:
 - a. Direct runoff into cisterns or rain barrels and use rainwater for irrigation or other non-potable use;
 - b. Direct roof runoff into vegetated areas;
 - c. Direct runoff from sidewalks, walkways, and/or patios into vegetated areas;

- d. Direct runoff from driveways and /or uncovered parking lots into vegetated areas;
- e. Construct sidewalks, walkways, and/or patios with permeable surfaces; or
- f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.

The permittee(s) shall also submit the 'stormwater checklist for small projects' with the building plan submittal. (Engineering)

13. COPPER BUILDING ELEMENTS. The building plans shall specify that all copper building elements will be pre-patinated at the factory, or if patination will occur on the site, the plans shall identify best management practices in conformance with the *San Mateo Countywide Water Pollution Prevention Program Requirements for Architectural Copper*, to the satisfaction of the City Engineer. (Engineering)
14. EROSION AND SEDIMENT CONTROL. An erosion and sediment control plan shall be submitted that shows effective Best Management Practices (BMP) and erosion and sediment control measures for the project site. Construction plans shall also include the "construction best management practices" plan sheet. (Engineering)
15. UNDERGROUND UTILITIES/SERVICES. Electric, telecommunication, and cable and utility service to the property shall be through underground service connections only. No overhead utilities are allowed. (Engineering)
16. STREET/PUBLIC RIGHT-OF-WAY CUTS FOR UTILITY CONNECTIONS. Street cuts for utility connections that are less than twenty (20) feet apart shall be repaired with a single patch. Asphalt repair and overlay shall be in accordance with the City Standard Details. (Engineering)
17. SEWER CONNECTION FEE. The proposed development is subject to a sewer connection fee pursuant to Section 13.36.070 of the Half Moon Bay Municipal Code. The fee shall be paid to the City prior to issuance of building permits. (Engineering)
18. FIRE CLEARANCE REQUIREMENTS. The permittee shall comply with all applicable fire and building codes and standards relating to fire and panic safety as identified by the Coastside Fire Protection District during the building permit process. (Fire)
19. COASTSIDE COUNTY WATER DISTRICT - REGULATIONS. The permittee shall comply with all applicable regulations and requirements of the Coastside County Water District. Water service shall not be in the same trench as other utilities. (Water District)

C. The following conditions shall apply to the new restroom facility and associated site improvements and shall be implemented prior to and during construction:

1. ARCHAEOLOGY-DISCOVERY OF HUMAN REMAINS. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected

to overlie adjacent remains. The County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the California Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American(s). If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the permittee shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. (Planning)

2. ARCHAEOLOGY-DISCOVERY OF RESOURCES. If subsurface historic or archaeological resources are uncovered during construction, all work shall stop, the applicant shall notify the Community Development Director and retain a qualified archaeologist to perform an archaeological reconnaissance and identify any mitigation measures required to protect archaeological resources. Subsurface excavation shall not resume until expressly authorized by the Director. (Building)
3. CONSTRUCTION TRAILERS. Temporary construction trailers are permitted as accessory uses in conjunction with the development of this site, subject to the following conditions:
 - a. The construction trailer shall be used as a temporary construction office only.
 - b. Neither sanitation facilities nor plumbed water is permitted within the trailer.
 - c. No overnight inhabitation of the construction trailer is permitted.
 - d. No construction trailers are permitted on site prior to building permit issuance.
 - e. The construction trailer shall be removed prior to final inspection. (Planning)
4. AIR QUALITY BEST MANAGEMENT PRACTICES. The project shall implement the following standard BAAQMD dust control measures during all phases of construction on the project site:
 - All active construction areas shall be watered twice daily or more often if necessary. Increased watering frequency shall be required whenever wind speeds exceed 15 miles-per-hour.
 - Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads and parking and staging areas at construction sites.
 - Cover stockpiles of debris, soil, sand, and any other materials that can be windblown. Trucks transporting these materials shall be covered.
 - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day or as often as necessary to keep them free of dust and debris associated with site construction. The use of dry power sweeping is prohibited.
 - Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with soil stabilizers, or covered as soon as possible. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas and previously graded areas inactive for 10 days or more.
 - Installation of sandbags or other erosion control measures to prevent silt runoff to public roadways.

- Replanting of vegetation in disturbed areas as soon as possible after completion of construction.
 - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points.
 - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - Post a publicly visible sign with the telephone number and person to contact at the City of Half Moon Bay regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations. (Building)
5. HAZARDOUS MATERIALS. Any materials deemed hazardous by the San Mateo County Department of Health that are uncovered or discovered during the course of work under this permit shall be disposed in accordance with regulations of the San Mateo County of Health. (Building)
 6. COMPLIANCE WITH CBC. All structures shall be constructed in compliance with the standards of the 2016 California Codes of Regulations Title 24, including Building Code, Residential Code, Administrative Code, Mechanical Code, Plumbing Code, Electrical Code, Energy Code, Fire Code and Green Building Code to the satisfaction of the Building Official. (Building)
 7. FIRST FLOOR HEIGHT VERIFICATION. Prior to below floor framing or concrete slab steel reinforcement inspection, a stamped and signed building height verification letter shall be submitted to the City from a licensed land survey certifying that the first floor height as constructed is equal to (or less than) the elevation specified for the first floor height in the approved plans. (Building)
 8. OVERALL PROJECT HEIGHT. Maximum overall height of the project, including any grading, foundation, pad, and building elevations shall be calculated using the elevation points indicated on the topographic survey map submitted at the time of application. The approved height of all projects developed in the City will be measured from existing grade as indicated on the submitted topographical survey. (Building)
 9. COMPLETION OF UTILITIES. Any public utilities requiring relocation as a result of the construction of the building(s) or improvements under this permit shall be relocated at the owner's expense. (Building)
 10. CONSTRUCTION HOURS. Construction work shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday; 8:00 a.m. to 6:00 p.m. Saturdays; and 10:00 a.m. to 6:00 p.m. Sundays and holidays, except as expressly authorized by the City Engineer in conformance with Section 14.40.020 of the Half Moon Bay Municipal Code. (Engineering)
 11. NOTICE OF DISRUPTION. The permittee(s) shall provide written notice to affected property and business owners and a copy of such notice to the City Engineer a minimum of

two business days prior to any planned disruption of pedestrian or vehicular traffic, parking, or public service facilities. (Engineering)

12. **CONSTRUCTION MATERIAL STORAGE.** Construction material shall not be stored in the street right-of-way without prior approval from the City Engineer. (Engineering)
13. **ENCROACHMENT PERMIT.** The permittee(s) shall obtain an encroachment permit prior to starting any construction activity within the City right-of-way or affecting City improvements. All improvements constructed within the City right-of-way shall conform to City standards to the satisfaction of the City Engineer. (Engineering)

D. The following condition shall apply to the After-the-Fact approval of the RV Park site, and shall be complied with within 120 days of this CDP approval:

1. **FINAL LANDSCAPING AND FENCING PLAN.** Within 120 days of this permit approval, the permittee(s) shall submit a landscaping and fencing plan that includes the following details:
 - a. Calculations of the total amount of existing landscaping within the RV Park site. If the landscaped area is less than 14,375 square feet (15% of the RV Park site), the plan shall include additional landscaping to meet the 15% minimum landscaped area as required by Municipal Code Section 18.08.035(D).
 - b. Removal and replacement of all landscape screening along the Highway 1 frontage of the subject site, including the cypress trees.
 - c. New landscape screening along the western border of the RV Park with low shrubs to soften public views of the RVs from the Coastal Trail.
 - d. Coordination with the Beach House Hotel for pruning and maintenance of the cypress trees along the northern property line between the RV Park and the Beach House Hotel.
 - e. The replacement landscape screening may be supplemented by new fencing and shall be proposed at a maximum height established through field evaluation by the Community Development Director, but anticipated to be no more than seven (7) feet. Final landscaping and fence heights shall be reviewed for their compliance with sight distance requirements at the Highway 1 access driveway.
 - f. The landscaping palette shall comprise of drought tolerant coastal native species or species otherwise compatible with the City's median landscaping palette that will sufficiently screen the RV Park and new restroom facility without obstructing ocean views.

The final landscaping and fencing plan shall be subject to review and approval by the Community Development Director prior to implementation. (Planning)

E. The following conditions shall apply to the After-the-Fact approval of the RV Park site, and shall be complied with within 180-240 days of this CDP approval as specified below:

1. STORMWATER TREATMENT PLAN. Within 180 days of this permit approval, the permittee(s) shall submit a stormwater treatment plan showing implementation of at least one of the six Low Impact Development (LID) measures listed below:
 - a. Direct runoff into cisterns or rain barrels and use rainwater for irrigation or other non-potable use;
 - b. Direct roof runoff into vegetated areas;
 - c. Direct runoff from sidewalks, walkways, and/or patios into vegetated areas;
 - d. Direct runoff from driveways and /or uncovered parking lots into vegetated areas; or
 - e. Reconstruction of existing landscape islands to function as vegetated infiltration trenches. (Engineering)
2. STORMWATER SITE INSPECTION. Within 180 days of this permit approval, a site inspection shall be performed to the satisfaction of the City Engineer to identify any active non-stormwater discharges or sources of pollution. If any discharges or pollution sources are identified, the site inspector shall prepare a report including a description of the discharges or sources and recommendations for remediation to be submitted to the City Engineer for review and approval. If the report identifies any recommended remediation, such improvements shall be implemented by the permittee(s). (Engineering)
3. LIGHTING PLAN. Within 180 days of this permit approval, the permittee(s) shall submit a lighting plan showing the location, quantity, and type of each exterior lighting fixture in the RV Park site. The lighting plan shall be subject to review and approval by the Community Development Director. Any lighting fixtures that are not downcast and shielded or are otherwise inconsistent with City standards to protect dark night skies may require replacement light heads or fixtures. Replacement heads or fixtures shall also be subject to review and approval by the Community Development Director. (Planning)
4. INSTALLATION OF FINAL LANDSCAPING AND FENCE SCREENING. Within 240 days of this permit approval, the permittee(s) shall install the replacement landscaping and fencing screening along the Highway 1 frontage and the new landscape screening along the western border of the RV Park pursuant to the approved plans required by Condition D1. The replacement landscaping and fencing screening along the Highway 1 frontage shall be constructed and maintained at a height not to exceed seven (7) feet. Pursuant to the Municipal Code, the replacement and new landscape screening shall be established within five years. (Planning)

F. The following conditions shall apply to the entire subject site and shall be implemented prior to final inspection:

1. LANDSCAPE INSTALLATION. All landscaping shall be installed in conformance with the approved final landscape plans prior to final inspection. (Planning)

2. **LIGHTING INSTALLATION**. All replacement light heads or fixtures shall be installed in conformance with the lighting plan required by Condition E3, as approved by the Community Development Director. (Planning)
3. **EXTERIOR COLORS AND MATERIALS**. Exterior building colors and materials shall be in substantial conformance with those shown on the approved final plans to the satisfaction of the Director of Community Development. (Planning)
4. **INFORMATIONAL/EDUCATIONAL SIGNAGE**. Prior to installation, the final elevations and copy of the proposed informational/educational signage for the new restroom structure and for wayfinding to nearby free public beach parking areas shall be submitted to the Community Development Director for review and approval. The proposed signage shall conform to Title 15 of the City's Municipal Code. (Planning)
5. **STORMWATER TREATMENT IMPLEMENTATION**. Prior to final inspection, the permittee(s) shall implement the Low Impact Development measures identified on the approved Stormwater Treatment Plan pursuant to Condition E1, as well as the remediation measures for any identified point sources of pollutant discharges pursuant to Condition E2. (Engineering)
6. **VEHICLE PARKING INSTALLATION**. All public parking stalls, EV charging station, and related signage shall be installed pursuant to the approved final plans required by Condition B2. (Planning)

G. Validity and Expiration of Permits

1. **EFFECTIVE DATE**. This site is located within the Coastal Appeal Zone. This permit shall take effect after expiration of the Coastal Commission appeal period, or if the permit is appealed to the Coastal Commission during the appeal period, it shall take effect after final Coastal Commission action. (Planning)
2. **ACCURACY OF APPLICATION MATERIALS**. The permittee(s) shall be responsible for the completeness and accuracy of all forms and material submitted for this application. Any errors or discrepancies found therein may be grounds for the revocation or modification of this permit and/or any other City approvals. (Planning)
3. **PERMIT EXPIRATION**. The Coastal Development Permit (CDP) shall expire one year from its date of final approval if development plans for a Building Permit have not been submitted. Once a Building Permit is issued, the CDP shall be deemed in effect. If plans for a Building Permit are submitted within the 1-year expiration period, and a Building Permit is not issued, the expiration of the CDP shall coincide and run concurrently with the Building Permit plan submittal/application as long as due diligence is pursued in the opinion of the Building Official in obtaining the Building Permit. (Planning)
4. **PERMIT EXTENSION**. The Community Development Director may, at the Director's discretion, approve a single one-year extension of this permit based on a written request and fee submitted to the Director prior to expiration of the permit. Any other extension shall require approval of a Permit Amendment prior to expiration of the permit. Any

Amendment Application to extend the permit shall be filed a minimum of ninety (90) days prior to permit expiration to ensure adequate processing time. (Planning)

5. **PERMIT RUNS WITH THE LAND.** The approval runs with the land and the rights and obligations thereunder, including the responsibility to comply with conditions of approval, shall be binding upon successors in interest in the real property unless or until such permits are expressly abandoned or revoked. (Planning)

6. **HOLD HARMLESS.** The permittee(s) agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against an and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, any review by the California Coastal Commission conducted under the California Coastal Act Public Resources Code Section 30000 et seq., or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City. (City Attorney).

OWNER'S/PERMITTEE'S CERTIFICATION:

I have read and understand and hereby accept and agree to implement the foregoing conditions of approval of the Coastal Development Permit.

APPLICANTS:

(Signature)

(Date)

(Signature)

(Date)



Activity Report

TO: Board of Harbor Commissioners
FROM: John Moren, Interim GM/Director of Operations
DATE: November 20, 2019
PERIOD: October 2019

Pillar Point Harbor:

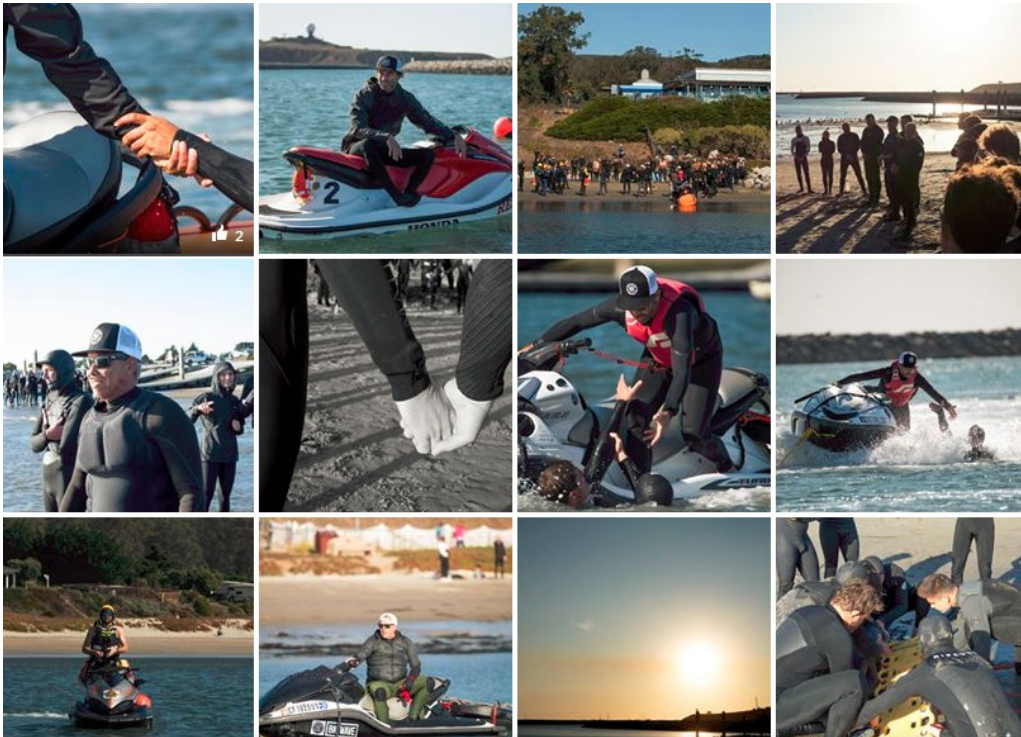
Construction Update & General Status Updates:

- Misc. maintenance work in progress throughout the marina
- Landscaping in facility

Miscellaneous:

- 438 launches at boat ramp 10/1/19 thru 10/31/19
- Beach Clean-up on October 26, 2019
- BWRAG – District sponsored Big Wave Risk Assessment Group was sold out, very successful combined Agency Training and Water Safety Summit held Oct 24, 25, and 27th

The BWRAG - Big Wave Risk Assessment Group surf safety summit sponsored by the San Mateo County Harbor District was 18% women including local surf instructors from The Wahine Project, brown girl surf & City Surf Project. #SurfEquity
<http://ow.ly/LETL50wXN8G>



- Harbor Patrol participated in Fleet Week in San Francisco, District DHM Rescue team had honor of leading the ships



- Both Pillar Point Harbor Patrol and Oyster Point Harbor Patrol participated in K38 training at Pillar Point Harbor
- Emergency Storm Drain repair at Launch Ramp
- Replaced both sewage pumps in main parking lot
- Painted/non-slip dock ramps
- PG&E planned power outages impacted Pillar Point Harbor, no significant issues

Occupancy Overview:

- Total occupancy: 99% 369 slips, 366 occupied

Search and Rescue Activity Highlights & Urgent Need Activities:

- 10/1 thru 10/31
 - 3 Search & Rescue
 - 18 Patrol Vessel
 - 26 DHM Calls
 - 2 Medical
 - 8 Law Enforcement
 - 7 Training
 - 2 Events
 - 2 Environmental Resource Protection Calls

EMS-Clean Marina Activities:

- Vessel safety/environmental inspections are ongoing
- Registration and Insurance enforcement

Calendar Reminder Items of Events and Activities:

- Coastal Clean up on November 30, 2019
- Lighted Boat Festival on December 14, 2019

Oyster Point Marina/Park

General Status & Construction Update:

- Misc. maintenance work in progress throughout the marina.
- OPD project continues underway, OPM has been switched to temp PG&E power from generator power

Miscellaneous:

- Registration, Liveaboard and insurance enforcement & seaworthiness

- Crew Training/OPM, PPH and USCG, K38 RWC training 9/30 thru 10/4 Crew



- OPM DHM Rescue Team provided safety/security patrol at Fleet Week



- Dragon Boat event 10/20
- OPM Team participated in BWRAG Agency/Summit Training
- OPM/PPH Training with San Mateo County Fire 10/8

Occupancy Overview:

- On 10/30/19 occupancy: 75% 408 slips, 305 occupied

Search and Rescue Activity Highlights & Urgent Need Activities:

- 10/1 thru 10/31: 11 vessel activities, 4 Fire, 5 Police Business, 6 Coast Guard, 36 DHM Call Outs
- 1 SPCA, 1 Fish & Wildlife

EMS-Clean Marina Activities:

- Vessel inspections for new tenants and for seaworthiness of existing tenants are ongoing.
- Outdated flare disposal event 11/2

Calendar Reminder Items of Events and Activities:

- Outdated flare disposal event 11/2

OPM Staff:

Oyster Point Marina Harbor Patrol was requested by Jesse Lange of South San Francisco Fire Department to participate in a joint training effort with San Mateo County Fire Department (Foster City FD, Belmont FD, And San Mateo FD)



Neal McGeehan, Joseph Robertson, Greg Gubser, and Matt Hoff gave an introduction and overview of the OPM facility and OPM R/V Challenger. Discussed techniques and coordination of RWC's to rescue boat approaches, pick up, and drop offs. Then escorted San Mateo County Fire to the location of the South San Francisco Fire Boat. For familiarization purposes only.

At 10:30 Oyster Point Challenger was underway with Matt Hoff and Greg Gubser and the RWC's to approximately 1-mile East of the OPM Entrance. As a team, discussed communications and working VHF frequencies while on the water. Began with a series of pick-ups and vessel approaches. Each team rotated operators and victims as well as sides of the vessel they approached on.

Next evolution included victim transfers from RWC to R/V Challenger. They made attempts going over the rail, through the swim door, and a web method to sling in an unconscious/ lifeless victim.

At 12:30 The training ended with a debrief at our guest dock as well as a shared lunch at OPM Harbormaster office.

- DHM's Gubser, Hoff, Andrews and Smith, assisted by Harbor Worker Zepeda were recognized with a commendation for their efforts to quickly extinguish a vessel fire in the marina, preventing it from spreading prior to SSFD arrival.



Administration:

See related Staff Report for update on Capital Projects

District:

- New GM and PPH Harbormaster search underway

Grants:

- Working with FEMA and CalOES for project funding assistance
- Continuing efforts to identify potential grant funding for all CIP's

District Training Officer, DHM Cary Smith
Activities and Training:

- Allied Agency Training with PPHP/OPMHP and USCG



- September 30 to October 3 K38 Stage 4 Rescue Water Craft Training 11 DHM Staff members completed Nationally Recognized Coxswain Certification.
- October 7 to 11 PC 832 Training Certification DHM Moore and DHM Sumner
- October 10 to October 13 PPHP and OPMHP Participation in SF Fleet Week (PPHP RWC Operations with the SFPD Marine Unit for SF City Water Front "Bridge to Bridge" Force Protection and Boating Safety)
- October 16 and 17 DHM A Testing and Interviews
- October 23 BWRAG Allied Agency Training, Attendees included SM County Parks, SMCSO Marine Unit, DHM Staff OPMHP and PPHP and USCG Station Golden Gate
- October 23 USCG Air Station Annual Small Boat Station Training Sign Off (Static in upper Launch Ramp Parking Area)
- October 23 to 25 DHM Finch and Moore completed Radiological Detection Training USCG Sector SF
- Facilitated and Supported BWRAG Training needs and Resources
- October 26 and 27 DHM Dunn, Duffy, Moore and Sumner BWRAG Attendance and Training
- October 30 New Tablet Training with the IT Team
- Meetings and Improvement of District Communications (Boating Safety Messaging and Harbor Patrol recognition for efforts for the community)
- Preparation and Support for Marine Flare Collection Turn In Pilot Program November 2nd
- Preparation for Sport Crab Season Opener

Deputy Harbormaster B Duties:

- Power Safety Shut Off adaptation and response
- Ongoing Daily Activities and Duties as assigned and unforeseen

Future Objectives in Progress:

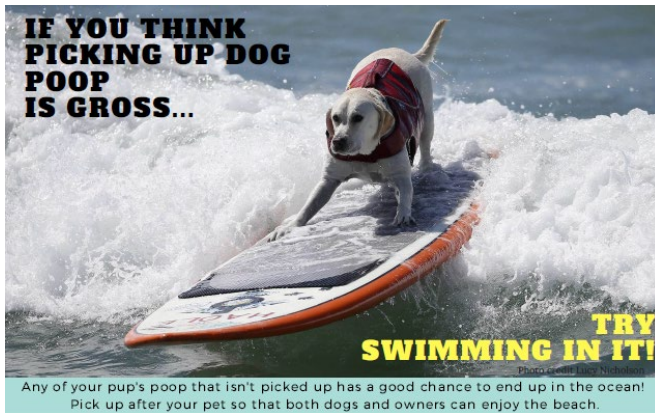
- SMCHD Operations Training Standardization
- SMCHD Patrol Boat Electronics Standardization
- SMCHD Water Based Recreational and Harbor Community Training
- SMCHD Enhanced Allied Agency Communications
- SMCHD Administration and Commission Safety and Boating Education Training
- SMCHD Operations Social Media Safety Messaging and Environmental Resource Protection Messaging
- SMCHD Operations Professional Image Development and Outreach
- SMCHD Operations Customer Service Training
- SMCHD Operations Mental Health and Self Medication Awareness and Officer Safety Training
- CPR/First Aid/AED Training from DHM Staff to Harbor Communities

District Safety:

- Target Solutions - OSHA courses, continuing to assign safety refresher courses for 2019
- 2019 DBW Boater Safety Survey/Kits – Continuing to work with DBW at PPH and OPM to send out Dock Walker boater safety surveys with statements. Tenants will deliver completed surveys to the HM office for boater safety kits.
- Continuing increased training efforts to promote excellent Customer Service

- Continued partnership with the San Mateo Resource Conservation District (RCD) to address pet waste as a cause of water pollution. Information on how pet waste is a pollutant is provided on the District's website and on informational flyers at both PPH and OPM Harbor Master Offices. Additionally, the link for the public to take the "Scoop-the-Poop" Pledge is on the District website. The District will be using its social media to further public awareness of the water pollution caused by pet waste and to encourage public to remove all pet waste.

Pictured are examples of informational flyers currently in use for public outreach to spread awareness on pet waste pollution.



SAN MATEO RESOURCE CONSERVATION DISTRICT

<http://www.sanmateorcd.org>
<https://www.facebook.com/sanmateorcd>
 This outreach program is funded by San Mateo County




Learn more at www.sanmateorcd.org/WQ and follow us on Facebook and Instagram @sanmateorcd

SAN MATEO RESOURCE CONSERVATION DISTRICT

ATTENTION PET LOVERS!

HELP PROTECT CREEKS & BEACHES




Pick up after your pet!

GET THE SCOOP ON PET POOP

HEALTH RISKS
 Bacteria and viruses in pet waste can cause illness in people and animals. You can be exposed to pet waste bacteria and viruses while gardening, playing in the grass, swimming, surfing, boating, or sunbathing on the beach.

WATER POLLUTION
 When it rains, pollutants such as pet waste are transported from lawns, streets, and trails to storm drains, creeks, streams, the beach, and the ocean without treatment.

LOCAL CONCERNS
 Local studies show high fecal bacteria levels at many creeks and beaches in coastal San Mateo County. If you live in a watershed that flows to beaches with this warning, it is especially important to do your part. For more info about beaches with high bacteria levels visit www.smchealth.org/beaches



There are many sources of bacteria but **picking up pet waste is one of the easiest ways to stop bacterial pollution**. The Resource Conservation District, the County, and other local partners continue to find solutions to prevent bacteria from entering local creeks, beaches, and the ocean.

YOU CAN MAKE A DIFFERENCE!

On walks: Carry extra bags and pick up pet poop on sidewalks and trails. Always throw away bags in a landfill trash can.


At home: Pick up pet waste in your yard, especially before it rains, and dispose of it in a landfill trash can. Do not discard in a compost bin


Dispose of waste: Unbagged pet waste can also be flushed down the toilet or put in a pet waste digester.


Take the Scoop the Poop Pledge: Receive a free pet waste bag dispenser when you take the pledge: www.flowstobay.org/petwaste (only residents of unincorporated County are eligible to receive a free pet waste bag dispenser)

Post a sign: If your yard is in a visible area, post a sign reminding others to pick up after their pet.

Spread the word: Tell others about the impacts of pet waste and encourage them to pick up after their pet.









Activity Report

TO: Board of Harbor Commissioners
FROM: Julie van Hoff, Director of Administrative Services
DATE: November 20, 2019
PERIOD: October 2019

Harbor Commissioner Meetings

- Special Commission Meeting –October 3, 2019
- Governance & Policy Committee Meeting- October 7, 2019
- Regular Commission Meeting – October 16, 2019

Public Record Act Requests

- Received and completed request from Smart Procure (purchasing records) 10/16/19
- Completed request from Lisa Damrosch regarding Johnson Pier Assessment 9/2/19
- Completed request from John Ullom regarding communications with contractors 9/16/19
- Received and completed request from John Ullom regarding all communications between Harbor District Staff, Contractors, and Elected Officials dealing with special, ad hoc, or any other Harbor District meeting 10/2/19
- Received and completed request from Tideline Marine regarding contracts and landing agreements between the District and Prop SF and communications between the District and Prop SF 10/18/19
- Uploaded all files to Next Request for 2019 PRA requests

Accounting/Finance

- **Accounting/Finance Operations**
 - Accounts Payable (A/P)
 - Processed two A/P runs
 - Uploaded Positive Pay to US BANK
 - Processed recurring journal entries
 - Updated A/P vendor master lists, 1099 info, five new purchase orders, updated CA Use Tax

- In process of setting up an account with Department of Public Works at Pillar Point Harbor
 - Created worksheet summarizing Harbor Commissioner travel & training expenses
 - Accounts Receivable (A/R)
 - Daily cash batch review and tenant account adjustment review
 - Month-end – The Marina Program (TMP) to general ledger reconciliation and rollover to next period
 - Assisted with collections of balances, filing of liens, sale of boats, and assisting operations staff
 - Prepared and reviewed monthly A/R report for PPH and OPM
 - Met with management to review “problem” accounts
 - Sent accounts to collections
 - Working on cleaning up AR credit balances at PPH
 - Working on unclaimed property filings
 - Resubmitted forms for the 2020 FTB Intercept Collection Program
 - Banking/Investments
 - Reconciled bank and investment accounts
 - Prepared bank reconciliation adjustments
 - Budget
 - Created and posted Budget Amendments for 1st quarter reporting
 - Purchasing/Contracts
 - Updated contract summary and major contract reconciliations
 - Payroll
 - Processed two payroll cycles
 - Uploaded CALPERS/ICMA reports for 457 savings plans
 - Reported CALPERS pension plan information
- **Board Meeting(s)**
 - Prepared Bills & Claims report
 - Prepared Legal Fees report
 - Assisted in preparation of 10/16/19 Board Packet and review of staff reports
 - Attended agenda setting meetings
- **Grants**
 - Resubmitted the SAVE Grant application in response to questions and comments received from DBW
 - Ocean Protection Council reimbursement #9 & #10 in progress
- **Year-end Accounting/Audit**
 - Responded to analytical review questions
 - Prepared audit adjustments for GASB 68- Accounting & Financial Reporting for Pensions and GASB 75- Accounting & Financial Reporting for Postemployment Benefits

Human Resources

- **Prepared Check Request for Medical & Life Insurance**
 - OE3 Trust Fund
 - Teamsters
 - SDRMA Medical & Ancillary

- **Personnel**
 - Worked on filing personnel paperwork
 - Prepared two Personnel Action Forms for step increases
 - Prepared paperwork for an employee evaluation
 - Prepared two Personal Action Forms for new hires
 - Prepared on-boarding paperwork for Administrative Analyst
 - Prepared paperwork for a PTO payout request
 - Prepared an offer letter for the position of Deputy Harbormaster
 - Updated employee contact list
 - Provided 2020 Open Enrollment documents to management and retirees
 - Assisted current employee with pending changes to medical plan
 - Assisted new employee with medical benefit questions
 - Attended 'Managing a Workforce in 2020'
 - Prepared employment agreement template for General Manager and sent to District HR recruitment consultant; coordinated reimbursement of candidate travel
 - Coordinating staff holiday party, tentatively scheduled December 11, 2019
 - Prepared leave paperwork and assisted employee
 - Working with Union and prior employee on longevity benefit issue
 - Worked with District Counsel and Labor & Employment Counsel on numerous issues including recruitment question, longevity benefit issue, harassment issue, gift of public funds, and PRA requests

- **Employment Recruitment**
 - Advertised for the position of Deputy Harbormaster A
 - Advertised for the position of Planner Analyst
 - Advertised for the position of Accountant; reviewed applications
 - Opened internal recruitment for Assistant Harbormaster
 - Facilitated and participated in 2nd interview of Harbormaster position
 - Assisted with examination for Deputy Harbormaster A and facilitated interviews
 - Assisted with reference check and offer letters
 - Interviewed Robert Half temporary employees to cover for open planner/analyst position
 - Created form for job candidates to upload their resumes and applications

Other Administrative Functions

- **Policy/Procedure Updates**
 - Worked with Labor & Employment Counsel on Anti-harassment, Non-discrimination, Anti-retaliation Policy
 - Working on updates to 4.2.1 Procurement Procedures
 - Working on records retention policy and procedures, including policy development and organizing or destruction of physical copies of documents

- **Leases/CAPs/Special Events**
 - Working on HMB Sportfishing reconciliation
 - Started work on transition plan for CAPs and Special Event Permits, including comprehensive one-on-one training with Deputy Board Secretary

- **Risk Management/ADA Compliance**
 - Registered for approximately 20 accredited ADA compliance training web courses and webinars
 - Researched ADA Coordinator certification
 - Reviewed ADA Self-Evaluation and Transition Plan produced by Sally Swanson Architects, Inc. in August 2018 to determine next steps for moving forward
 - Identified approximately 10 opportunities for training through SDRMA that will count toward Worker's Compensation and Property/Liability Credit Incentive Points (CIP) Program
 - Researched newsletter templates used by other government agencies (including local) as well as past iterations of the District's newsletter. This is required for transparency certificate from CSDA

- **Information Technology**
 - Continued bi-weekly Business Process Documentation & Improvement meetings - topic included records retention
 - Updated District's website.
 - Finalized & published RFP for ongoing Information Technology Services. The current contract will expire on December 31, 2019. A pre-proposal optional site visit was held on October 29, 2019. The proposals are due to the District on November 19, 2019 at 4:00 p.m.
 - Researched Microsoft SharePoint and OneDrive as potential cloud-based systems for District staff

- **Communications & Social Media**
 - Created 16 separate posts (including links and original photos) to cover the Big Wave Risk Assessment Group (BWRAG) surf safety summit
 - Attended the BWRAG surf safety summit on Saturday 10/26 and Sunday 10/27, as well as a district-only training day on 10/24
 - Obtained over 2000 photos of BWRAG instructors and participants in action, both in the classroom and on the shore of the Eastside beach

- Started work on a comprehensive communications plan to collect all existing guidance on social media posting and emergency messaging
- Identified majority of SMCHD partners and some associated news feeds to follow
- Met with social media consultant 5 times to discuss social media strategy, including tone, branding, and posting schedule
- Purchased a digital camera
- Created and disseminated three separate emergency messages in DialMyCalls (alert system) to PPH contacts for separate Public Safety Power Shutoff events in October; worked with Administrative Assistant on translation-Actual shutoff events on 10/9 and 10/25-Anticipated shutoff event on 10/29
- Identified the need for closer coordination with San Mateo County Sheriff's Office of Emergency Services to align public emergency messaging
- Attended Coastside Emergency Action Program (CEAP) meeting in Half Moon Bay to network with other local agencies and begin developing pathways for creating informed messaging during emergencies

- **Other**
 - Scanned incoming mail
 - Attended monthly staff meeting
 - Worked on special event permits
 - Continued Cross training of accounts payable and accounts receivable Accounting Technicians
 - Working on ensuring all District vessels, trailers and vehicles have up to date DMV registrations.