City of Capitola Agenda

Mayor:	Stephanie Harlan
Vice Mayor:	Michael Termini
Council Members:	Jacques Bertrand
	Ed Bottorff
	Kristen Petersen
Treasurer:	Peter Wilk

REVISED

CAPITOLA CITY COUNCIL
REGULAR MEETING

THURSDAY, FEBRUARY 9, 2017

7:00 PM

CITY COUNCIL CHAMBERS
420 CAPITOLA AVENUE, CAPITOLA, CA 95010

CLOSED SESSION - 6:45 PM
CITY MANAGER'S OFFICE

An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council on closed session items only. There will be a report of any final decisions in City Council Chambers during the Open Session Meeting.

LIABILITY CLAIMS [Govt. Code § 54956.95]
Claimant: Molly Kirsch
Agency claimed against: City of Capitola

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 7:00 PM

All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Council Meeting will be distributed to Councilmembers to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers, nor be read by them prior to consideration of an item.

All matters listed on the Regular Meeting of the Capitola City Council Agenda shall be considered as Public Hearings.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Kristen Petersen, Michael Termini, Jacques Bertrand, Ed Bottorff, and Mayor Stephanie Harlan

2. PRESENTATIONS

A. Presentation of Certificates of Appreciation for Retiring City Commissioners

B. Santa Cruz Metropolitan Transit District Update Presented by District General Manager Alex Clifford

3. REPORT ON CLOSED SESSION

4. ADDITIONAL MATERIALS

Additional information submitted to the City after distribution of the agenda packet.

A. Item 9.D. Communication from AT&T regarding Wireless Telecommunications

B. Item 10.B. Public Communications regarding Monterey Bay Community Power Joint Powers Agreement

5. ADDITIONS AND DELETIONS TO AGENDA

6. PUBLIC COMMENTS

Oral Communications allows time for members of the Public to address the City Council on any item not on the Agenda. Presentations will be limited to three minutes per speaker. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the minutes. A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

City Council Members/City Treasurer/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration.

8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS

A. Appointment of an Alternate to the Regional Transportation Commission
RECOMMENDED ACTION: Make appointment.

9. CONSENT CALENDAR

All items listed in the "Consent Calendar" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the public or the City Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government.

Note that all Ordinances which appear on the public agenda shall be determined to have been read by title and further reading waived.

A. Consider the January 26, 2017, Regular City Council Minutes
RECOMMENDED ACTION: Approve Minutes.

B. Receive Planning Commission Action Minutes for the Regular Meeting of January 19, 2017
RECOMMENDED ACTION: Receive Minutes.

C. Deny Liability Claim of Molly Kirsch
RECOMMENDED ACTION: Deny liability claim.

D. Second Reading of an Ordinance Amending Chapter 17.98 of the Capitola Municipal Code Pertaining to Wireless Telecommunications, Adoption of an Addendum to the General Plan Update Environmental Impact Report, and Adoption of a Resolution to Submit the Amendment to the California Coastal Commission
RECOMMENDED ACTION: That the City Council take the following actions:

1. Adopt the Addendum to the General Plan Update Environmental Impact Report;
2. Adopt an Ordinance to amend Municipal Code Chapter 17.98 Wireless Communications Facilities;
3. Adopt the attached Resolution directing the City Manager to submit an Amendment to the City of Capitola Local Coastal Program to the California Coastal Commission for certification.

E. Lateral Police Officer Hiring Incentive Program
RECOMMENDED ACTION: Approve Resolution to Increase Bonus for Lateral Police Officer Hires.

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

All items listed in "General Government" are intended to provide an opportunity for public discussion of each item listed. The following procedure pertains to each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

A. Consideration of an Esplanade Park Master Plan
RECOMMENDED ACTION:

1. Authorize the City Manager to enter a contract with Michael Arnone for the creation of an Esplanade Park Master Plan funded using Public Art Fund revenues.

2. Council discretion to consider the request by the Art and Cultural Commission to move forward with the climbing sculpture element of the plan prior to the development of the park master plan.

B. Approval of the Monterey Bay Community Power Joint Powers Agreement and a Resolution Authorizing the City of Capitola's Participation and First Reading of the Related Uncodified Ordinance
RECOMMENDED ACTION: That the City Council take the following actions:

1. Adopt the attached resolution establishing the Monterey Bay Community Power Authority and approving the City of Capitola as a founding member of the Authority.
2. Introduce the attached ordinance authorizing the implementation of a Community Choice Energy program in the City of Capitola.
3. Direct staff to move forward on discussions regarding the City's share of the credit guarantee; and,
4. Appoint a primary and alternate on the newly formed Monterey Bay Community Power Policy Board of Directors.

C. Council Member Review of Community Grant Recipients
RECOMMENDED ACTION: Receive grantee list and consider designating Council Members to research specific grant recipients.

11. ADJOURNMENT

Note: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes "final." Please be advised that in most instances the decision become "final" upon the City Council's announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 7:00 p.m. (or in no event earlier than 6:00 p.m.), in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City's website: www.cityofcapitola.org and at Capitola City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola. Need more information? Contact the City Clerk's office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: City Council meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed "Live" on the City's website at www.cityofcapitola.org by clicking on the Home Page link "**Meeting Video**." Archived meetings can be viewed from the website at anytime.

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Presentation of Certificates of Appreciation for Retiring City Commissioners

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Mayor Harlan will present certificates of appreciation to:

Nathan Cross for five years of service on the Finance Advisory Committee; and
Amie Forest for three years of service on the Commission on the Environment.

ATTACHMENTS:

1. Nathan Cross certificate of appreciation
2. Amie Forest certificate of appreciation

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

City of Capitola

Certificate of Appreciation

to

NATHAN CROSS

for Service as a Member on the

Finance Advisory Commission

from January 2012 through December 2016

Stephanie Harlan

Stephanie Harlan, Mayor

Signed and sealed this 9th day of February, 2017

City of Capitola

Certificate of Appreciation

to

AMIE FOREST

for Service as a Member on the

Commission on the Environment

from January 2014 through December 2016

Stephanie Harlan

Stephanie Harlan, Mayor

Signed and sealed this 9th day of February, 2017

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Santa Cruz Metropolitan Transit District Update Presented by District General Manager Alex Clifford

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Report Prepared By: Jamie Goldstein
City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

Deiter, Michele (MDeiter@ci.capitola.ca.us)

From: Shank, Aaron M. <AShank@porterwright.com>
Sent: Wednesday, February 08, 2017 7:59 AM
To: City Council; Condotti, Anthony (acondotti@abc-law.com)
Cc: DI BENE, JOHN (Legal) (jd3235@att.com)
Subject: AT&T's initial comments to City of Capitola's proposed amendment to wireless ordinance
Attachments: AT&T Ltr re. Capitola's proposed amendment to wireless ordinance.pdf

Dear Mayor Harlan, Vice Mayor Termini, Councilmembers Bottorff, Bertrand and Petersen, and Mr. Condotti: Please accept this letter from John di Bene on behalf of AT&T in connection with the City's proposed amendment to Chapter 17.98 (Wireless Communications Facilities) of the Capitola Municipal Code. Please consider these comments in connection with Item 9.D for tomorrow's City Council agenda. If you have any questions, please feel free to contact me. Thank you.

Aaron M. Shank
Outside Legal Counsel to AT&T

Aaron M. Shank | Porter Wright Morris & Arthur LLP | 41 S High St Suites 2800-3200 | Columbus, OH 43215
Direct: 614-227-2110 | Fax: 614-227-2100 | ashank@porterwright.com
porterwright

JOHN DI BENE
General Attorney
Legal Department

AT&T Services, Inc.
2600 Camino Ramon
Room 2W901
San Ramon, CA 94583

925.543.1548 Phone
925.867.3869 Fax
jdb@att.com

February 8, 2017

Via E-mail

City of Capitola City Council
City Hall
420 Capitola Avenue
Capitola, CA 95010

Anthony P. Condotti, Esq.
City Attorney for City of Capitola
Atchison, Barisone, Condotti & Kovacevich
333 Church Street
Santa Cruz, CA 95060

Re. AT&T's Initial Comments to Proposed Wireless Ordinance
Chapter 17.98 of the Capitola Municipal Code

Dear Mayor Harlan, Vice Mayor Termini, Councilmembers Bottorff, Bertrand and Petersen, and Mr. Condotti:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide AT&T's initial comments regarding the draft wireless telecommunications ordinance ("Proposed Ordinance"). AT&T recognizes that the Proposed Ordinance reflects the City's efforts to bring its code up to date given advances in wireless technologies and the laws that govern wireless siting. AT&T welcomes the opportunity to work with the City to improve the current process for siting wireless facilities, and AT&T asks the City to fully consider detailed comments from industry stakeholders.

The Proposed Ordinance must be viewed in the context of the interplay between applicable federal and state laws and the City's Code. By and large, the applicable federal laws aim to promote and expedite deployment of wireless telecommunications services.[1] State law also imposes significant limitations upon the City's authority to regulate siting of wireless

[1] *See, e.g.*, Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B); H. Conf. Rep. No. 104-458, at 1 (1996) ("Act") (purpose of the Telecommunications Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition"); *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Ruling 13994 (2009) (the "Shot Clock Order"); Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96 (codified as 47 U.S.C. § 1455(a)).

telecommunications facilities.[2] With these limitations in mind, AT&T offers the following specific comments regarding the proposed amendments.

Definitions

The City has restated many definitions that are provided under federal law. Rather than rewriting the entire text of each definition, which risks mistake and potentially obsolescence, the City should simply incorporate the definitions from the sources of the federal laws. As for the definition of "collocation," we note that the City is proposing to adopt the definition from the FCC's regulations implementing Section 6409(a), 47 C.F.R. § 1.40001(b)(2). But this definition is more narrow than the one that has been traditionally applied to wireless telecommunications facilities in other contexts. Outside of the Section 6409(a), the term collocation also refers to placing wireless telecommunications facilities on existing buildings or other structures.[3] AT&T recommends that the City adopt this broader view of collocation. Not only is this consistent with federal law, but it will help encourage collocations while fostering the city's stated purpose to allow for "robust wireless services."[4]

Risks in Complying with the Applicable FCC Shot Clock

Section 17.98.040.E.7 of the Proposed Ordinance provides that an application may be "deemed withdrawn" if the applicant takes time to respond to an incomplete notice. This proposed provision is unhelpful to providers and the City, and it is unlawful. The delay contemplated by this proposed provision – the time for a service provider to respond to an incomplete notice – is often the result of the wireless provider and City staff working together to resolve issues. AT&T regularly engages with cities in the context of responding to concerns raised by incomplete notices, and recommends that the City not seek to constrain the collaborative process. What's more, the City cannot extinguish a pending application when the applicant needs time, as a practical matter, to respond to an incomplete notice. The FCC shot clocks establish comprehensive timing parameters for processing applications to install wireless telecommunications facilities, and there is no room for the City to regulate the workings of the shot clocks. In the context of new site builds, collocations, and modifications under Section 6409(a), the FCC shot clocks provide that an application may be tolled by an incomplete notice. These rules do not permit the City to deem an application withdrawn. AT&T appreciates the need to keep the process moving, but recommends the City build in a mechanism by which an applicant can maintain its application while it works to respond to an incomplete notice.

Section 17.98.040.F.3 of the Proposed Ordinance, regarding the process for considering a Tier 3 application, risks violating the applicable shot clock in many instances. The City may often run into problems complying with the shot clock for Tier 3 applications given the procedure by which an application may be referred from administrative review by the Community Development Director to public hearing by the Planning Commission. Under this procedure, when the Community Development Director is less than 10 days from issuing a decision, a request for public hearing can be made. This triggers new noticing requirements and

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[2] *See, e.g.*, Cal. Gov't Code §§ 65964 & 65964.1; Cal. Pub. Utils. Code §§ 7901 & 7901.1.
[3] *See* Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 C.F.R. Part 1, Appx. B.
[4] *See* Section 17.98.010.A of the Proposed Ordinance.

the need to get onto the Planning Commission's calendar. It is very likely that this procedure will take more than 90 days. And it is important to understand that the applicable FCC shot clock for many – perhaps all – Tier 3 applications is the 90-day collocation shot clock. Although not defined as "collocation" under the Proposed Ordinance, Tier 3 covers applications for building-mounted, façade-mounted, and pole-mounted wireless telecommunications facilities. The FCC Shot Clock Order contemplates these types of placements as collocations subject to the 90-day shot clock. AT&T recommends eliminating this potential referral process, which is unlikely needed given the nature of Tier 3 applications.

The City may also run into problems complying with the FCC shot clocks in the context of certain appeals. For example, Section 17.98.040.K.2 of the Proposed Ordinance, regarding appeals of Tier 2 and Tier 3 facilities, provides for two layers of appeals and appeal hearings. Especially in connection with applications for collocations, the City runs a serious risk of violating the 90-day shot clock every time a decision on an application is appealed.

Risks in Complying with Section 6409(a)

Section 17.98.040.D of the Proposed Ordinance encourages pre-application conferences. While pre-submittal conferences can be helpful for certain applications, many times they are not needed and serve only to delay. Especially with respect to eligible facilities requests under Section 6409(a) and other administrative approvals, adding so much time can be counterproductive and is inconsistent with state and federal laws that aim to foster prompt action on applications for permits to construct or modify wireless telecommunications facilities.

Section 17.98.050.B.1 of the Proposed Ordinance provides that Section 6409(a) permits will be subject to a condition that they cannot extend the underlying permit term and "its term shall be coterminous." Given that Section 17.98.050.A.4 of the Proposed Ordinance sets the maximum duration for permits as ten years,[5] the result will be that every Section 6409(a) permit will be for a term of less than ten years. This is presumptively unreasonable under state law and is not consistent with the purpose of the applicable federal law. AT&T recommends that the City eliminate this as a standard condition upon Section 6409(a) permits.

Section 17.98.040.H.3 of the Proposed Ordinance identifies when the Community Development Director may deny a Section 6409(a) application. At least with respect to Sections 17.98.040.H.3.a (where a proposed facility would defeat an existing concealment element) and 17.98.040.H.3.d (where a proposed facility otherwise does not qualify for mandatory approval), the Community Development Director should be permitted to transfer an application from the Tier 1 process to another applicable process. Indeed, the FCC's Final Rule implementing Section 6409(a) provides that once a Section 6409(a) application is denied, the applicable shot clock under the Telecommunications Act of 1996 (the 90-day or 150-day shot clock, as applicable) commences with respect to the application.[6] In order to avoid conflicts with the federal rule, AT&T recommends that the City add a provision allowing the Community

[5] AT&T also stresses that a general ten-year maximum term is not appropriate because this is a minimum term to avoid being presumptively unreasonable under California Government Code Section 65964(b).

[6] Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, 80 Fed. Reg, 1,238, 1,257, ¶113 (Jan. 8, 2015) (Final Rule).

Development Director to reassign a Tier 1 application to another tier upon finding it does not qualify as an eligible facilities request.

Conclusion

AT&T applauds the City for its efforts in seeking to develop a reasonable ordinance with respect to wireless facilities. To that end, I encourage the City to consider additional ways to meet its stated goal of providing for more robust wireless services while ensuring compliance with applicable state and federal laws. We welcome the opportunity to work with the City to fine-tune its Proposed Ordinance.

Very truly yours,

/s/ John di Bene

John di Bene

Deiter, Michele (MDeiter@ci.capitola.ca.us)

From: Andy Hartmann <andy@ibew234.org>
Sent: Tuesday, February 07, 2017 9:07 AM
To: City Council
Cc: Fridy, Linda (lfridy@ci.capitola.ca.us)
Subject: Suggestions for Monterey Bay Community Power JPA
Attachments: Recommendations for MBCP Joint Exercise of Powers Agreement.pdf

Mayor and City Council Members,
Below are a few suggestions to make the CCA program more sustainable, robust, and comprehensive.

1. **Finance initial start-up costs** (see RFP for Humboldt County Community Choice Aggregation Development and Operations Services, Task 3.1 of http://www.redwoodenergy.org/images/Files/CCA/RCEA-CCA-RFP-15-001.pdf). This will remove any impediment to jurisdictions not joining for financial concern.
2. **Include a Business Plan** in order to include a roadmap for the development, procurement, and integration of local renewable energy resources (see attached).
3. **Improve Governance Structure**. Give each jurisdiction a seat on the Board and use MCE's 50/50 approach to weighted voting, so that every vote fairly represents its ratepayers.

Thank you for your time and consideration.

Sincerely,

Andy Hartmann
Business Manager/Financial Secretary
International Brotherhood of Electrical Workers Local 234
10300 Merritt Street
Castroville, CA 95012
(831) 594-7471 cell
(831) 633-2311
(831) 633-0570 fax

February 3, 2017

Proposed recommendations for the
JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE
Monterey Bay Community Power Authority
OF
Monterey, Santa Cruz, and San Benito Counties

Alter RECITALS

D. a. ~~It is further desired to establish a long-term energy portfolio that prioritizes the use and development of State, local and regional renewable resources and carbon free resources.~~
It is further desired to establish a long-term energy portfolio that prioritizes the use and development of local renewable and carbon-free resources. (Page 2)

Add to ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.3 Business Plan. The Authority shall cause to be prepared a local development Business Plan within one (1) year after launch of the CCA Program. The Business Plan shall include a roadmap for the development, procurement, and integration of local renewable energy resources. The Business Plan shall include a description of how the CCA Program will contribute to fostering local economic benefits, such as job creation and community energy programs. The Business Plan shall identify opportunities for local power development and how to achieve the goals outlined in Recitals C and D of this Agreement. The Business Plan shall include specific language detailing employment and labor standards that relate to the execution of the CCA Program. The Business Plan shall identify clear and transparent marketing practices to be followed, including the identification of the sources of its electricity and explanation of the various types of electricity procured by the Authority. The Business Plan shall be subject to annual public review. (Page 13)

Fridy, Linda (lfridy@ci.capitola.ca.us)

Subject: FW: Request to take action to form Monterey Bay Community Power

From: Katherine O'Dea [mailto:katherine@saveourshores.org]
Sent: Monday, February 06, 2017 5:34 PM
To: Katherine O'Dea <katherine@saveourshores.org>
Subject: Request to take action to form Monterey Bay Community Power

Dear Council Member,

On behalf of the Board, Staff and Constituents of Save Our Shores, I urge you, strongly, to vote to adopt a final resolution to both form and join a Joint Powers Authority to be known as Monterey Bay Community Power. This action is arguable the most important step you can take as an elected official to ensure the Monterey Bay region will meet (and possibly exceed) the state mandate to get 33% of our electricity from renewables by 2020 and 50% by 2030. Further, forming and joining the JPA will also ensure our local jurisdictions have the ability to set rates and use surplus revenues to fund local complimentary programs that will create local jobs.

Most importantly, voting for and enacting community choice energy will:

- More than double our use of renewable energy resources (from 27% renewables to 59% renewables)
- Provide 70% greenhouse gas (GHG) emission free electricity
- Provide annual surplus revenues of approximately $9 million dollars in funds that can will support our local regional goals
- Help build local renewable energy projects, stimulate local economic reinvestment and support local green job creation
- Provide all this, at the same rates

No other initiative has the potential to make such a dramatic positive impact on GHG emissions reductions in our region than this one.

Thank you for your consideration of our request.

Sincerely,

Katherine O'Dea

Katherine O'Dea
Executive Director, Save Our Shores
Office: 1.831.462.5660 x8
Mobile: 1.401.640.8213
Website: www.saveourshores.org
Address: 345 Lake Ave, Suite A, Santa Cruz, CA 95062

Fridy, Linda (lfridy@ci.capitola.ca.us)

From: Alex Yasbek <ayasbek@gmail.com>
Sent: Thursday, February 09, 2017 10:00 AM
To: City Council
Subject: Please Support Monterey Bay Community Power

Dear Mayor and City Council Members,

I am writing to you to urge you to support the Community Choice Energy program - The Monterey Bay Community Power program. I think the benefits to our community are numerous from a decrease in carbon emissions to an increase in local jobs.

I do however think that the program can be improved and I do not see any issue with delaying a vote by a month so that the following issues can be addressed:

1. The governance structure of the project seems unfair (i.e the entire county of Monterey gets one vote while the City of Santa Cruz get one vote, at least this is my understanding)

2. The startup fee structure seems to rely too heavily on our local Cities - I think these fees could more feasibly be covered by some sort of finance option.

3. I do not believe the program is clear enough on it's commitment to local jobs (at least this is not strongly stated in the proposed agreement)

4. There does not appear to be a community advisory board proposed for the project.

To recap: I strongly urge you to support the project but I would like the above mentioned issues to be addressed.

Thank you.

-Alex Yasbek
831 334 9054
400 34th Ave, Santa Cruz, CA 95062

Emerging Ecologies

February 3, 2017

City of Capitola
Capitola City Council Members
420 Capitola Ave
Capitola, CA 95010
ATTN: Mayor, City Council and City Manager

RE: Monterey Bay Community Power – Support for Resolution to Form and Join JPA & Ordinance

Dear Esteemed Mayor, City Councilmembers and City Manager,

As a local small business owner, owned and operated within the tri-county region, I take a special interest in the initiatives considered for adoption within our community. As an environmental consultant and globally minded resident of the region and Co-Chair of the Monterey Bay Regional Climate Action Compact, I take a particular interest in initiatives which promise to reduce emissions, address climate change and sea level rise, support green job creation and generate local revenues to stimulate economic reinvestment, especially in the clean energy sector.

On behalf of Emerging Ecologies – I am pleased to submit this letter of support for the formation of the Monterey Bay Community Power Program.

This initiative is the single most important climate action our region can take to reduce our greenhouse gas (GHG) emissions and thus to support our region's Climate Action goals.

On the Monterey Bay, 50% of the greenhouse gas (GHG) emissions produced come from the built environment – this is, the energy we use every day in our homes and businesses. By taking local control over the kind of energy we purchase, we can lower our emissions dramatically in just a few years. This potential for emissions reduction is at the heart for our support of this program.

This is why Community Choice Energy (CCE) was first identified by the region's climate leaders as a powerful local initiative with the potential to dramatically reduce our region's GHG emissions and combat climate change. This is why many of our local jurisdictions including the City of Capitola have included CCE within your Climate Action Plans. This is also why climate leaders throughout the region have supported this effort in the local region since inception.

For the City of Capitola this issue is especially dire, as the Monterey Bay Sea Level Rise Vulnerability & Adaptation study recently drafted by Moss Landing Marine Labs identified:

- City of Capitola is one of the two **most vulnerable** communities to the impacts of sea level rise
- Over 300 buildings are vulnerable within your city as early as 2030
- Capitola main beach width is estimated to be reduced by 95% by 2100

This program **can help both Capitola and the region, make a significant step forward in reducing emissions** and thus, buffering your community against the potential impacts of sea level rise associated with climate change.

But this program is about more than emissions reduction. It is also about local green job creation, economic reinvestment in our local community and the potential to support community resilience through localized support for clean energy development, renewable energy adoption, and more robust energy efficiency and other complementary programs. This is also why we have and will continue to support this initiative.

Emerging Ecologies works to give rise to sustainable, engaged and resilient communities. We are pleased to see initiatives like this one take shape **to provide residents and businesses throughout the region with the choice** to select clean energy, support green job creation and support more resilient localized energy systems. We are further impressed with the extensive public three year process undertaken by this effort, and the fact that the project team secured over $400K in grant and individual contributions to conduct a Technical Feasibility Study at no cost to our region's general funds.

In 2013, all 21 jurisdictions in the Monterey Bay Area passed resolutions to explore the feasibility of CCE for our local region and form the Program Development Advisory Committee (PDAC) – on which the City of Capitola has served for 3 years, and 28 public meetings. Following the completion of the Technical Feasibility Study and Peer Review in 2016, and based upon the positive results of the study, 19 of 21 jurisdictions passed resolutions reviewing the governance structure and indicating their intent to join the JPA.

We commend the City of Capitola for your leadership demonstrated to date in participating in this committee. **We further urge the City of Capitola to take action to form and join** Monterey Bay Community Power **by passing the resolution and ordinance before you for consideration.**

This important program will:

- More than double our use of renewable energy resources (from 27% renewables to 59% renewables), more than 10 years ahead of California's Renewable Portfolio Standard goal of 50% by 2030 timetable
- Provide 70% greenhouse gas (GHG) emission free electricity – representing a significant jump forward in helping local jurisdictions achieve your Climate Action goals
- Provide annual surplus revenues of approximately $9 million dollars in funds that can will support our local regional goals
- Help build local renewable energy projects, stimulate economic reinvestment and support local green job creation
- Provide all this, at the same rates

The extensive public process, transparent disclosure of information, and the 90+ community outreach presentations conducted are laudable. The PDAC's recommended 23 guiding principles should also be commended which will set strategic and operational practices based on industry best practices with special attention to key components such as rate parity, rapid investment in local renewable energy generation, localized complementary programs like energy efficiency and distributed solar, appropriate financial controls and customer safeguards, adherence to economic justice principles and support for localized job creation.

In your 2015 Climate Action Plan, the City of Capitola estimated that CCE will account for 74.6% of your residential and non residential energy emissions reductions. In line with your adopted Climate Action Plan – no other initiative has the potential to make such a dramatic positive impact on GHG emissions reductions in our region than this one.

We urge your passage of this resolution.

Sincerely,

Brennen Jensen
Director, Emerging Ecologies

MONTEREY BAY REGIONAL CLIMATE ACTION COMPACT

February 3, 2017

City of Capitola
Capitola City Council Members
420 Capitola Ave
Capitola, CA 95010
ATTN: Mayor, City Council and City Manager

RE: Monterey Bay Community Power – Support for Resolution to Form and Join JPA & Ordinance

Dear Esteemed Mayor Harlan, City Councilmembers Bottorff, Bertrand, Petersen, Termini and City Manager Goldstein,

On behalf of the **Monterey Bay Regional Climate Action Compact** – a consortium local businesses, nonprofits, institutions and the 21 jurisdictions of the Monterey Bay who have come together to take meaningful action against the causes and impacts of climate change – I am pleased to submit this letter of support for the formation of the Monterey Bay Community Power Program.

This initiative is the single most important climate action our region can take to support our Climate Action goals.

On the Monterey Bay, 50% of the greenhouse gas (GHG) emissions produced come from the built environment – this is, the energy we use every day in our homes and businesses. By taking local control over the kind of energy we purchase, we can lower our emissions dramatically in just a few years. This potential for emissions reduction is at the heart for our support of this program.

This is why Community Choice Energy (CCE) was first identified by the Compact as a powerful local initiative with the potential to dramatically reduce our region's GHG emissions and combat climate change. This is why many of our local jurisdictions **including the City of Capitola** have included CCE within your Climate Action Plans. This is also why the Compact has supported this effort in the local region since inception.

But this program is about more than emissions reduction. **It is also about local green job creation, economic reinvestment in our local community and the potential to support community resilience** through localized support for clean energy development, renewable energy adoption, and more robust energy efficiency and other complementary programs. **These economic and social benefits** are also why we have and will continue to support this initiative.

Since 2011, the Compact has supported the concept of CCE – first adopting the initiative as part of its key strategic objectives at our 1st Climate Summit. Then, supporting the 21 jurisdictions in exploring the concept's feasibility for our local region through policy support and in helping the project team secure over $400K in grant and individual contributions to conduct a Technical Feasibility Study at no cost to our region's general funds.

In 2013, all 21 jurisdictions in the Monterey Bay Area passed resolutions to explore the feasibility of CCE for our local region and formed the Program Development Advisory Committee (PDAC) – on which the City of Capitola has served for 3 years, and 28 public meetings. Following the completion of the Technical Feasibility Study and Peer Review in 2016, and based upon the positive results of the study, 19 of 21 jurisdictions passed resolutions reviewing the governance structure and indicating their intent to join the JPA.

This month, all 21 jurisdictions will consider adoption of the final resolution to form and join the JPA. We commend the City of Capitola for your leadership demonstrated to date in participating in this committee. **We further urge the City of Capitola to take action to become a JPA member jurisdiction, by passing the JPA resolution and ordinance before you for consideration**.

This important program will:

- More than **double our use of renewable energy** resources (from 27% renewables to 59% renewables), more than 10 years ahead of California's Renewable Portfolio Standard goal of 50% by 2030 timetable
- Provide 70% **greenhouse gas (GHG) emission free** electricity – representing a significant jump forward in helping local jurisdictions achieve your Climate Action goals
- Provide surplus revenues of approximately **$9 million dollars annually** to support our local regional goals
- Help build local renewable energy projects, stimulate economic reinvestment and **support local job creation**
- **Provide all this, at the same rates**

The extensive public process conducted over the past three years, transparent disclosure of information, technical study and key documents on the Program's online website, and the 90+ community outreach presentations conducted over this time frame are laudable. The PDAC's recommended 23 guiding principles should also be commended which will help to set strategic and operational practices based on industry best practices with special attention to key components such as rate parity, rapid investment in local renewable energy generation, localized complementary programs like energy efficiency and distributed solar, appropriate financial controls and customer safeguards, adherence to economic justice principles and support for localized job creation.

In your 2015 Climate Action Plan, the City of Capitola estimated that CCE will account for 74.6% of your residential and non residential energy emissions reductions. In line with your adopted Climate Action Plan – no other initiative has the potential to make such a dramatic positive impact on GHG emissions reductions in our region than this one.

We urge your passage of this resolution.

Sincerely,

Brennen Jensen
Director, Emerging Ecologies
Co-Chair, Monterey Bay Regional Climate Action Compact

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Appointment of an Alternate to the Regional Transportation Commission

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RECOMMENDED ACTION: Make appointment.

BACKGROUND: At its meeting of January 26, 2017, the City Council deferred appointment of the alternate to the Santa Cruz County Regional Transportation Commission. Council Member Bottorff indicated interest in the position, but only if he was not reapportioned as the representative for the METRO board.

FISCAL IMPACT: None.

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Consider the January 26, 2017, Regular City Council Minutes

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RECOMMENDED ACTION: Approve Minutes.

DISCUSSION: Attached for City Council review and approval are the draft minutes of the regular meeting of January 26, 2017.

ATTACHMENTS:

1. Draft minutes for the 1/26/17 regular meeting

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

CAPITOLA CITY COUNCIL
REGULAR MEETING ACTION MINUTES
THURSDAY, JANUARY 26, 2017

CLOSED SESSION
CITY MANGER'S OFFICE 6:15 PM

CALL TO ORDER

Vice Mayor Termini called the meeting to order at 6:15 p.m. with the following items to be discussed in Closed Session:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
[Govt. Code § 54956.8]

Property: 4400 Jade Street, APN 034-551-02, Capitola, CA
City Negotiator: Jamie Goldstein, City Manager
Negotiating Parties: Soquel Union Elementary School District
Under Negotiation: Terms of Joint Use Agreement

LIABILITY CLAIMS [Govt. Code § 54956.95]

Claimant: Sandra Jones
Agency claimed against: City of Capitola

There was no one in the audience; therefore, the City Council recessed to the Closed Session in the City Manager's Office.

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 7:00 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Member Ed Bottorff: Present, Council Member Jacques Bertrand: Present, Mayor Stephanie Harlan: Present, Vice Mayor Michael Termini: Present, Council Member Kristen Petersen: Present.

City Treasurer Peter Wilk was present.

2. PRESENTATIONS

A. Oath of Office Ceremony for Standby City Council Member Marilyn Warter [420-20/520-50]

City Clerk Linda Fridy swore in Standby Council Member Warter.

3. REPORT ON CLOSED SESSION

City Attorney Tony Condotti said there was no reportable action on the real property lease of 4400 Jade Street and the liability claim will be voted on as part of the consent agenda.

4. ADDITIONAL MATERIALS

A. Item 10.A – A letter withdrawing the application being appealed pending a new design

B. Item 10.B – A reformatted page 222 from the agenda packet (Space Needs Assessment)

C. Item 10.B -- A revised Library Tentative Funding chart

D. Item 10.D -- An email regarding expanding the vacation rental overlay

5. ADDITIONS AND DELETIONS TO AGENDA

Community Development Director Rich Grunow noted the application for item 10.A was withdrawn and the appeal will not be heard.

6. PUBLIC COMMENTS

Joseph Leight expressed concerns about AMBAG (Association of Monterey Bay Area Governments) circumventing the public process.

Barbara Bush expressed concern about the new federal administration and a culture of misinformation, and ask for accountability at all levels.

Karl Shubert spoke on behalf of residents of Topaz Street and presented a petition, which was also presented to the Traffic and Parking Commission, regarding the amount of pass-through traffic along Topaz. He asked for enforcement of current speed limits and future discussion of options to reduce both speed and traffic.

Marylin Garrett spoke in support of independent radio and CELDF (Community Environmental Legal Defense Fund).

Mel Vento, resident of Topaz Street, echoed the concerns of her neighbors about traffic issues and the resulting danger in her residential neighborhood. She shared a message from resident Dana Ingersoll, the parent of a young child, in support of additional restrictions.

A gentleman spoke to the adverse health effects of electromagnetic radiation.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

Council Member Termini addressed the impact of recent storms, particularly the danger posed to the Capitola Wharf. He encouraged speedy discussion of future action to preserve the Wharf. He also noted the Fallen Officers Foundation has a fundraiser coming up, and band selection for the summer concert series has been completed.

Council Member Petersen recently attended the League of California Cities New Councilmembers Academy. There she met State Senate President Kevin de Leon and was pleased to make a local connection when he told her his children learned to swim in Capitola.

Mayor Harlan shared topics from the recent Joint Mayors Select Committee meeting, including transportation, infrastructure and affordable housing. She noted the Sanitation District's 10-year plan is available and a new veteran's information center opened in the Santa Cruz Main Library Branch.

She requested that the next agenda include a discussion of how Council Members could research community groups receiving City grants ahead of the budget process and asked to set a council team-building lunch date. At the end of the meeting, the lunch was tentatively scheduled for March 3, with Attorney Condotti researching if a private home location was allowed under the Brown Act.

Council Member Bertrand said he has been talking with the Sanitation District about pending improvements at the Nob Hill/Perry Park pump station and invited other Council Members and the public to contact him about a possible site visit.

Treasurer Wilk thanked staff for bringing him up to speed and praised the overall transparency of the city's financial information.

City Manager Jamie Goldstein thanked council and staff for support during his recent surgery.

8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS

A. Appointment of Representatives to Open City and County Boards and Commissions [110-10/1010-60]
RECOMMENDED ACTION: Make appointments.

Council Member Termini said the Arts & Cultural Commission supports both applicants for the at-large positions and noted the art professional spot is still open. The Commission also recommends artist Kim Hogan as the City's representative to the Arts Council of Santa Cruz County.

For the open alternate position on the Regional Transportation Commission, Council Member Termini noted he declined since he terms out in two years. Council Member Bottorff offered to take the spot unless he is reappointed the METRO representative to the RTC. The alternate appointment was continued.

B. Appointment to New County Ad-Hoc Homelessness Governance Study Committee [750-20]
RECOMMENDED ACTION: Appoint a Council Member to the County's ad-hoc committee.

Council Member Bertrand will attend pending schedule confirmation.

MOTION:	**APPOINT DENNIS NORTON TO THE FULL TERM AT-LARGE POSITION ON THE ARTS AND CULTURAL COMMISSION, MARY JO CONNOLLY TO THE UNFINSHED TERM, KIM HOGAN TO THE ARTS COUNCIL OF SANTA CRUZ COUNTY, AND COUNCIL MEMBER BERTRAND TO THE AD-HOC HOMELESSNESS STUDY COMMITTEE.**
RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Michael Termini, Vice Mayor
SECONDER:	Ed Bottorff, Council Member
AYES:	Bottorff, Bertrand, Harlan, Termini, Petersen

9. CONSENT CALENDAR

A. Consider the January 12, 2017, Regular City Council Minutes
RECOMMENDED ACTION: Approve Minutes.

B. Approval of City Check Register Reports Dated December 2, December 9, December 16 and December 23, 2016 [300-10]
RECOMMENDED ACTION: Approve Check Registers.

C. Deny Liability Claim of Sandra Jones for an Undetermined Amount [Claims Binder]
RECOMMENDED ACTION: Deny liability claim.

D. Consider Approving an Amended and Restated Joint Exercise of Powers Agreement and a Joint Community Facilities Agreement for the Libraries Facilities Financing Authority [230-10/500-10 A/C: Santa Cruz County Library Joint Powers Authority]
RECOMMENDED ACTION: Approve an Amended and Restated Joint Exercise of Power Agreement for the Libraries Facilities Financing Authority and a Joint Community Facilities Agreement.

E. Approve First Amendment to Contract with Bogard Construction for Library Project Management Services [330-10/500-10 A/C: Bogard Construction]
RECOMMENDED ACTION: Approve the first contract amendment with Bogard Construction for project management services for the Capitola Library Project, adding $210,000 of services to the contract. Further, approve a budget amendment increasing the approved expenditures in the Library Project Fund by $210,000.

F. Authorize Entering into a License Agreement with Parkmobile, LLC, for the Development of Trial Village Employee Parking Permit Program [470-40/500-10 A/C: Parkmobile, LLC]
RECOMMENDED ACTION: As recommended by the Traffic and Parking Commission, authorize the City Manager to enter into a License Agreement with Parkmoblie, LLC, to develop a trial Village Employee Parking Program for the lower Beach and Village Parking Lot.

RESULT:	**ALL ITEMS APPROVED OR DENIED AS RECOMMENDED [UNANIMOUS]**
MOVER:	Michael Termini, Vice Mayor
SECONDER:	Ed Bottorff, Council Member
AYES:	Bottorff, Bertrand, Harlan, Termini, Petersen

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

A. Appeal of a Planning Commission Approval of a Design Permit, Coastal Development Permit and Variance for a New Two-story, Single-family Residence at 105 Sacramento Avenue (Continued) [730-10]
RECOMMENDED ACTION: Uphold the Planning Commission's decision to approve the project as conditioned.

This application was withdrawn and the appeal was not heard.

B. Consider Report on the Library Project and Provide Direction on Budget Options [230-10/330-05/330-20]
RECOMMENDED ACTION: Receive update on library design and public outreach process, consider report on estimated project costs, and provide direction on project scope and budget.
.

Public Works Director Steve Jesberg presented an overview of where the library project currently stands and options for the budget based on size of the facility. Architect Chris Noll walked the Council through the process to date and integration of community input. The project is beginning the schematic design phase. He offered three conceptual design options.

The project budget will determine the library size. Director Jesberg presented three options: $13.15 million for an 11,700-square-foot facility based on the revised needs assessment, $14.15 million for a 12,700-square foot facility based on the original needs assessment, and $10.6 million for 9,120-square-foot facility based on the available funding. Susan Nemitz, system library director, noted staff of the library system's newest branches gave valuable input to the revised needs assessment, which resulted in lower stacks, fewer DVDs, and a mix of desktop and laptop computers. The proposed designs address the demand for group study space versus individual quiet space.

City Manager Goldstein noted the City currently has $10.6 million in hand, which would not cover the recommended size. Likely outside funding sources increase that amount to $11.15 million. About $2 million in General Fund money is needed to reach the revised needs assessment size. Some of that would come from a one-time fund balance transfer of $450,000 from the pension obligation bond closeout plus $400,000 from the redevelopment loan repayment. A larger-size facility would certainly require a loan. He noted that the CalPERS board recently changed its discount rate, which increases the City's ongoing annual payments. Multi-year financial planning must also allow for a sales tax downturn due to economic forces and/or mall redevelopment.

Mayor Harlan opened the public hearing. Marylin Garrett does not support the use of wifi in the library.

Gayle Ortiz, Capitola Library Advisory Committee, reported the committee unanimously supports the 11,700-square-foot option. She emphasized that the General Fund impact is only two years, which will likely predate any mall

redevelopment, and that it is appropriate for the City to put money into a project of this scale.

Ron Graves, resident, expressed concern about maintenance costs for flat roofs. He supports a larger facility, but worries that the redevelopment of the mall will not maintain the sales tax level.

Martha Bowersock does not support taking on additional debt.

Council Member Termini advocated for ample size to provide programs. He noted that roads will get support from the recent county Measure D and that CalPERS will not increase as significantly in the next two years.

Council Member Bertrand clarified the amount of space for staff use. Parking demand will be analyzed by a professional to assure it is adequate. He noted that a project of this scope unites the community and is a source of pride.

Council Member Petersen also supports a building that meets the needs assessment size and praised the flexible design.

Council Member Bottorff expressed concern about financial constraints such as CalPERS and noted projects often go over their budgets. He supports a limit of $10.5 million.

Mayor Harlan does not want to take money from capital improvement projects without investigating options for financing.

MOTION:	**APPROVE A PROJECT BUDGET OF $13.15 MILLION ALLOWING FOR CONSTRUCTION OF AN 11,700-SQUARE-FOOT FACILITY**
RESULT:	**ADOPTED [3 TO 2]**
MOVER:	Michael Termini, Vice Mayor
AYES:	Jacques Bertrand, Michael Termini, Kristen Petersen
NAYS:	Ed Bottorff, Stephanie Harlan

C. Introduction of an Ordinance Amending Chapter 17.98 of the Capitola Municipal Code Pertaining to Wireless Telecommunications (Continued) [730-85/740-40]
RECOMMENDED ACTION: That the City Council take the following actions:

1. Adopt the Addendum to the General Plan Update Environmental Impact Report;
2. Introduce an ordinance to amend Municipal Code Chapter 17.98 Wireless Communications Facilities;
3. Adopt the attached Resolution directing the City Manager to submit an Amendment to the City of Capitola Local Coastal Program to the California Coastal Commission for certification.

Director Grunow reviewed information provided at the previous hearing. The item was continued to see if there were elements from the City of Monterey's code that should be incorporated. Director Grunow said Capitola's version is more comprehensive and provides a tiered approach.

Council Member Termini clarified that a Tier Four Conditional Use Permit could be denied based on aesthetics or if there were other locations or options that were not considered.

Mayor Harlan opened the public hearing. Marylin Garrett opposes the proliferation of radiation from wireless technology.

Martha Bowersock, resident, spoke to health concerns about the technology.

Several speakers expressed frustration that health concerns cannot be considered.

Mayor Harlan noted that speakers should contact members of Congress to support changes to federal laws regarding wireless technology and local oversight.

Council Member Bertrand said that based on conversations at California League of Cities events, jurisdictions across the state are grappling with wireless permitting issues.

RESULT:	**APPROVE FIRST READING [UNANIMOUS]**	**Next: 2/9/2017 7:00 PM**
MOVER:	Ed Bottorff, Council Member	
SECONDER:	Jacques Bertrand, Council Member	
AYES:	Bottorff, Bertrand, Harlan, Termini, Petersen	

D. Zoning Code Update Status Report [730-85]
RECOMMENDED ACTION: Receive the staff presentation and provide direction on any additional zoning topics that should be discussed in upcoming hearings.

Senior Planner Katie Herlihy provided a status report on efforts to update the Zoning Code. A draft has been published online reflecting input from stakeholders, public hearings, Planning Commission, City Council, California Coastal Commission, and staff. Nine issues will be brought back for further discussion:

1. Zoning Map and TRO boundary
2. Height exception in MU-V
3. Height exception City Wide
4. Land use changes in C-R
5. Office uses in C-R
6. California Coastal Commission non-policy edits
7. Setbacks of encroachments and accessory structures
8. Accessory Dwelling Units
9. Non-conforming structures

Planner Herlihy encouraged Council Members to contact staff regarding any other topics they would like to revisit. Once the Planning Commission has reviewed these pending issues, it will recommend that City Council initiate a 60-day public review. The draft code and issues will then come to Council for review before it releases the code to public comment.

Council Member Termini asked about addressing Coastal Commission policy responses. Director Grunow recommends that the City adopt the code it wants and see what the formal response is from the Coastal Commission. He anticipates there will be significant concerns.

11. ADJOURNMENT

The meeting was adjourned at 10 p.m.

_____
Stephanie Harlan, Mayor

ATTEST:

_____
Linda Fridy, City Clerk

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: Community Development

SUBJECT: Receive Planning Commission Action Minutes for the Regular Meeting of January 19, 2017

RECOMMENDED ACTION: Receive Minutes.

ATTACHMENTS:

1. 01-19-2017 Planning Commission Action Minutes

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

ACTION MINUTES
CAPITOLA PLANNING COMMISSION MEETING
THURSDAY, JANUARY 19, 2017
7 P.M. – CAPITOLA CITY COUNCIL CHAMBERS

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioner Linda Smith: Present, Commissioner Edward Newman: Present, Chairperson TJ Welch: Absent, Commissioner Susan Westman: Absent, Commissioner Sam Storey: Present.

2. NEW BUSINESS

A. Swearing In of New Planning Commissioner(s)

Senior Planner Herlihy swore in Commissioner Storey

B. Election of Chair and Vice Chair

Commissioner Smith nominated Commissioner Newman for Chair and Commissioner Westman for Vice Chair. Commissioner Storey seconded the motion.

RESULT:	**ACCEPTED [3 TO 0]**
MOVER:	Linda Smith, Commissioner
SECONDER:	Sam Storey, Commissioner
AYES:	Smith, Storey, Newman
ABSENT:	Welch, Westman

C. Commission Appointments

The Commission opted to defer appointments to the February 2, 2017, meeting.

1. **Art & Culture Commission**
2. **Traffic & Parking Commission**

3. PRESENTATIONS

A. Soquel Creek Water District Presentation

4. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – None
B. Public Comments - None
C. Commission Comments - None
D. Staff Comments – None

5. APPROVAL OF MINUTES

A. Planning Commission Minutes for the Regular Meeting of December 1, 2016

RESULT:	**APPROVED [2 TO 0]**
MOVER:	Linda Smith, Commissioner
SECONDER:	Edward Newman, Commissioner
AYES:	Smith, Newman
ABSTAIN:	Storey
ABSENT:	Welch, Westman

6. CONSENT CALENDAR

A. 502 Pine Street #16-212 036-022-48

Subdivision application to convert a duplex apartment into two residential condominium units in the RM-M (Multi-family Residential – Medium Density) zoning district.
This project is not in the Coastal Zone and does not require a Coastal Development Permit.
Environmental Determination: Categorical Exemption
Property Owner: David Kraemer
Representative: John Swift, filed: 11/18/16

Motion: Approve Subdivision

RESULT:	**APPROVED [2 TO 0]**
MOVER:	Sam Storey, Commissioner
SECONDER:	Linda Smith, Commissioner
AYES:	Smith, Storey
ABSTAIN:	Newman
ABSENT:	Welch, Westman

7. PUBLIC HEARINGS

A. 4530 Garnet Street #16-157 034-034-02

Design Permit application for a remodel and 557 square foot addition to combine an existing single-family residence and detached secondary dwelling unit with a variance request to the maximum 80% valuation for improvements to a non-conforming structure, located in the R-1 (Single-Family Residential) zoning district.
This project is in the Coastal Zone but does not require a Coastal Development Permit.
Environmental Determination: Categorical Exemption
Property Owner: Clark Cochran
Representative: Dennis Norton, filed: 8/15/16
NOTE: Request for Continuance to February 2, 2017 Planning Commission Meeting

RESULT:	**CONTINUED [UNANIMOUS]**	**Next: 2/2/2017 7:00 PM**
MOVER:	Sam Storey, Commissioner	
SECONDER:	Linda Smith, Commissioner	
AYES:	Smith, Newman, Storey	
ABSENT:	Welch, Westman	

B. 407 El Salto Drive #16-178 APN: 036-133-18

Major Revocable Encroachment Permit and Fence Permit with a height exception for a new front-yard fence and gate to be located within the public right-of-way of a residence located in the R-1 (Single Family Residential) zoning district.
This project is in the Coastal Zone but does not require a Coastal Development Permit.
Environmental Determination: Categorical Exemption
Property Owner: Rebecca Peters
Representative: Rebecca Peters, filed: 9/26/16

MOTION: Approve Major Revocable Encroachment Permit with amended conditions and findings;
and
MOTION: Approve Fence Permit with a height exception with amended conditions and findings

RESULT:	**ENCROACHMENT PERMIT APPROVED AS AMENDED [UNANIMOUS]**
MOVER:	Linda Smith, Commissioner
SECONDER:	Sam Storey, Commissioner
AYES:	Smith, Newman, Storey
ABSENT:	Welch, Westman

RESULT:	**FENCE PERMIT APPROVED AS AMENDED [2-1]**
MOVER:	Linda Smith, Commissioner
SECONDER:	Sam Storey, Commissioner
AYES:	Smith, Newman, Storey
NAYS:	Newman
ABSENT:	Welch, Westman

C. Zoning Code Update All Properties within Capitola

Continuation of Comprehensive Update to the City of Capitola Zoning Code (Municipal Code Chapter 17).

RESULT:	**CONTINUED [UNANIMOUS]**	**Next: 2/2/2017 7:00 PM**
AYES:	Smith, Newman, Storey	
ABSENT:	Welch, Westman	

8. DIRECTOR'S REPORT

9. COMMISSION COMMUNICATIONS

10. ADJOURNMENT

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Deny Liability Claim of Molly Kirsch

RECOMMENDED ACTION: Deny liability claim.

DISCUSSION:

Molly Kirsch has filed a liability claim against the City in the amount of $228.68.

Report Prepared By: Liz Nichols
Executive Assistant to the City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: Community Development

SUBJECT: Second Reading of an Ordinance Amending Chapter 17.98 of the Capitola Municipal Code Pertaining to Wireless Telecommunications, Adoption of an Addendum to the General Plan Update Environmental Impact Report, and Adoption of a Resolution to Submit the Amendment to the California Coastal Commission

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RECOMMENDED ACTION: That the City Council take the following actions:

1. Adopt the Addendum to the General Plan Update Environmental Impact Report;
2. Adopt an Ordinance to amend Municipal Code Chapter 17.98 Wireless Communications Facilities;
3. Adopt the attached Resolution directing the City Manager to submit an Amendment to the City of Capitola Local Coastal Program to the California Coastal Commission for certification.

BACKGROUND/DISCUSSION: The City Council adopted the first reading of the updated Wireless Communications Facilities Ordinance on January 26, 2017. The updated Ordinance will be submitted to the California Coastal Commission for certification following final adoption.

FISCAL IMPACT: None

ATTACHMENTS:

1. Wireless Communication Facilities Ordinance
2. Addendum to GPU EIR
3. LCP Amendment Resolution

Report Prepared By: Linda Fridy
City Clerk

Wireless Communications Ordinance Amendment second reading
February 9, 2017

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

Chapter 17.98 – WIRELESS COMMUNICATIONS FACILITIES

Sections:

17.98.010 Purpose and Intent

A. Purpose. This chapter establishes requirements for the development, siting, collocation, installation, modification, relocation, development, and operation of wireless communications facilities consistent with applicable state and federal laws. These requirements aim to protect public health, safety, and welfare while balancing the benefits of robust wireless services with the unique community character, aesthetics, and local values of Capitola.

B. Intent. This chapter does not intend to, and shall not be interpreted or applied to:

1. Prohibit or effectively prohibit personal wireless services;
2. Unreasonably discriminate among wireless communications providers of functionally equivalent personal wireless services;
3. Regulate the installation, operation, collocation, modification, or removal of wireless facilities on the basis of the environmental effects of radio frequency (RF) emissions to the extent that such emissions comply with all applicable Federal Communications Commission (FCC) regulations;
4. Prohibit or effectively prohibit any collocation or modification that the City may not deny under state or federal law; or
5. Preempt any applicable state or federal law.

17.98.020 Definitions

A. Terms Defined. Terms used in this chapter are defined as follows:

1. "Amateur radio facilities" are antennas and related equipment for the purpose of self-training, intercommunication, or technical investigations carried out by an amateur radio operator who operates without commercial interest, and who holds a written authorization from the Federal Communications Commission to operate an amateur radio facility.
2. "Antenna" means a device or system of wires, poles, rods, dishes, discs, or similar devices used to transmit and/or receive radio or electromagnetic waves.
3. "Applicable FCC decisions" means the same as defined by California Government Code Section 65964.1(d)(1), as may be amended, which defines that term as "In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (2014)."
4. "Array" means one or more antennas mounted at approximately the same level above ground on tower or base station.
5. "Base station" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), as may be amended, which defines that term as follows:
    a. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. Section 1.40001(b)(9) or any equipment associated with a tower.
    b. "Base station" includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
    c. "Base station" includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
    d. "Base station" includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under 47 C.F.R. Section 1.40001, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of 47 C.F.R. Section 1.40001 that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
    e. "Base station" excludes any structure that, at the time the relevant application is filed with the State or local government under 47 C.F.R. Section 1.40001, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of 47 C.F.R. Section 1.40001.

6. "Collocation" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition effectively means "to add" new equipment to an existing facility and does not necessarily refer to more than one wireless facility installed at a single site.

7. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment."

8. "Eligible support structure" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)4), as may be amended, which defines that term as "[a]ny tower or base station as defined in [47 C.F.R. Section 1.40001], provided that it is existing at the time the relevant application is filed with the State or local government under [47 C.F.R. Section 1.40001]."

9. "Existing" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(5), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes of the [FCC rules implementing Section 6409 of the Spectrum Act] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition."

10. "FCC" means the Federal Communications Commission or its successor agency.

11. "Personal wireless services" has the same meaning as provided in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended, which defines the term as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."

12. "Section 6409(a)" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a), as may be amended.

13. "Service provider" means a wireless communications provider, company or organization, or the agent of a company or organization that provides wireless communications services.

14. "Significant gap" is a gap in the service provider's own wireless telecommunications facilities, as defined in federal case law interpretations of the Federal Telecommunications Act of 1996.

15. "Site" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(6), as may be amended, which provides that "[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."

16. "Stealth facility" is any facility designed to blend into the surrounding environment, and is visually unobtrusive. Examples of stealth facilities may include architecturally screened roof-mounted antennas, facade mounted antennas painted and treated as architectural elements to blend with the existing building, or elements designed to appear as vegetation or trees. Also referred to as concealed communications facilities.

17. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC's criteria and thresholds for a substantial change according to the facility type and location.

    a. For towers outside the public right-of-way, a substantial change occurs when:

        (1) The proposed collocation or modification increases the overall height more than 10 percent or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or

        (2) The proposed collocation or modification involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or

        (3) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four cabinets; or

        (4) The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

    b. For towers in the public right-of-way and for all base stations, a substantial change occurs when:

        (1) The proposed collocation or modification increases the overall height more than 10 percent or 10 feet (whichever is greater); or

        (2) The proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet; or

(3) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four 4cabinets; or

(4) The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no pre-existing ground cabinets associated with the structure; or

(5) The proposed collocation or modification involves the installation of any ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure; or

(6) The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

c. In addition, for all towers and base stations wherever located, a substantial change occurs when:

(1) The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Community Development Director; or

(2) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets, or excavation that is inconsistent with the thresholds for a substantial change described in this section.

d. Interpretation of Thresholds.

(1) The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.

(2) The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

18. "Temporary wireless communications facility" means a wireless communications facility located on a parcel of land and consisting of a vehicle-mounted facility, a building mounted antenna, or a similar facility, and associated equipment, that is used to provide temporary coverage for a large-scale event or an emergency, or to provide temporary replacement coverage due to the removal of an existing permitted,

permanent wireless communications facility necessitated by the demolition or major alteration of a nearby property.

19. "Tower" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(9), as may be amended, which defines that term as "[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site." Examples include, but are not limited to, monopoles, mono-trees, and lattice towers.

20. "Transmission equipment" means the same as defined by the FCC in 47 C.F.R. Section 140001(b)(8), as may be amended, which defines that term as "[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul."

21. "Wireless" means any FCC-licensed or authorized wireless communications service transmitted over frequencies in the electromagnetic spectrum.

22. "Wireless communications facility" is a facility that sends and/or receives radio frequency signals, AM/FM, microwave, and/or electromagnetic waves for the purpose of providing voice, data, images or other information, including, but not limited to, cellular and/or digital telephone service, personal communications services, and paging services. Wireless communications facilities include antennas and all other types of equipment for the transmission or receipt of such signals; towers or similar structures built to support such equipment; equipment cabinets, base stations, and other accessory development; and screening and concealment elements. (Also referred to as "facility").

23. "Wireless communications provider" is any company or organization that provides or who represents a company or organization that provides wireless communications services. (Also referred to as "service provider").

24. "Zoning Code" means the City of Capitola Zoning Code.

B. Terms Not Defined. Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

17.98.030 Applicability and Exemptions

A. Applicability. This chapter applies to all new facilities and all modifications to existing facilities proposed after the effective date of this chapter unless exempted by Subsection B (Exemptions) below.

B. Exemptions. This chapter does not apply to:

1. Amateur radio facilities;
2. Direct-to-home satellite dishes, TV antennas, wireless cable antennas, and other OTARD antennas covered by the Over-the-Air Reception Devices rule in 47 Code of Federal Regulations (C.F.R.) Section 1.4000 et seq.;
3. Non-commercial wireless communications facilities owned and operated by a public agency, including but not limited to the City of Capitola; and
4. All antennas and wireless facilities identified by the FCC or the California Public Utilities Commission (CPUC) as exempt from local regulations.

17.98.040 Permit Requirements

A. Required Permits. Wireless communications facilities are grouped into four tiers, each with its own permit requirement as shown in Table 17.98-1.

TABLE 17.98-1: WIRELESS COMMUNICATIONS FACILITY TIERS AND REQUIRED PERMITS

	Types of Facilities	Permit Required
Tier 1	Modifications to an existing facility that qualify as an "eligible facility request" as defined in Section 17.98.020.A.7	Section 6409(a) Permit
Tier 2	Building- and facade-mounted facilities in the C-C, C-R, or I zoning district when the proposed facility (1) is a stealth facility, (2) does not generate noise in excess of the City's noise regulations and (3) does not exceed the applicable height limit in the applicable zoning district. Pole-mounted facilities in the public right-of-way consistent with Section 17.98.070.D when the facility is either (1) incorporated into a steel pole with all antennas, equipment, and cabling entirely concealed from view, or (2) mounted to a wood pole with all equipment other than antennas located substantially underground and pole-mounted equipment, where necessary, extends no more than 2 feet horizontally and 5 feet vertically from the pole. A collocation that is not a Tier 1 Facility. A modification to an eligible support structure that is not a Tier 1 Facility.	Administrative Permit
Tier 3	Building- and facade-mounted facilities in the C-C, C-R, or I zoning district that are not Tier 2 Facilities.	Minor Use Permit

	Building- and facade-mounted facilities in the MU-V, MU-N, VA, or CF zoning district. Pole-mounted facilities in the public right-of-way consistent with Section 17.98.070.D that are not Tier 2 Facilities.	
Tier 4	New towers in any zoning district Any facility in the R-1, RM, or MH zoning district[1] Any facility within a public park or open space Any facility that is not a Tier 1, 2, or 3 Facility	Conditional Use Permit
[1] Except pole-mounted facilities located in a public right-of-way that qualify as either a Tier 2 or 3 Facility.		

B. Review Authority.

1. **Tier 1 and Tier 2 Facilities.** The Community Development Director shall review and take action on all Section 6409(a) Permit applications for Tier 1 facilities and Administrative Permit applications for Tier 2 facilities.

2. **Tier 3 Facilities.** The Community Development Director shall review and take action on Minor Use Permit applications for Tier 3 facilities. If a member of the public requests a public hearing in accordance with Subsection F.3 (Tier 3 Facilities (Minor Use Permit)) below, the Community Development Director may refer the application to the Planning Commission for review and final decision.

3. **Tier 4 Facilities.** The Planning Commission shall review and take action on Conditional Use Permit applications for Tier 4 facilities.

C. Conflicting Provisions. Conditional Use Permits required for a wireless communications facility shall be processed in compliance with Chapter 17.60 (Conditional Use Permits) and with this chapter. In the event of any conflict between this chapter and Chapter 17.60 (Conditional Use Permits), this chapter shall govern and control.

D. Pre-Application Conference.

1. The City encourages prospective applicants to request a pre-application conference with the Community Development Department before completing and filing a permit application.

2. The purpose of this conference is to:

   a. Inform the applicant of City requirements as they apply to the proposed project;

   b. Inform the applicant of the City's review process;

   c. Identify information and materials the City will require with the application; and

d. Provide guidance to the applicant of possible project alternatives or modifications.

3. The pre-application conference and any information provided to prospective applicants by City staff shall not be construed as a recommendation for approval or denial of an application.

4. Failure by City staff to identify all permit requirements shall not constitute a waiver of those requirements.

E. Permit Application and Review.

1. **Application Required.** All permits granted under this chapter shall require an application filed and reviewed in compliance with this chapter. All permit applications shall be filed with the Community Development Department on an official City application form. Applications shall be filed with all required fees, information, and materials as specified by the Community Development Department.

2. **Eligibility for Filing.**

a. An application may only be filed by the property owner or the property owner's authorized agent.

b. The application shall be signed by the property owner or the property owner's authorized agent if written authorization from the owner is filed concurrently with the application.

3. **Application Contents.** All applications shall include the following:

a. The applicable application fee(s) established by the City. Fees required to process permit applications are identified in the Planning Fee Schedule approved by the City Council.

b. A fully completed and executed application using an official City application form.

c. The application must state what approval is being sought (i.e., Conditional Use Permit, Minor Use Permit, Administrative Permit, or Section 6409(a) Permit). If the applicant believes the application is for a Section 6409(a) Permit, the applicant must provide a detailed explanation as to why the applicant believes that the application qualifies as an eligible facilities request subject to a Section 6409(a) Permit;

d. A completed and signed application checklist available from the City, including all the information, materials, and fees specified in the City's application checklist for proposed wireless communications facilities;

e. If the proposed facility is to be located on a City-owned building or structure, the application must be signed by an authorized representative of the City;

f. For Section 6409(a) Permits and Administrative Permits involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate permit required by the City for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable); and

g. All other materials and information required by the Community Development Director as publicly stated in the application checklist(s).

4. **Application Fees.**

a. The City may deem an application complete only after all required fees have been paid.

b. Failure to pay any required supplemental application fees is a basis for denial or revocation of a permit application.

c. The City will not refund fees for a denied application.

5. **Application Review.**

a. The application processing time for applications subject to this chapter shall be in conformance with the time periods and procedures established by applicable FCC decisions, adjusted for any tolling due to incomplete application notices or mutually agreed upon extensions of time.

b. The Community Development Department shall review each application for completeness and accuracy before it is accepted as being complete. The Community Development Department's determination of completeness shall be based on the City's list of required application contents and any additional written instructions provided to the applicant in a pre-application conference and during the initial application review period.

c. Within 30 calendar days of the Community Development Department's receipt of an application , the Community Development Department shall inform the applicant in writing that the application is complete and has been accepted for processing, or that the application is incomplete and that additional information is required.

d. When an application is incomplete as filed, the applicable timeframe for the City's review and action on such application does not include the time that the applicant takes to respond to the Community Development Department's request for additional information. The applicable timeframe for the City's review and action on the application shall be tolled until the applicant makes a supplemental submission, responding to the Community Development Department's request for additional information. The timeframe for review

begins running again when the applicant makes a supplemental submission in response to the Community Development Department's notice of incompleteness.

e. Additional required information shall be submitted in writing.

f. After an applicant responds to an incomplete notice and submits additional information, the Community Development Department will notify the applicant within ten (10) days of the Community Development Department's receipt of the supplemental submission if the additional information failed to complete the application. The applicable timeframe for the City's review and action on the application shall be tolled until the applicant makes a supplemental submission, responding to the Community Development Department's request for additional information.

6. **Project Evaluation and Staff Report.**

a. The Community Development Department shall review all applications to determine if they comply with this chapter, the Zoning Code, the General Plan, and other applicable federal and state laws and City policies and regulations.

b. For all applications requiring review by the Planning Commission, the Community Development Department shall prepare a staff report describing the proposed project and including, where appropriate, a recommendation to approve, approve with conditions, or deny the application.

7. **Applications Deemed Withdrawn.**

a. If an applicant does not pay required supplemental fees or provide information requested in writing by the Community Development Department within nine (9) months following the date of the letter requesting such fees and/or information, the application shall expire and be deemed withdrawn without any further action by the City.

b. After the expiration of an application, future City consideration shall require the submittal of a new complete application and associated filing fees.

F. Public Notice and Hearing.

1. **All Facilities.** Public notice of pending decision or hearing for all facilities shall contain the following:

a. A description of the proposed facility, collocation, or modification.

b. The location of the subject property.

c. Required permits and approvals.

d. How the public can obtain additional information on the proposed project.

2. **Tier 1 Facilities (Section 6409(a) Permit) and Tier 2 Facilities (Administrative Permit).**

a. City approval or denial of a Tier 1 or Tier 2 facility is a ministerial action which does not require a public hearing.

b. The applicant shall post notice of pending action on a Tier 1 or Tier 2 facility application on the subject property at least ten (10) calendar days prior to the City taking action on the application.

c. In addition to the information identified in Subsection F.1 (All Facilities) above, the notice of a pending action shall contain the following:

(1) For Tier 1 facilities, the following statement: "Federal law may require approval of this application. Further, Federal Communications Commission Regulations may deem this application granted by the operation of law unless the City timely approves or denies the application, or the City and applicant reach a mutual tolling agreement."

(2) For Tier 2 facilities, the following statement: "The proposed wireless communication facility is allowed with an Administrative Permit and will be approved by the Community Development Director if the project complies with all applicable standards and regulations."

3. **Tier 3 Facilities (Minor Use Permit).**

a. A public hearing for a Tier 3 facility is required only if the Community Development Director receives a written request for a public hearing from the public.

b. The City shall mail public notice of a pending action on a Tier 3 facility to the owners of the real property located within a radius of 100 feet from the exterior boundaries of the subject property at least ten (10) calendar days prior to the City taking action on the application.

c. In addition to the information identified in Subsection F.1 (All Facilities) above, the notice of a pending action shall contain a statement that the City is considering the application and that the Community Development Director will hold a public hearing for the application only upon receiving by a specified date written request for a hearing.

d. If the City receives a request for a public hearing by the specified date, the Community Development Director shall hold a noticed public hearing on the application or refer the application to the Planning Commission for review and final decision. Public notice of the requested public hearing will be mailed to the owners of real property located within a radius of 100 feet from the exterior boundaries of the subject property.

e. If no written request for a public hearing is received by the specified date, the Community Development Director shall act on the application without a public hearing.

4. **Tier 4 Facilities.**

a. The Planning Commission shall review and take action on Tier 4 facility applications at a noticed public hearing in conformance with this chapter and Chapter 17.60 (Conditional Use Permits), as may be amended from time to time.

b. At least ten (10) calendar days prior to the scheduled hearing date, the City shall provide public notice of the hearing by:

(1) Mailing public notice of the hearing to the following recipients:

a) The owners of the subject property or the owner's authorized agent and the applicant;

b) The owners of the real property located within a radius of 600 feet from the exterior boundaries of the subject property;

c) Each local agency expected to provide essential facilities or services to the subject property;

d) Any person who has filed a written request for notice with the Community Development Department; and

e) Any other person, whose property, in the judgment of the Community Development Department, might be affected by the proposed project; and

(2) Posting a printed notice at the project site.

c. If the number of property owners to whom notice would be mailed in compliance with Subsection 4.b.1 above is more than 1,000, the Community Development Department may choose to provide notice by placing a display advertisement of at least one-eight page in one or more local newspapers of general circulation at least ten (10) calendar days prior to the scheduled hearing date.

d. In addition to the types of notice required above, the Community Development Department may provide additional notice as determined necessary or desirable.

e. The validity of the hearing shall not be affected by the failure of any resident, property owner, or community member to receive a mailed notice.

f. In addition to the information identified in Subsection F.1 (All Facilities) above, the notice of a public hearing shall identify the date, location, and time of the hearing.

G. Applicant Notifications for Deemed Granted Remedies. Under state and/or federal law, the City's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely

acted upon by the City, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:

1. For all Tier 2, Tier 3 and Tier 4 Facility applications:

    a. Completes all public noticing required pursuant to Section 17.98.040.F (Public Notice and Hearings) and California Government Code Section 65091 to the Community Development Director's satisfaction.

    b. No more than 30 days before the date by which the City must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide the following written notice to the City and other specified recipients as follows:

        (1) For Tier 2 Facilities, the written notice shall be delivered to the City and posted on the subject property.

        (2) For Tier 3 Facilities, the written notice shall be delivered to the City and mailed to the owners of the subject property (or the owner's authorized agent), and the owners of the real property located within a radius of 100 feet from the exterior boundaries of the subject property and any person who has filed a written request for notice with the Community Development Department.

        (3) For Tier 4 Facilities, the written notice shall be delivered to the City and mailed to the owners of the subject property (or the owner's authorized agent), the owners of the real property located within a radius of 600 feet from the exterior boundaries of the subject property, each local agency expected to provide essential facilities or services to the subject property, any person who has filed a written request for notice with the Community Development Department, and any other person identified by the Community Development Department as a person whose property might be affected by the proposed project.

        (4) The notice shall be delivered to the City in person or by certified United States mail.

        (5) The notice must state that the applicant has submitted an application to the City, describe the location and general characteristics of the proposed facility, and include the following statement: "Pursuant to California Government Code Section 65964.1, state law may deem the application approved in 30 days unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement."

2. For all facility applications:

a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.

b. Following the date by which the City must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the City that the application is deemed granted by operation of law.

H. Basis for Approval – Tier 1 Facilities.

1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an Administrative Permit, Minor Use Permit, or Conditional Use Permit, as applicable, and subject to the discretion of the Community Development Director.

2. The Community Development Director shall approve a Section 6409(a) Permit for a Tier 1 facility upon finding that the proposed facility qualifies as an eligible facilities request and does not cause a substantial change as defined in Section 17.98.020 (Definitions).

3. In addition to any other alternative recourse permitted under federal law, the Community Development Director may deny a Section 6409(a) Permit upon finding that the proposed facility:

   a. Defeats the effect of existing concealment elements of the support structure;

   b. Violates any legally enforceable standard or permit condition related to compliance with generally applicable building, structural, electrical and/or safety codes;

   c. Violates any legally enforceable standard or permit condition reasonably related to public health and/or safety; or

   d. Otherwise does not qualify for mandatory approval under Section 6409(a) for any lawful reason.

I. Basis for Approval – Tier 2 Facilities. To approve an Administrative Permit for a Tier 2 facility, the Community Development Director must find that the proposed facility complies with the requirements of this chapter and all other applicable requirements of the Zoning Code.

J. Basis for Approval – Tier 3 and 4 Facilities. To approve a Minor Use Permit or Conditional Use Permit for a proposed Tier 3 or Tier 4 facility, the review authority must make all of the following findings:

1. The facility is consistent with the requirements of this chapter.
2. The facility is allowed in the applicable zoning district.
3. The facility is consistent with the General Plan, Local Coastal Program, Zoning Code, and any applicable specific plan or area plan adopted by the City Council.
4. The location, size, design, and operating characteristics of the facility will be compatible with the existing and planned land uses in the vicinity of the property.
5. The facility will not be detrimental to the public health, safety, and welfare.
6. The facility is properly located within the city and adequately served by existing or planned services and infrastructure.

K. Appeals.

1. **Tier 1 Facilities:** Community Development Director decisions on a Section 6409(a) Permit are final and may not be appealed.
2. **Tier 2 and 3 Facilities.** Community Development Director decisions on an Administrative Permit for a Tier 2 Facility and a Minor Use Permit for a Tier 3 Facility may be appealed to the Planning Commission in a manner consistent with the process described in Chapter 2.52 (Appeals to City Council). Planning Commission decisions on such an appeal may be appealed to the City Council.
3. **Tier 4 Facilities.** Planning Commission decisions on a Conditional Use Permit for a Tier 4 facility may be appealed to the City Council in accordance with Chapter 2.52 (Appeals to City Council).

L. Permit Revocation.

1. **Basis for Revocation.** The City may revoke a permit for a wireless communications facility for noncompliance with any enforceable permit, permit condition, or law applicable to the facility.
2. **Revocation Procedures.**
   a. When the Community Development Director finds reason to believe that grounds for permit revocation exist, the Director shall send written notice to the permit holder that states the nature of the violation or non-compliance and a means to correct the violation or non-compliance. The permit holder shall have a reasonable time from the date of the notice (not to exceed 60 calendar days from the date of the notice or a lesser period if warranted by a public emergency) to correct the violation or cure the noncompliance, or show that the violation has not occurred or the facility is in full compliance.

b. If after receipt of the notice and opportunity to cure described in Section 17.98.040.L.2.a above, the permit holder does not correct the violation or cure the noncompliance (or demonstrate full compliance), the Community Development Director may schedule a public hearing before the Planning Commission at which the Planning Commission may modify or revoke the permit.

c. For permits issued by the Community Development Director, the Community Development Director may revoke the permit without such public hearing. The Community Development Director decision to revoke may be appealed to the Planning Commission.

d. The Planning Commission may revoke the permit upon making one or more of the following findings:

(1) The permit holder has not complied with any enforceable permit, permit condition, or law applicable to the facility.

(2) The wireless communications provider has failed to comply with the conditions of approval imposed.

(3) The permit holder and/or wireless communications provider has failed to submit evidence that the wireless communications facility complies with the current FCC radio frequency standards.

(4) The wireless communications facility fails to comply with the requirements of this chapter.

e. The Planning Commission's decision may be appealed to the City Council in accordance with Chapter 2.52 (Appeals to City Council).

f. Upon revocation, the City may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

M. Cessation of Operations

1. **Notice to City.** Wireless communications providers shall provide the City with a notice of intent to vacate a site a minimum of 30 days prior to the vacation.

2. **New Permit Required.** A new permit shall be required if a site is to be used again for the same purpose as permitted under the original permit if a consecutive period of six months have lapsed since cessation of operations.

3. **Removal of Equipment.** The service provider or property owner shall remove all obsolete and/or unused facilities and associated equipment from the site within 180 days of the earlier of:

a. Termination of the lease with the property owner; or

b. Cessation of operations.

N. Abandonment

1. To promote the public health, safety and welfare, the Community Development Director may declare a facility abandoned or discontinued when:

   a. The permit holder or service provider abandoned or discontinued the use of a facility for a continuous period of 90 days; or

   b. The permit holder or service provider fails to respond within 30 days to a written notice from the Community Development Director that states the basis for the Community Development Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or

   c. The permit expires and the permit holder or service provider has failed to file a timely application for renewal.

2. After the Community Development Director declares a facility abandoned or discontinued, the permit holder or service provider shall have 60 days from the date of the declaration (or longer time as the Community Development Director may approve in writing as reasonably necessary) to:

   a. Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval; or

   b. Remove the facility and all improvements installed in connection with the facility (unless directed otherwise by the Community Development Director), and restore the site to its original pre-construction condition in compliance with all applicable codes and consistent with the previously-existing surrounding area.

3. If the permit holder and/or service provider fail to act as required in Section 17.98.040.N.2 within the prescribed time period, the following shall apply:
   a. City may but is not obligated to remove the abandoned facility, restore the site to its original per-construction condition, and repair any and all damages that occurred in connection with such removal and restoration work.
   b. The City may but is not obligated to store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate.
   c. The last-known permit holder (or its successor-in-interest), the service provider (or its successor-in-interest), and, if on private property, the real property owner shall be jointly liable for all costs and expenses incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, including, without limitation, any interest on the balance owing at the maximum lawful rate.
   d. The City may but is not obligated to use any financial security required in connection with the granting of the facility permit to recover its costs and interest.
   e. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs

for removal, restoration, repair and storage (plus applicable interest). The City Clerk shall cause the lien to be recorded with the County of Santa Cruz Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Santa Cruz Recorder's Office.

4. If a permit holder, service provider, and/or private property owner fails to comply with any provisions of this Section 17.98.040.N (Abandonment), the City may elect to treat the facility as a nuisance to be abated as provided in Municipal Code Title 4 (General Municipal Code Enforcement).

O. Relocation for Facilities in the Right-of-Way.

1. The Public Works Director may require a permit holder to relocate and/or remove a facility in the public right-of-way as the City deems necessary to:

   a. Change, maintain, repair, protect, operate, improve, use, and/or reconfigure the right-of-way for other public projects; or

   b. Take any actions necessary to protect the public health, safety and welfare.

2. The Public Works Director shall provide the permit holder with adequate written notice identifying a specified date by which the facility must be relocated and/or removed.

3. The relocation and/or removal of the facility shall be at the permit holder's sole cost and expense and in accordance with the standards in this chapter applicable to the facility.

P. Transfer of Ownership.

1. **Notice**. Any wireless communications provider that is buying, leasing, or is considering a transfer of ownership of a previously approved facility shall submit a letter of notification of intent to the Community Development Director a minimum of 30 days prior to the transfer.

2. **Responsibilities**. In the event that the original permit holder sells its interest in a wireless communications facility, the succeeding carrier shall assume all facility responsibilities and liabilities and shall be held responsible for maintaining consistency with all permit requirements and conditions of approval.

3. **Contact Information**. A new contact name for the facility shall be provided by the succeeding provider to the Community Development Department within 30 days of transfer of interest of the facility.

17.98.050 Standard Conditions of Approval

All wireless communications facilities approved through a City permit or deemed granted by operation of law shall comply with the following standard conditions of approval. Standard conditions of approval shall apply in addition to other conditions of approval attached to the

project by the review authority in compliance with the Zoning Code and as allowed by state and federal law.

A. All Facilities. The following standard conditions of approval apply to all facilities and shall be included in all Administrative Permits, Minor Use Permits, and Conditional Use Permits:

1. **Compliance with Chapter.** The facility shall comply with the requirements of this chapter, including but not limited to requirements in Section 17.98.070 (Development Standards) and Section 17.98.080 (Operation and Maintenance Requirements).

2. **Compliance with Applicable Laws.** The permit holder and service provider shall at all times comply with all applicable provisions of the Zoning Code, any permit issued under the Zoning Code, and all other applicable federal, state and local laws, rules and regulations. Failure by the City to enforce compliance with applicable laws shall not relieve any applicant of its obligations under the Municipal Code (including, but not limited to, the Zoning Code), any permit issued under the Zoning Code, or any other applicable laws, rules, and regulations.

3. **Compliance with Approved Plans.** The facility shall be built in compliance with the approved plans on file with the Community Development Department.

4. **Approval Term.** The validly issued Administrative Permit, Minor Use Permit, or Conditional Use Permit for the wireless communications facility shall be valid for an initial maximum term of ten years, except when California Government Code Section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term. The approval may be administratively extended by the Community Development Director from the initial approval date for a subsequent five years and may be extended by the Director every five years thereafter upon verification that the facility continues to comply with this chapter and conditions of approval under which the facility was originally approved. Costs associated with the review process shall be borne by the service provider, permit holder, and/or property owner.

5. **Inspections; Emergencies**. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permit holder. The permit holder and service provider shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

6. **Contact Information for Responsible Parties**. The permit holder and service provider shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one person. All such contact information for responsible parties shall be provided to the Community Development Director upon request.

7. **Graffiti Removal**. All graffiti on facilities must be removed at the sole expense of the permit holder within 48 hours after notification from the City.

8. **FCC (including, but not limited to, RF Exposure) Compliance**. All facilities must comply with all standards and regulations (including, but not limited to, those relating to RF exposure) of the FCC and any other state or federal government agency with the authority to regulate such facilities. The City may require submission on an ongoing basis of documentation evidencing that the facility and any collocated facilities complies with applicable RF exposure standards and exposure limits and affirmations, under penalty of perjury, that the subject facilities are FCC compliant and will not cause members of the general public to be exposed to RF levels that exceed the maximum permissible exposure (MPE) levels deemed safe by the FCC.

9. **Implementation and Monitoring Costs**. The permit holder and service provider (or their respective successors) shall be responsible for the payment of all reasonable costs associated with the monitoring of the conditions of approval, including, without limitation, costs incurred by the Community Development Department, the Public Works Department, the City Manager's Department, the office of the City Attorney and/or any other appropriate City department or agency. The Community Development Department shall collect costs on behalf of the City

10. **Indemnities.** The permit holder, service provider, and, if applicable, the non-government owner of the private property upon which the facility, tower and/or base station is installed (or is to be installed) shall defend (with counsel satisfactory to the City), indemnify and hold harmless the City of Capitola, its officers, officials, directors, agents, representatives, and employees (i) from and against any and all damages, liabilities, injuries, losses, costs and expenses and from and against any and all claims, demands, lawsuits, judgments, writs of mandamus and other actions or proceedings brought against the City or its officers, officials, directors, agents, representatives, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from and against any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits, judgments, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of, in connection with or relating to the acts, omissions, negligence, or performance of the permit holder, the service provider, and/or, if applicable, the private property owner, or any of each one's agents, representatives, employees, officers, directors, licensees, contractors, subcontractors or independent contractors. It is expressly agreed that the City shall have the right to approve (which approval shall not be unreasonably withheld) the legal counsel providing the City's defense, and the property owner, service provider, and/or permit holder (as applicable) shall reimburse City for any and all costs and expenses incurred by the City in the course of the defense.

B. Tier 1 Facilities. In addition to the applicable conditions in Subsection A (All Facilities), all Tier 1 facilities shall comply with and all Section 6409(a) Permits shall include the following standard conditions of approval:

1. **No Permit Term Extension.** The City's grant or grant by operation of law of a Section 6409(a) Permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) Permit will not extend the permit term for any Conditional Use Permit, Minor Use Permit, Administrative Permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station. If requested in writing by the applicant at the time of application submittal, the permit term for the underlying Conditional Use Permit, Minor Use Permit, Administrative Permit or other underlying regulatory approval may be administratively extended by the Community Development Director (at his/her discretion) from the initial approval date upon verification that the facility continues to comply with this chapter and conditions of approval under which the facility was originally approved.
2. **No Waiver of Standing.** The approval of a Section 6409(a) Permit (either by express approval or grant by operation of law) does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a), or any eligible facilities request.

17.98.060 Preferred Siting and Location

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The Community Development Director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

A. Preferred Siting. To the extent feasible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:

1. Sites on a City owned or controlled parcel (excluding public parks and/or open spaces); then
2. Collocations on eligible support structures in the public right-of-way; then
3. Collocations on eligible support structures outside of the public right-of-way; then
4. New base stations in the public right-of-way; then
5. New base stations outside of the public right-of-way; then
6. New towers in the public right-of-way, then
7. New towers outside the public right-of-way.

B. Discouraged Siting – Utility Poles in Planned Utility Undergrounding Project Areas. The City discourages the placement of new facilities on utility poles within the public right-of-way in areas where there is a planned utility undergrounding project. In such cases, new facilities should be placed on utility poles within the planned utility undergrounding project area only if an alternative placement is infeasible or undesirable based on the standards and/or criteria contained in this chapter. If a utility

undergrounding project is initiated, the City may require the removal of any facilities on utility poles in the public right-of-way in accordance with Section 17.98.040.L (Relocation for Facilities in the Right-of-Way).

C. Preferred Locations – General. All applicants should, to the extent feasible, locate proposed facilities in non-residential zoning districts.

D. Preferred Locations – Non-Residential Zoning Districts. To the extent feasible, all proposed facilities in non-residential zoning districts should be located according to the following preferences, ordered from most preferred to least preferred:

1. Parcels in the industrial park (I-P) zoning district; then
2. Parcels in the commercial (C-N, C-R, and C-C) zoning districts; then
3. Parcels in all other non-residential zoning districts.

E. Preferred Locations – Residential Zoning Districts. If a facility is proposed in a residential (R-1, R-M, MHE) zoning district, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:

1. Parcels that contain approved non-residential uses and do not contain residential uses; then
2. Parcels that contain approved non-residential uses and also contain residential uses; then
3. All other parcels.

F. Additional Alternative Sites Analysis. If an applicant proposes to locate a new facility or substantial change to an existing facility on a parcel that contains a single-family or multi-family residence, the applicant shall provide an additional alternative sites analysis that at a minimum shall include a meaningful comparative analysis of all the alternative sites in the more preferred locations that the applicant considered and states the underlying factual basis for concluding why each alternative in a more preferred location was (i) technically infeasible, (ii) not potentially available and/or (iii) more intrusive.

17.98.070 Development Standards

A. General Design Standards. All new facilities and substantial changes to existing facilities shall conform to the following design standards:

1. **Concealment.** To the maximum extent feasible, all facilities shall incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property shall be completely concealed to the maximum extent feasible according to the following preferences, ordered from most preferred to least preferred:
   a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral; then

b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then

c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.

2. **Height.**

a. All facilities may not exceed the height limit in the applicable zoning district except as allowed in subsections (b) or (c) below.

b. The review authority may approve a height exception up to 8 feet above the height limit when a proposed facility is:

(1) Mounted on the rooftop of an existing building;

(2) Completely concealed; and

(3) Architecturally integrated into the underlying building.

c. The review authority may approve a height exception for towers or utility poles when:

(1) The proposed facility is no taller than the minimum necessary to meet service objectives;

(2) The height exception is necessary to address a significant gap in the applicant's existing service coverage;

(3) The applicant has demonstrated to the satisfaction of the Planning Commission that no alternative location, siting technique, or type of facility is feasible to meet service objectives; and

(4) The proposed facility complies with design standards and preferences in Section D (Tower-Mounted Facilities) below to the maximum extent feasible.

3. **Setbacks.** All facilities shall comply with all setback requirements in the applicable zoning district.

4. **Collocation.** Facilities shall be designed, installed, and maintained to accommodate future collocated facilities to the extent feasible.

5. **Landscaping.** Landscaping shall be installed and maintained as necessary to conceal or screen the facility from public view.

6. **Lights.** Security lighting shall be down-shielded and controlled to minimize glare or light levels directed at adjacent properties.

7. **Noise**. All transmission equipment and other equipment (including but not limited to air conditioners, generators, and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in Municipal Code Chapter 8.28 (Noise).

8. **Public Right-of-Way.** Facilities located within or extending over the public right-of-way require City approval of an encroachment permit.

9. **Signage.**

   a. A facility may not display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations, or required by law or permit condition.

   b. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

10. **Advertising.** No advertising signage or identifying logos shall be displayed on wireless communications facilities, except for small identification plates used for emergency notification or hazardous or toxic materials warning, unless expressly allowed by the City in a written approval, recommended under FCC regulations, or required by law or permit condition.

11. **Historic Features.** A facility which modifies the exterior of a historic feature as defined in Chapter 17.87 (Historic Features) shall comply with the requirements of Chapter 17.87.

B. Tower-Mounted Facilities.

1. **General Design Preferences.** To the extent feasible and appropriate for the proposed location, all new towers should be designed according to the following preferences, ordered from most preferred to least preferred:

   a. Faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks and water tanks); then

   b. Faux trees; then

   c. Monopoles that do not conceal the antennas within a concealment device.

2. **Tower-mounted Equipment.** All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.

3. **Ground-mounted Equipment.** Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The City may require additional design and/or landscape features to blend the equipment or enclosure into the surrounding environment.

4. **Concealment Standards for Faux Trees.** All faux tree facilities shall comply with the following standards:

a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches.

b. The canopy shall be naturally tapered to mimic the particular tree species.

c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts and brackets, shall be painted flat natural colors to mimic the particular tree species.

d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.

e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.

C. Building and Facade Mounted Facilities.

1. **General Design Preferences.** To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:

   a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then

   b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, and chimneys); then

   c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure.

2. **Ground-mounted Equipment.** Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

D. Pole-Mounted Facilities in the Public Right-of-Way.

1. **All Facilities**. All facilities mounted to steel light poles and wood utility poles in the public right-of-way shall comply with the following design standards:

   a. Antennas, brackets, and cabling shall all be painted a single color that matches the pole color.

   b. Unnecessary equipment manufacturer decals shall be removed or painted over.

c. The facility shall not alter vehicular circulation or parking within the public right-of-way or impede vehicular or pedestrian access or visibility along the public right-of-way.

d. All pole-mounted transmission equipment (including, but not limited to, antennas) shall be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile.

e. Colors and materials for facilities shall be chosen to minimize visibility. All visible exterior surfaces shall be constructed with non-reflective materials and painted and/or textured to match the support pole. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the maximum extent feasible.

f. An applicant may request an exemption from one or more standards in this Section 17.98.070.D (Pole-Mounted Facilities in the Public Right-of-Way) on the basis that such exemption is necessary to comply with Public Utilities Commission General Order 95. The applicant bears the burden to demonstrate why such exemption should be granted.

2. **Steel Pole Facilities**. Facilities mounted to a steel light pole in the public right-of-way shall comply with the following design standards:

a. All equipment and cabling shall be located in the pole and concealed from view.

b. Antennas shall be located on the top of the pole as a vertical extension of the pole. Antennas and equipment may not be mounted onto the side of the pole.

c. To the extent technically feasible, antennas shall be contained within a maximum 14-inch wide enclosure on the top of the pole.

3. **Wood Pole Facilities**. Facilities mounted to a wood utility pole in the public right-of-way shall comply with the following design standards:

a. Equipment enclosures shall be as narrow as feasible with a vertical orientation to minimize its visibility when attached to the pole. The equipment mounting base plates may be no wider than the pole.

b. Side-mounted equipment may extend no more than five feet horizontally from the side of the pole.

c. Equipment shall be stacked close together on the same side of the pole.

d. A line drop (no electric meter enclosure) shall be used if allowed by the utility company.

e. Shrouds, risers, or conduit shall be used to reduce the appearance of cluttered or tangled cabling.

f. Side-mounted antennas shall be attached to the pole using an arm with flanges/channels that reduces the visibility of cabling and passive RF gear.

g. To the extent technically feasible, top-mounted antennas may be no wider than the width of the pole top.

17.98.080 Operation and Maintenance Requirements

All wireless communications facilities approved through a City permit or deemed granted by operation of law shall comply with the following operation and maintenance requirements.

A. General Compliance. All facilities shall comply with all applicable goals, objectives and policies of the General Plan/Local Coastal Program, area plans, zoning regulations and development standards; the California Coastal Act; and the California Environmental Quality Act (CEQA).

B. Access Control. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances. The Community Development Director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, antenna facilities have the potential to become an attractive nuisance.

C. Noise. All facilities shall be constructed and operated in such a manner as to minimize the amount of noise impacts to adjacent uses and activities. At any time, noise attenuation measures may be required by the Community Development Director when deemed necessary. Facilities shall comply with all applicable noise standards in the General Plan and Municipal Code. Testing and maintenance activities of wireless communications facilities which generate audible noise shall occur between the hours of eight a.m. and five p.m., weekdays (Monday through Friday, non-holiday) excluding emergency repairs, unless allowed at other times by the Community Development Director.

D. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing, transmission equipment, antennas, towers, equipment, cabinets, structures, accessory structures, signs, and concealment and/or stealth features and standards shall be maintained in a state of good repair, in a neat and clean manner, and in accordance with all approved permits and conditions of approval. Damage to the site and the facility shall be repaired promptly. This shall include keeping all wireless communications facilities graffiti free and maintaining security fences in good condition.

E. Change in Federal or State Regulations. All facilities shall meet the current standards and regulations of the FCC, the California Public Utilities Commission, and any other agency of the federal or state government with the authority to regulate wireless communications providers. If such standards and/or regulations are changed, the wireless communications provider shall bring its facilities into compliance with such revised standards and regulations within 90 days of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal or state agency. Failure to a bring wireless communications facility into compliance with revised standards and regulations shall constitute grounds for the

immediate removal of the facility at the wireless communications provider's expense.

F. Service after Natural Disaster. All wireless communications facilities providing service to the government or general public shall be designed to survive a natural disaster without interruption in operation.

17.98.090 Temporary Wireless Communications Facilities.

A. A temporary wireless communications facility, such as a "cell-on-wheels" (COW), may be used to replace wireless communications facility services during the relocation or rebuilding process of an existing facility, during festivals or other temporary events and activities that otherwise require a permit under this chapter, and during public emergencies.

B. A temporary wireless communications facility shall be processed as an administrative use permit under a proposed or existing permit when used during the relocation or rebuilding process of an existing wireless communications facility, or when used for a festival or other temporary event or activity.

C. A temporary wireless communications facility to protect public health, safety or welfare during an emergency shall be processed as a Tier 2 Administrative Permit. The applicant shall submit an application for a temporary emergency use permit before installation of such temporary wireless communications facility.

D. The Community Development Director may approve a temporary wireless communications facility for no more than ninety (90) days.

E. A temporary wireless facility may be approved for a period of up to one year if the following requirements are met:

1. The Planning Commission determines that the temporary wireless communications facility shall be sited and constructed so as to:
    a. Avoid proximity to residential dwellings to the maximum extent feasible;
    b. Be no taller than needed;
    c. Be screened to the maximum extent feasible; and
    d. Be erected for no longer than reasonably required, based on the specific circumstances.
2. Permits and/or authorizations in excess of ninety (90) days for temporary wireless communications facilities shall be subject to the notice and review procedures required by Section 17.98.040.F (Public Notice and Hearing).

F. The property owner and service provider of the temporary wireless communications facility installed pursuant to this section 17.98.090 (Temporary Wireless Communications Facilities) shall immediately remove such facility from the site at the end of the specified term or the conclusion of the relocation or rebuilding process, temporary event, or emergency, whichever occurs first. The property owner and service provider of the

temporary wireless communications facility shall be jointly and severally liable for timely removal of such temporary facility. The City may (but is not obligated to) remove any temporary wireless communications facility installed pursuant to this section 17.140.090 (Temporary Wireless Communications Facilities) at the owner and provider's cost immediately at the end of the specified term or conclusion of the relocation or rebuilding process, temporary event, or emergency, whichever occurs first.

17.98.100 Limited Exemption from Standards

A. Request for Exemption. An applicant may request an exemption from one or more requirements in this chapter on the basis that a permit denial would effectively prohibit personal wireless services in Capitola.

B. Basis for Approval. For the City to approve such an exemption, the applicant must demonstrate with clear and convincing evidence all of the following:

1. A significant gap in the applicant's service coverage exists;
2. All alternative sites identified in the application review process are either technically infeasible or not potentially available; and
3. Permit denial would effectively prohibit personal wireless services in Capitola.

C. Applicant Must Demonstrate Basis for Approval. The applicant always bears the burden to demonstrate why an exemption should be granted.

17.98.110 Severability

If any section or portion of this chapter is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the chapter, which shall continue in full force and effect.

ADDENDUM TO PROGRAM ENVIRONMENTAL IMPACT REPORT CITY OF CAPITOLA GENERAL PLAN UPDATE (SCH #2013072002)
For the
CITY OF CAPITOLA ZONING CODE UPDATE

INTRODUCTION

This addendum has been prepared to document compliance with the California Environmental Quality Act (CEQA) for the City of Capitola's proposed Zoning Code update. The proposed Zoning Code update would implement the City of Capitola's 2014 General Plan Update and includes both text and map amendments to reflect the goals, policies, and implementation measures in the 2014 General Plan.

This addendum provides an analysis of whether the adoption of the Zoning Code update would result in any new or more severe adverse environmental effects which were not previously analyzed in the 2014 General Plan Update Program EIR pursuant to CEQA Guidelines Sections 15162, 15164, and 15168.

PROJECT DESCRIPTION

The City of Capitola proposes a comprehensive update to its Zoning Code (Municipal Code Chapter 17) which includes both text and map amendments to reflect the goals, policies, and implementation measures in the 2014 General Plan update. The existing Zoning Code has not been comprehensively updated since 1975.

The Zoning Code update would establish new and modified land use regulations which will guide future development and design throughout the City of Capitola. The proposed Zoning Code update includes new and revised zoning districts, permitting procedures, and development standards throughout the City of Capitola. Development standards and uses in the Zoning Code update have been modified from the existing code to be consistent with current federal and state regulations, better reflect current conditions, desired development trends, and best planning practices.

The proposed Zoning Code update would also move the City's Green Building and Floodplain District Ordinances from Municipal Code Chapter 17 (Zoning Code) to Chapter 15 (Buildings and Construction). No changes are currently proposed to the Green Building or Floodplain Ordinances other than moving it to another chapter of the Municipal Code.

Changes to the Zoning Code are primarily administrative in nature, including a new and more user-friendly format, improved organization and clarity, revised nomenclature and naming conventions, and previously uncodified procedural requirements. The updated Code presents information and standards in table formats and relies more heavily on graphics to illustrate the meaning and intent of various regulations.

A summary of notable changes included in the proposed Zoning Code update are outlined below:

- Improved organization and format to improve clarity and usability;
- A new user guide to help citizens access, understand, and apply the Zoning Code;
- Revised regulations to comply with federal and state law;
- Streamlined permitting process for routine permits including signs, design permits, rooftop solar systems, and tenant improvements;
- Combined the current Commercial-Residential and Neighborhood-Commercial zoning districts into a new Neighborhood Mixed-Use zoning district to be consistent with the General Plan land use designation;
- Consolidated/eliminated 6 overlay zones which were redundant with other zoning and/or CEQA regulations to simplify the zoning map;
- Updated coastal overlay chapter with significantly improved organization and clarity;
- Improved historic preservation chapter which codifies process to review and modify historic structures and provides incentives and exceptions to promote preservation;
- Simplified legal non-conforming standards which eliminates the existing 80% valuation standard and adds a new replication allowance;
- Revised parking standards for take-out restaurants in the Village to replace the current 6-seat rule with a square-footage allowance;
- Relaxed development standards for secondary dwelling units;
- Planned Developments would no longer be allowed in R-1 zones;
- Better defined community benefits to qualify for a Planned Development or General Plan allowances for increased floor area ratio;
- Simplified formula to calculate Floor Area Ratio;
- New lighting standards to prevent light trespass;
- New regulations to control unattended donation boxes;
- Improved guidance on when post-approval changes to a project trigger review by the Planning Commission;
- New standards to limit the allowable area of outdoor commercial displays;
- Incentives to encourage non-conforming multi-family uses in single-family zones to make needed property improvements. Also reduced allowable extensions from 50 to 25 years.
- New standards to allow parklets and sidewalk dining areas;
- New minor modification process to allow the Planning Commission to authorize minor deviations to certain development standards which don't meet variance findings;
- New standards to regulate the placement of outdoor decks in residential zones;
- Modified Design Review process to allow a second architect to review major projects;

- New requirements for large commercial and residential projects to provide bike and electric vehicle parking.

While some of the above-listed revisions will result in modest changes to existing development standards, none of the revisions would allow increased density, reduced lot size requirements, or substantial changes to lot coverage, floor area ratio, height, or requirements for on-site parking.

Use regulations have also been revised in the proposed code to account for modern use types not contemplated in the current code and to remove outdated and inapplicable use classifications. Like the current code, the updated code would require a discretionary use permit for use types which have the potential to adversely affect existing community character.

CEQA ADDENDUM PROCEDURES

This document has been prepared in accordance with CEQA Guidelines sections 15164 and 15168 to explain the rationale for determining that the proposed Capitola Zoning Code update would not create any new or substantially more severe significant effects on the environmental that were not analyzed in the General Plan Update EIR.

In determining whether an Addendum is the appropriate document to analyze modifications to the General Plan EIR, State CEQA Guidelines Section 15164 states:

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only mior technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Since the General Plan EIR has been certified, the environmental impacts of subsequent activities proposed under the General Plan must be examined in light of the impact analysis in the certified EIR to determine if additional CEQA documentation must be prepared. One of the standards that applies is whether, under Public Resources Code Section 21166 and State CEQA Guidelines Sections 15162 and 15163, there are new significant effects or other grounds that require preparation of a subsequent EIR or supplemental EIR in support of further agency action on the project. Under these guidelines, a subsequent or supplemental EIR shall be prepared if any of the following criteria are met:

(a) When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3) New information of substantial importance, which was not known and count not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As demonstrated in the environmental analysis contained herein, none of the conditions that had been analyzed in the General Plan EIR would change with adoption of the proposed Zoning Code update. Furthermore, no new information of substantial importance meeting the criteria listed in State CEQA Guidelines Section 15162 has been identified.

PRIOR ENVIRONMENTAL DOCUMENT

The Capitola City Council adopted the General Plan Update and certified the associated EIR on June 26, 2014. The certified EIR found that adoption of the GPU would have significant, unavoidable effects to air quality, hydrology and water quality, traffic, utilities and service systems, and greenhouse gas emissions. In accordance with CEQA section 15091, the Capitola City Council adopted findings of overriding considerations to certify the EIR.

ENVIRONMENTAL REVIEW UPDATE CHECKLIST

I. AESTHETICS

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to aesthetic resources including: scenic vistas; scenic resources including, but not limited to, trees, rock outcroppings, or historic buildings.; existing visual character or quality of the site and its surroundings; or day or nighttime views in the area?

Response: The proposed Zoning Code update would not result in new or increased severity of significant visual and light/glare impacts beyond what was addressed in the General Plan EIR. The amendments to the Zoning Code are consistent with the development assumptions under the adopted General Plan. Housing and commercial uses would be developed in the same locations and within prescribed densities and intensities as contemplated in the General Plan EIR. All future development projects would be subject to applicable City requirements pertaining to visual resources, as well as to further CEQA analyses of project specific impacts.

II. AGRICULTURAL AND FORESTRY RESOURCES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to agricultural resources including: conflict with zoning for or result in rezoning of forest land; result in the loss of forest land or conversion of forest land to non-forest use; convert Important Farmland and/or conflict with existing zoning for agricultural use or Williamson Act contract?

Response: There are no forest lands, farmlands of state or local importance, or agriculturally zoned properties in the City of Capitola. Consequently, the GP EIR concluded that there would be no significant impacts to agriculture or forestry resources. The proposed Zoning Code update would not result in any new impacts not previously considered by the GP EIR.

III. AIR QUALITY

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to air quality including: conflicts with or obstruction of implementation of the Regional Air Quality Strategy (RAQS) or applicable portions of the State Implementation Plan (SIP); violation of any air quality standard or substantial contribution to an existing or projected air quality violation; a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard; exposure of sensitive receptors to

substantial pollutant concentrations; or creation of objectionable odors affecting a substantial number of people?

Response: The General Plan EIR found that implementation of the Plan could result in significant, unavoidable impacts to air quality through an increase in mobile and stationary source emissions and cumulative contributions to regional air quality standards. The proposed Zoning Code update would not increase any residential densities or commercial intensities nor does it include new allowances which could facilitate development which could result in direct or indirect air quality impacts. Therefore, there are no project changes or any new information of substantial importance which indicate that the proposed Zoning Code update would exacerbate air quality impacts beyond the analysis and conclusions in the General Plan EIR.

IV. BIOLOGICAL RESOURCES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to biological resources including: adverse effects on any sensitive natural community (including riparian habitat) or species identified as a candidate, sensitive, or special status species in a local or regional plan, policy, or regulation, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service; adverse effects to federally protected wetlands as defined by Section 404 of the Clean Water Act; interference with the movement of any native resident or migratory fish or wildlife species or with wildlife corridors, or impeding the use of native wildlife nursery sites; and/or conflicts with the provisions of any adopted Habitat Conservation Plan, Natural Communities Conservation Plan, or other approved local, regional or state habitat conservation plan, policies or ordinances?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to biological resources. The proposed Zoning Code update does not include any policies or actions which would involve new or altered physical changes to the environment which have the potential to adversely affect biological resources. There have been no changes in the project or is there any new information of substantial importance to indicate that the proposed Zoning Code update would result in new or more severe impacts to biological resources.

V. CULTURAL RESOURCES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to cultural resources including: causing a change in the significance of a historical or archaeological resource as defined in State CEQA Guidelines Section 15064.5; destroying a unique paleontological resource or site or unique geologic feature; and/or disturbing any human remains, including those interred outside of formal cemeteries?

Response: The General Plan EIR found that implementation of the Plan could result in significant impacts to cultural resources, but that mitigation measures could be applied to reduce the impact to a less than significant level. The proposed Zoning Code update does not include any residential density or commercial intensity increases which could result in additional housing development above what was evaluated in the General Plan EIR. Therefore, there have been no changes to the project or new information of substantial importance which indicate that the proposed Zoning Code update could result in new or more severe impacts to cultural resources.

VI. GEOLOGY AND SOILS

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in one or more effects from geology and soils including: exposure of people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, seismic-related ground failure, including liquefaction, strong seismic ground shaking, or landslides; result in substantial soil erosion or the loss of topsoil; produce unstable geological conditions that will result in adverse impacts resulting from landslides, lateral spreading, subsidence, liquefaction or collapse; being located on expansive soil creating substantial risks to life or property; and/or having soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

Response: The General Plan EIR found that implementation of the Plan would have no potential to result in significant impacts to/from geology and soils. There have been no changes to the project or new information of substantial importance which indicate that the proposed Zoning Code update could result in new or more severe impacts to/from geology and soils.

VII. GREENHOUSE GASES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that show the project may generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emission of greenhouse gases?

Response: The General Plan EIR found that implementation of the Plan would result in significant, unavoidable impacts to greenhouse gases and climate change. The proposed Zoning Code update includes the same residential densities and commercial intensities as what was evaluated by the General Plan EIR, therefore, there have not been any changes to

the project or new information of substantial importance which indicate that the proposed Zoning Code update could result in new or more severe impacts to greenhouse gas emissions.

VIII. HAZARDS AND HAZARDOUS MATERIALS

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in one or more effects from hazards and hazardous materials including: creation of a significant hazard to the public or the environment through the routine transport, storage, use, or disposal of hazardous materials or wastes; creation of a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment; production of hazardous emissions or handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school; location on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 creating a hazard to the public or the environment; location within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport; within the vicinity of a private airstrip resulting in a safety hazard for people residing or working in the project area; impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; and/or exposure of people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to/from hazards and hazardous materials. There have been no changes to the project, or new information of substantial importance which indicate that the proposed Zoning Code update would result in a new or more severe impact to hazards and hazardous materials.

X. HYDROLOGY AND WATER QUALITY

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to hydrology and water quality including: violation of any waste discharge requirements; an increase in any listed pollutant to an impaired water body listed under section 303(d) of the Clean Water Act ; cause or contribute to an exceedance of applicable surface or groundwater receiving water quality objectives or degradation of beneficial uses; substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level; substantially alter the existing drainage pattern of the site or area in a manner which would result in substantial erosion, siltation or flooding on- or off-site; create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems; provide substantial additional sources of polluted runoff;

place housing or other structures which would impede or redirect flood flows within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, including City Floodplain Maps; expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam; and/or inundation by seiche, tsunami, or mudflow?

Response: The General Plan EIR found that the implementation of the Plan could result in significant unavoidable impacts to groundwater supply, but found no significant impacts to water quality, drainage, erosion, or flooding. The proposed Zoning code update would not increase residential densities or commercial intensities which would facilitate new water-dependent development. Therefore, there have been no changes to the project or any new information of substantial importance which indicate that the proposed Zoning code update would result in new or more severe impacts to hydrology or water quality.

XI. LAND USE AND PLANNING

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to land use and planning including: physically dividing an established community; and/or conflicts with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to land use and planning. There have been no changes in the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to land use and planning.

XII. MINERAL RESOURCES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause one or more effects to mineral resources including: the loss of availability of a known mineral resource that would be of value to the region and the residents of the state; and/or loss of locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

Response: There are no mineral resource deposits in the City of Capitola which could be reasonably extracted given existing non-compatible land uses. Accordingly, the General Plan EIR found that implementation of the Plan would not result in any impacts to mineral resources. There have been no changes to the project or new information of substantial

importance which indicate that the proposed Zoning code update would result in new or more severe impacts to mineral resources.

XIII. NOISE

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in one or more effects from noise including: exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels; a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project; for projects located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or for projects within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

Response: The General Plan EIR found that implementation of the Plan could result in significant impacts from noise resulting from construction of future projects authorized by the Plan. Consequently, the General Plan EIR included mitigation measures to reduce impacts from noise to a less than significant level. However, there have been no changes in the project or new information of substantial importance which indicate that the proposed Zoning code update would result in new or more severe impacts to/from noise.

XIV. POPULATION AND HOUSING

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in one or more effects to population and housing including displacing substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to population and housing. There have been no changes to the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to population and housing.

XV. PUBLIC SERVICES

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in one or more substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services: fire protection, police protection, schools, parks, or other public facilities?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to public services. There have been no changes to the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to public services.

XVI. RECREATION

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that result in an increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated; or that include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Response: The General Plan EIR found that implementation of the Plan would not result in any significant impacts to recreation. There have been no changes to the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to recreation.

XVII. TRANSPORTATION/TRAFFIC

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause effects to transportation/traffic including: conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit; conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways; cause a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in

substantial safety risks; substantial increase in hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment); inadequate emergency access; and/or a conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

Response: The General Plan EIR found that implementation of the Plan could result in significant, unavoidable impacts to transportation. The proposed Zoning code update does not include any increased residential densities or commercial intensities which would facilitate new development, which could result in additional traffic. Therefore, there have been no changes to the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to transportation.

XVIII. UTILITIES AND SERVICE SYSTEMS

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new information of substantial importance" that cause effects to utilities and service systems including: exceedance of wastewater treatment requirements of the applicable Regional Water Quality Control Board; require or result in the construction of new water or wastewater treatment facilities, new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects; require new or expanded entitlements to water supplies or new water resources to serve the project; result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments; be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs; and/or noncompliance with federal, state, and local statutes and regulations related to solid waste?

Response: The General Plan EIR found that implementation of the Plan could result in significant unavoidable impacts to utilities and service systems due to the potential for groundwater overdraft. The proposed Zoning code update would not increase residential densities or commercial intensities which would facilitate new water-dependent development or the need for new or expanded wastewater treatment facilities or landfills. There have been no changes to the project or information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to utilities and service systems.

XIX. MANDATORY FINDINGS OF SIGNIFICANCE:

Since the previous EIR was certified or previous ND was adopted, are there any changes in the project, changes in circumstances under which the project is undertaken and/or "new

information of substantial importance" that result in any mandatory finding of significance listed below?

Does the project degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self- sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?

Response: There have been no changes to the project or any new information of substantial importance which indicate that the proposed Zoning code update would result in any new or more severe impacts to the quality of the environment, including adverse impacts to habitat for sensitive species, cumulative environmental impacts, or adverse direct or cumulative effects on human beings.

RESOLUTION NO. _____

RESOLUTION OF THE CAPITOLA CITY COUNCIL AUTHORIZING SUBMITTAL TO THE CALIFORNIA COASTAL COMMISSION FOR THE CERTIFICATION OF AN AMENDMENT TO THE LOCAL COASTAL PROGRAM AMENDING CHAPTER 17.98 (WIRELESS COMMUNICATIONS FACILITIES) OF THE CAPITOLA MUNICIPAL CODE

WHEREAS, the City of Capitola's Local Coastal Program (LCP) was certified by the California Coastal Commission in December of 1981 and has since been amended from time to time; and

WHEREAS, the Capitola City Council conducted a duly noticed public hearing on January 26, 2017, and at this meeting the City Council passed the proposed Ordinance to a second reading, and on February 9, 2017, adopted an Ordinance of the City Council of the City of Capitola amending Chapter 17.98, Wireless Communications Facilities; and

WHEREAS, the City Council approved an Addendum to the General Plan Update Environmental Impact report which found that the proposed ordinance and LCP amendment would not have a significant effect on the environment; and

WHEREAS, Public Notice was provided as required under Coastal Act 30514 et seq.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Capitola that this Resolution declares and reflects the City's intent to amend the LCP Implementation Plan as it pertains to wireless telecommunications facilities within the City of Capitola, as drafted, if certified by the California Coastal Commission, in full conformity with the City of Capitola LCP and provisions of the California Coastal Act.

BE IT FURTHER RESOLVED, that the City Manager or his designee is directed to submit the said Coastal Commission LCP Amendments to the California Coastal Commission for its review and certification. If the Coastal Commission approves the amendment package, it will take effect automatically upon Coastal Commission approval. If the Coastal Commission modifies the amendment package, only the modifications will require formal action by the City of Capitola.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 9th day of February, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Stephanie Harlan, Mayor

ATTEST:

_____
Linda Fridy, City Clerk

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Lateral Police Officer Hiring Incentive Program

RECOMMENDED ACTION: Approve Resolution to Increase Bonus for Lateral Police Officer Hires.

BACKGROUND: The Capitola Police Department has been successful over the past few years in hiring entry level and Police Academy graduates as police officers. As a result of this success, the department does not have as many officers with long-term policing experience as the Department has had in the past.

In order to better recruit lateral police officer candidates, staff believes the City needs to be more competitive with other agencies by increasing the bonus it offers lateral police officer candidates. A lateral officer is defined as an applicant who is currently working for a recognized law enforcement agency, has successfully completed the probation period for that agency, and possesses a State of California Basic POST Certificate.

DISCUSSION: Bonuses for lateral police officer hires have become a more common tool used to attract qualified lateral candidates. The Police Officer Association (POA) Memorandum of Understanding allows for the City Manager to offer a bonus of up to $2,000 to a lateral police officer hire. Staff believes this amount should be increased in order to be competitive. In the Monterey Bay Area, the cities of Santa Cruz and Salinas offer $20,000 bonuses for a lateral hire. The City of Scotts Valley offers a $10,000 bonus for lateral hires and up to $5,000 for Academy Graduates.

Staff is recommending increasing the Lateral Transfer Incentive Bonus up to $10,000. The attached resolution will add $8,000 to the already existing $2,000.

The Lateral Bonus is at the discretion of the City Manager and will be included as part of the individual offer to the lateral transfer. The additional incentive included in the resolution can be suspended or terminated at any time.

The following would be the payment schedule and the repayment requirements if the hire voluntarily leaves prior to completing three years of employment after probation.

1. $5,000 at the time of hire.
2. $5,000 at the successful completion of probation.

If the officer leaves voluntarily prior to working for the City for three full years after completion of probation, the bonus shall be paid back at a prorated basis.

Staff believes this is a competitive figure. The cost is significantly less than the cost of putting a candidate through the academy, which can be more than $40,000. In addition, a lateral hire should complete field training faster than an academy graduate.

FISCAL IMPACT: Fiscal Year 2016/2017 $5,000 if Police Department hires one Lateral Police Officer. Fiscal Year 2017/2018 if one additional Lateral Police Officer is hired the impact would be $10,000. It would include the first payment to the 2017/208 hire and the second payment to the 2016/2017 hire.

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

Lateral Police Officer Bonus
February 9, 2017

DRAFT RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA APPROVING THE LATERAL POLICE OFFICER HIRING INCENTIVE PROGRAM FOR THE CAPITOLA POLICE DEPARTMENT

WHEREAS, in an effort to successfully attract and hire the highest quality candidates, the Capitola Police Department needs to provide appropriate monetary incentives to assist in its recruitment efforts, and

WHEREAS, the addition to the existing monetary hiring incentive will assist in making the Department more competitive with other agencies, and

WHEREAS, the monetary recruitment incentive is as proposed:

1. Increase the current Lateral Officer incentive amount upon date of hire from $2,000.00 To $10,000.00.
2. Lateral officers to receive $5,000.00 Incentive paid at hire and $5000.00 at the successful completion of probation.

WHEREAS, incentive recipients choosing to voluntarily leave the Capitola Police Department in advance of three full years after completion of probation shall be contractually required to repay the applicable prorated portion of the monetary incentive, and

WHEREAS, the City of Capitola will have the ability to suspend or cancel the addition to the program in the event that staffing is no longer a concern or if the fiscal constraints require that it be halted.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Capitola that it hereby approves the Hiring and Recruitment Incentive Enhancement Program for the Capitola Police Department.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 9th day of February 2017, by the following vote:

AYES:

NOES:

ABSENT:

_____
Stephanie Harlan, Mayor

ATTEST:

_____
Linda Fridy, City Clerk

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Consideration of an Esplanade Park Master Plan

RECOMMENDED ACTION:

1. Authorize the City Manager to enter a contract with Michael Arnone for the creation of an Esplanade Park Master Plan funded using Public Art Fund revenues.
2. Council discretion to consider the request by the Art and Cultural Commission to move forward with the climbing sculpture element of the plan prior to the development of the park master plan.

BACKGROUND: Commercial building projects in excess of $250,000 valuation are required to participate in the Capitola Public Art program. The developer has the option to either setting aside not less than 2 percent of the total project valuation for public art integrated into the project, or depositing 1 percent of the valuation to the City's public art fund.

The City of Capitola's Art and Cultural Commission has been given the responsibility of proposing projects that are eligible to use public art funds. In the past, the Commission has recommended art projects such as the kiosk at the Esplanade, the Wharf Road murals, and the sculptures on 41st Avenue.

Over the past few years, the Art and Cultural Commission has looked into options for the installation of a climbing sculpture, but for a variety of reasons, other than Esplanade Park, no location has been found to be suitable.

DISCUSSION: The Art and Cultural Commission has been looking for suitable sites for larger public art projects throughout the City. Esplanade Park, due to its location, size and compatible uses, appears to be the most suitable location. However, the park is heavily utilized, nearly the entire area is programmed, and much of the park infrastructure is aging.

In order to accommodate public art, the Commission feels a redesign of Esplanade Park is needed. Staff concurs with this recommendation.

The Commission would like Council to give direction on creating a park master plan for Esplanade Park and whether a redesign of Esplanade Park is something the Council is willing to consider at this time.

In addition to the park master plan, the Commission would like to receive direction from the Council as to whether the Commission can begin working on a climbing sculpture at Esplanade Park as an independent element of the Park Master Plan.

Base on his years of experience in Capitola and specifically his work at Esplanade Park, the Art

and Cultural Commission would like to contract with Michael Arnone to create a plan for the park that includes multiple public art features. In addition to the public art features, the master plan design could better incorporate the existing uses of the park, including the bandstand. Esplanade Park was designed prior to the building of the bandstand. The use of the bandstand for concerts and movies is somewhat limited by the row of trees down the middle of the park. The Esplanade Park master plan could address this limitation. A conceptual preview is included as Attachment 1.

The Art and Cultural Commission would like to have Mr. Arnone create a park master plan that includes multiple public art pieces. The initial ideas for public art at Esplanade Park include the following.

1. Climbing sculpture
2. A redesign of the showers which includes art tiled wall
3. Shade structures

If the Council gives direction to move forward with the park master plan, staff will begin to look for funding sources, such as grants, for project construction.

FISCAL IMPACT: The estimate for the proposed Esplanade Park Master Plan is $3,250. The funding for the design can be paid from the Public Art Fund. There would be no use of General Fund sources for the initial design. The climbing sculpture would be funded through the Public Art fund. The cost at this time is not known; it will depend on the size and scale of the sculpture. The 2016/2017 public art budget has $27,700 remaining. Currently the Public Art Fund has a balance of approximately $250,000.

ATTACHMENTS:

1. art concepts for esplanade park
2. esplanade park aerial view
3. esplanade park street views

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

ART CONCEPTS FOR ESPLANADE PARK

1 Remove existing shower pedestal. Replace with showers along outside wall of bathroom building. Shower back splash wall to be tile design. Front wall to be curved with vertical wave.

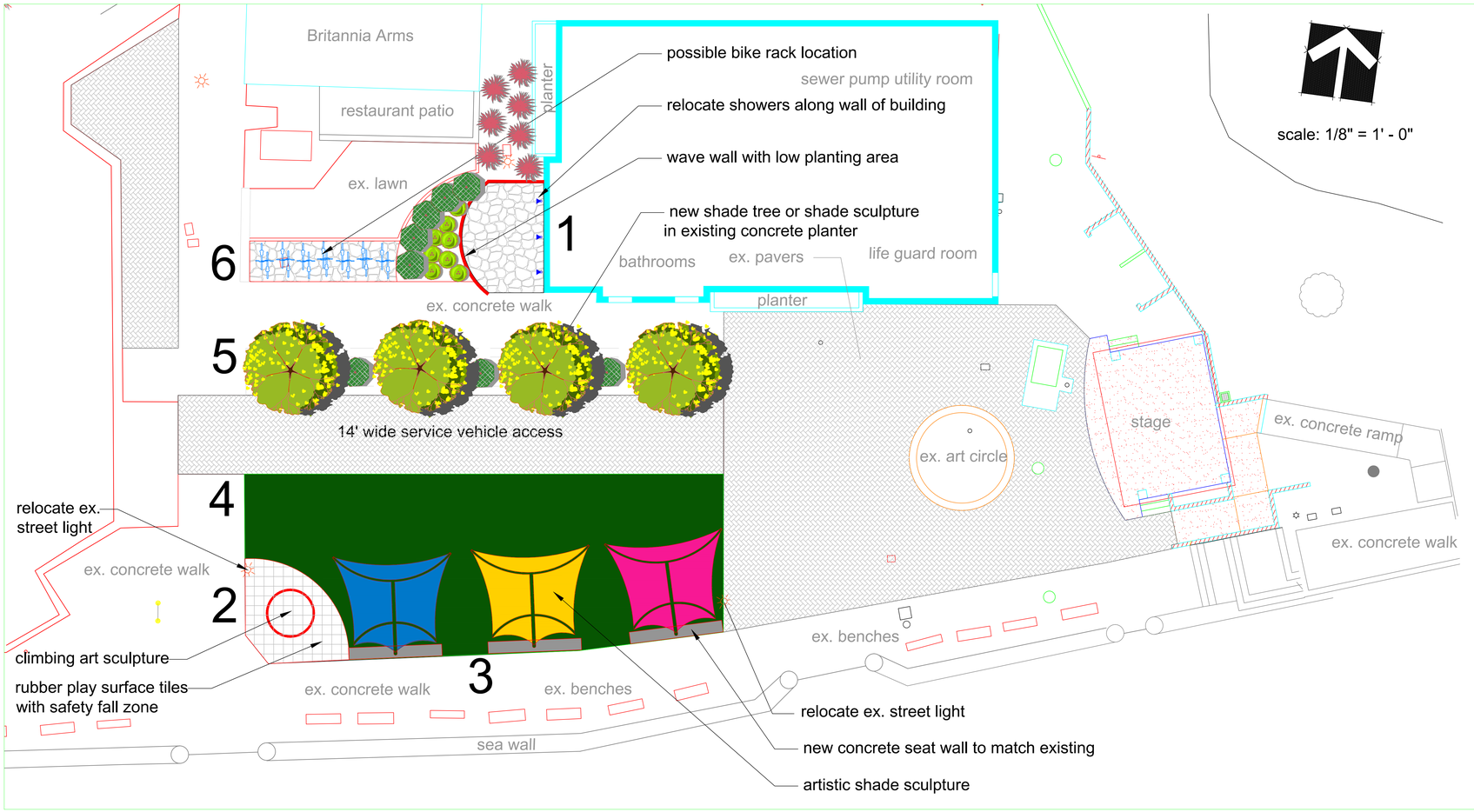
2 Climbing art sculpture to serve as focal point entry to the park as seen from Monterey Avenue and Esplanade. To be in line with axis line of stage. Use a rubber play surface tile with safety zone based on fall height of climbing structure.

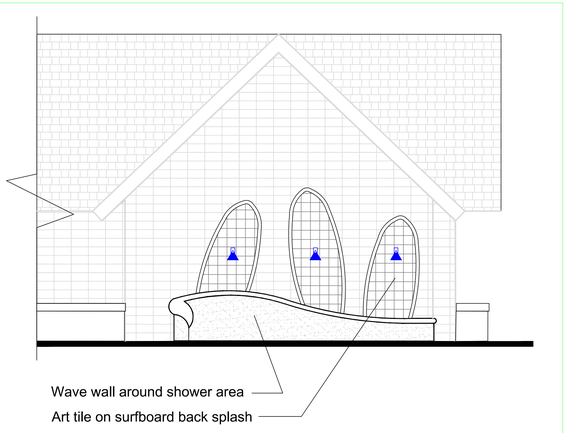
3 Artistic shade element to replace the existing trees and planters. Provide colorful permanent shade for both sides of the park. Seating may be incorporated into design with concrete seatwall to match existing.

4 Increase size of lawn area and provide unobstructed view of stage. Provide 14' wide service vehicle access path.

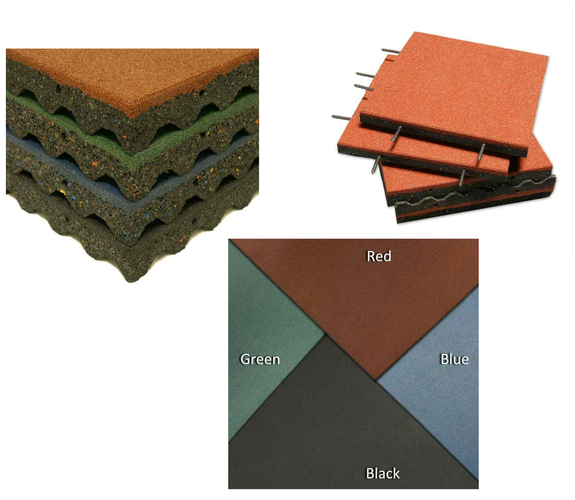
5 Replace trees in existing concrete planter or mirror the artistic shade element. Possible species: Cassia leptophylla - Gold Medallion Tree

6 Relocate bike racks and replace with artistic design fitting marine/nautical concept





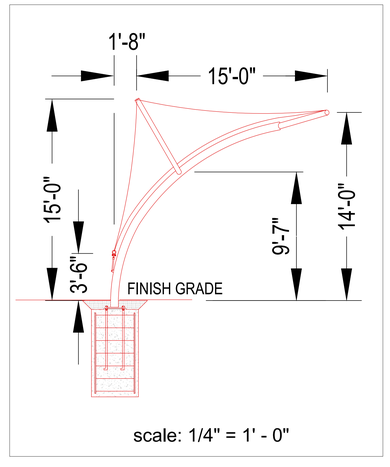
1 SHOWER ELEVATION



2 PLAY SURFACE TILES FOR CLIMBING SCULPTURE

2 CLIMBING SCULPTURE CONCEPT

5 SHADE TREE



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3370 Samuel Pl. Santa Cruz, CA 95062
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3 ARTISTIC SHADE STRUCTURE CONCEPT

0 25 50 100 Feet

N

Esplanade Park
Aerial View

Attachment: esplanade park street views (1642 :

Attachment: esplanade park street views (1642 :

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Approval of the Monterey Bay Community Power Joint Powers Agreement and a Resolution Authorizing the City of Capitola's Participation and First Reading of the Related Uncodified Ordinance

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RECOMMENDED ACTION: That the City Council take the following actions:

1. Adopt the attached resolution establishing the Monterey Bay Community Power Authority and approving the City of Capitola as a founding member of the Authority.
2. Introduce the attached ordinance authorizing the implementation of a Community Choice Energy program in the City of Capitola.
3. Direct staff to move forward on discussions regarding the City's share of the credit guarantee; and,
4. Appoint a primary and alternate on the newly formed Monterey Bay Community Power Policy Board of Directors.

BACKGROUND: In 2013, Monterey Bay Community Power (MBCP) was formed as a region-wide informal partnership comprised of all 21 local governments within the greater Monterey Bay area, including the Counties of Santa Cruz, Monterey, and San Benito and all 18 cities located within those counties. This collaborative was created to examine the potential for a community choice energy (CCE) program in the region.

The goals of MBCP are to reduce greenhouse gas emissions while providing electric power and other forms of energy to customers at competitive prices. In addition, the program seeks to reduce energy consumption, stimulate the local economy by creating local jobs, and promote long-term electric rate stability and reliability for the residents of the tri-county area.

A Project Development Advisory Committee (PDAC) comprised of representatives from multiple jurisdictions was formed in early 2014 to help guide the process. Between 2014 and 2016, 26 meetings were held by the PDAC to allow input from participating jurisdictions, stakeholder groups, and interested citizens. In 2014, $404,846 was raised by the Santa Cruz County Project Team to conduct a Technical Feasibility Study that analyzed the benefits and risks associated

with creating a CCE program. In summary, the study found MBCP would be operationally viable under a relatively broad range of scenarios, and demonstrated the potential for customer savings as well as reduced GHG emissions.

During summer 2016, the PDAC hosted three special study sessions for county and city elected officials and executive staff for review the Technical Study. Discussion included options regarding power supply, governance, start-up financing, and agency management.

Later that same year, ad-hoc subcommittee meetings focused on JPA governance and agency financing were held. The resulting Monterey Bay Community Power Resolution of Intent was issued in late September 2016. That same month Capitola adopted the Resolution of Intent, affirming the City's interest in participating in the proposed Monterey Bay Community Power Joint Powers Authority (JPA).

DISCUSSION: The four years of planning have resulted in a proposed Joint Powers Authority (Attachment 1), which requires the passage of a resolution (Attachment 2) and uncodified ordinance (Attachment 3).

The City will also need to appoint a representative and alternate to the Policy Board of Directors, and direct staff to work with the Santa Cruz County planning team on the credit guarantee requirements.

Staff anticipates MBCP's inaugural board meeting will be held in late April 2017.

Proposed Governance Structure of MBCP: The Monterey Bay Community Power JPA will be composed of jurisdictions within the three counties that pass a JPA resolution and the CCE ordinance by February 28, 2017. The JPA will be formed in April 2017 and will begin providing electrical service to customers in Spring 2018.

The JPA will be overseen by a two-board structure. First, a Policy Board composed of elected officials will provide guidance/approval in the areas of strategic planning, passage of the agency budget and customer rates, and large capital expenditures. Second, the JPA will also include a separate Operations Board composed of senior executive staff who will provide oversight and support to the Chief Executive Officer on matters pertaining to the provision of electrical service to customers in the region, focusing on the routine, day-to-day operations of the agency.

The JPA Governing Board will consist of up to 11 seats, allocated by population size as outlined below.

Five jurisdictions with 50,000+ population are eligible for permanent seats on the Boards. Pending approval of the JPA, these are: 1) Santa Cruz County, 2) Monterey County, and the cities of 3) Salinas, 4) Watsonville and 5) Santa Cruz. Additionally, the County of San Benito will have a permanent seat on the Board in recognition of the large geographical area it represents. The remaining five shared/rotating seats will be allocated as follows:

- 1 seat for Santa Cruz County small cities (Scotts Valley and Capitola)
- 1 seat for Monterey County Peninsula Cities (Monterey, Carmel, Pacific Grove);
- 1 seat for Monterey County Coastal Cities (Marina, Sand City, Del Rey Oaks, Seaside);
- 1 seat for Monterey County Salinas Valley Cities (Gonzales, Greenfield, King City,

Soledad);
- 1 seat for San Benito County small cities (San Juan Bautista and Hollister)

Shared board seats will be determined through the city selection process in their respective counties, with a term of two years. Directors may be reappointed and serve multiple terms. At the last City Selection meeting Capitola was given the first term for our region.

Agency Financing: In order to move forward with agency and program implementation, MBCP will need between $2 million and $3 million to pay for start-up costs and an additional $10 million to $15 million to cover power supply contracting and early operational/working capital needs. In December 2016, Santa Cruz County, on behalf of MBCP, issued a banking and credit services RFP seeking third-party lenders for both the start-up capital and line of credit that will be needed later. MBCP intends to have its financing in place by April or May 2017.

FISCAL IMPACT: Financial participation for MBCP members will be in the form of a credit guarantee to support the pre-revenue start-up loan of up to $3 million. The credit guarantee obligation will be distributed on a per-seat basis and will take the form of a letter of credit, or interagency agreement. In the example of an 11-member board, each seat on the board would be allocated 1/11 (9.1 percent) of the credit guarantee burden.

Shared seat members divide the credit guarantee among the cities in their grouping. Therefore, Capitola would be responsible for approximately 4.5 percent of the credit guarantee for startup costs, or around $140,000. This cost would only be incurred in the unlikely event that MBPC is formed, but is terminated prior to delivering power to customers.

ATTACHMENTS:

1. Joint Powers Agreement for the Monterey Bay Community Power Authority
2. Draft Resolution for the Monterey Bay Community Power Authority
3. Draft Uncodified Ordinance for the Monterey Bay Community Power Authority
4. Public comment on the Monterey Bay Community Power Authority

Report Prepared By: Jamie Goldstein
City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE

Monterey Bay Community Power Authority

OF

Monterey, Santa Cruz, and San Benito Counties

This Joint Exercise of Powers Agreement, effective on the date determined by Section 2.1, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the Parties set forth in Exhibit B, establishes the Monterey Bay Community Power Authority ("Authority"), and is by and among the Counties of Monterey, Santa Cruz, and San Benito who become signatories to this Agreement ("Counties") and those cities and towns within the Counties of Monterey, Santa Cruz, and San Benito who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto.

RECITALS

A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.

B. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local governments to develop programs to reduce greenhouse gas emissions.

C. The purposes for entering into this Agreement include:

   a. Reducing greenhouse gas emissions related to the use of power in Monterey, Santa Cruz, and San Benito Counties and neighboring regions;

b. Providing electric power and other forms of energy to customers at affordable rates that are competitive with the incumbent utility;

c. Carrying out programs to reduce energy consumption;

d. Stimulating and sustaining the local economy by lowering electric rates and creating local jobs as a result of MBCP's CCE program.

e. Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources.

D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and geothermal energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible.

a. It is further desired to establish a short term and long-term energy portfolio that prioritizes the use and development of State, local and regional renewable resources and carbon free resources.

b. In compliance with State law and in alignment with the Authority's desire to stimulate the development of local renewable power, the Authority shall draft an Integrated Resource Plan that includes a range of local renewable development potential in the Monterey Bay Region and plans to incorporate local power into its energy portfolio as quickly as is possible and economically feasible.

E. The Parties desire to establish a separate public Authority, known as the Monterey Bay Community Power Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

F. The Parties anticipate adopting an ordinance electing to implement through the Authority a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(c) and 366.2. The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1: DEFINITIONS AND EXHIBITS

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A: Definitions
Exhibit B: List of the Parties
Exhibit C: Regional Allocations

ARTICLE 2: FORMATION OF MONTEREY BAY COMMUNITY POWER AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and "Monterey Bay Community Power Authority" shall exist as a separate public Authority on the date that this Agreement is executed by at least three Initial Participants from the Counties of Monterey, Santa Cruz, and San Benito and the municipalities within those counties, after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 Formation. There is formed as of the Effective Date a public Authority named the Monterey Bay Community Power Authority. Pursuant to Sections 6506 and 6507 of the

Act, the Authority is a public Authority separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.3 Purpose. The purpose of this Agreement is to establish an independent public Authority in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by the Authority.

2.4 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.7 through 3.7.1:

. 2.4.1 to make and enter into contracts;

. 2.4.2 to employ agents and employees, including but not limited to a Chief Executive Officer;

. 2.4.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;

. 2.4.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party without approval of the affected Party's governing board;

. 2.4.5 to lease any property;

. 2.4.6 to sue and be sued in its own name;

. 2.4.7 to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;

. 2.4.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

. 2.4.9 to issue revenue bonds and other forms of indebtedness;

. 2.4.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

. 2.4.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

. 2.4.12 to adopt Operating Rules and Regulations;

. 2.4.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services; and

. 2.4.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

2.5 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power

possessed by the City of Santa Cruz and any other restrictions on exercising the powers of the authority that may be adopted by the board.

2.6 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act ("CEQA").

ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

3.1 Boards of Directors. The governing bodies of the Authority shall consist of a Policy Board of Directors ("Policy Board") and an Operations Board of Directors ("Operations Board").

. 3.1.1 Both Boards shall consist of Directors representing any of the three Counties of Monterey, Santa Cruz, or San Benito that become a signatory to the Agreement and Directors representing any of the Cities or Towns within those counties that becomes a signatory to the Agreement ("Directors"). Each Director shall serve at the pleasure of the governing board of the Party who appointed such Director, and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 90 days of the date that such position becomes vacant.

. 3.1.2 Policy Board Directors must be elected members of the Board of Supervisors or elected members of the City or Town Council of the municipality that is the signatory to this Agreement. Jurisdictions may appoint an alternate to serve in the absence of its Director on the Policy Board. Alternates for the Policy Board must be members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement.

. 3.1.3 Operations Board Directors must be the senior executive/CountyAdministrative Officer of any County that is the signatory to this Agreement, or senior executive/City Manager from any municipality that is the signatory to this Agreement. Jurisdictions may appoint an alternate to serve in the absence of its Director on the Operations Board. Alternates for the Operations

Board must be administrative managers of the County or administrative managers of the governing board of the municipality that is the signatory to this Agreement.

. 3.1.4 Board seats will be allocated under the following formulas. Policy and Operations Board seats for founding JPA members (i.e. those jurisdictions that pass a CCA ordinance by February 28, 2017) will be allocated on a one jurisdiction, one seat basis until such time as the number of member jurisdictions exceeds eleven. Once the JPA reaches more than eleven member agencies, the Policy and Operations Boards' composition shall shift to a regional allocation based on population size. This allocation shall be one seat for each jurisdiction with a population of 50,000 and above, and shared seats for jurisdictions with populations below 50,000 allocated on a sub-regional basis, as set forth in Exhibit C. Notwithstanding the above, the County of San Benito shall be allotted one seat.

. 3.1.5 Shared board seats will be determined through the Mayors and Councilmembers' city selection process in their respective counties, with a term of two years. Directors may be reappointed, following the Mayors and Councilmembers' city selection process in their respective counties, and serve multiple terms. In the event of an established board seat transitioning to a shared seat due to the addition of a new party, the sitting Director will automatically be the first representative for that shared seat to ensure continuity and maintain experience.

3.2 Quorum. A majority of the appointed Directors shall constitute a quorum, except that less than a quorum may adjourn in accordance with law.

3.3 Powers and Functions of the Boards. The Boards shall exercise general governance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. The Boards shall provide general policy guidance to the CCA Program.

. 3.3.1 The Policy Board will provide guidance/approval in the areas of strategic planning and goal setting, passage of Authority budget and customer rates, and large capital expenditures outside the typical power procurement required to provide electrical service.

. 3.3.2 The Operations Board will provide oversight and support to the Chief Executive Officer on matters pertaining to the provision of electrical service to

customers in the region, focusing on the routine, day-to-day operations of the Authority.

3.3.3 Policy Board approval shall be required for any of the following actions, including but not limited to:

(a) The issuance of bonds, major capital expenditures, or any other financing even if program revenues are expected to pay for such financing;

(b) The appointment or removal of officers described in Section 3.9, subject to Section 3.9.3;

(c) The appointment and termination of the Chief Executive Officer;

(d) The adoption of the Annual Budget;

(e) The adoption of an ordinance;

(f) The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority;

(g) The adoption of the Implementation Plan;

(h) The selection of General Counsel, Treasurer and Auditor;

(i) The amending of this Joint Exercise of Powers Agreement; and

(j) Termination of the CCA Program.

3.3.4 Operations Board approval shall be required for the following actions, including but not limited to:

(a) The approval of Authority contracts and agreements, except as provided by Section 3.4.

(b) Approval of Authority operating policies and other matters necessary to ensure successful program operations.

3.3.5 Joint approval of the Policy and Operations Boards shall be required for the initiation or resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner,

or intervenor; provided, however, that the Chief Executive Officer or General Counsel, on behalf of the Authority, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative authority, without approval of the Boards as long as such action is consistent with any adopted Board policies.

3.4 Chief Executive Officer. The Authority shall have a Chief Executive Officer ("CEO"). The Operations Board shall present nomination(s) of qualified candidates to the Policy Board. The Policy Board shall make the selection and appointment of the CEO who will be an employee of the Authority and serve at will and at the pleasure of the Policy Board.

The CEO shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The CEO may exercise all powers of the Authority, including the power to hire, discipline and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement falls within the Authority's fiscal policies to be set by the Policy Board, except the powers specifically set forth in Section 3.3 or those powers which by law must be exercised by the Board(s) of Directors. The CEO shall report to the Policy Board on matters related to strategic planning and goal setting, passage of Authority budget and customer rates, and large capital expenditures outside the typical power procurement required to provide electrical service. The CEO shall report to the Operations Board on matters related to Authority policy and the provision of electrical service to customers in the region, focusing on the routine, day-to-day operations of the Authority. It shall be the responsibility of the CEO to keep both Board(s) appropriately informed and engaged in the discussions and actions of each to ensure cooperation and unity within the Authority.

3.5 Commissions, Boards, and Committees. The Boards may establish any advisory committees they deem appropriate to assist in carrying out the CCA Program, other energy programs, and the provisions of this Agreement which shall comply with the requirements of the Ralph M. Brown Act. The Boards may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees if the Board(s) deem it appropriate to appoint such commissions, boards or committees, and

shall determine whether members shall be compensated or entitled to reimbursement for expenses.

3.6 Director Compensation. Directors shall serve without compensation from the Authority. However, Directors may be compensated by their respective appointing authorities. The Boards, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by their respective Directors.

3.7 Voting. Except as provided in Section 3.7.1 below, actions of the Boards shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.1. Special Voting Requirements for Certain Matters.

(a) Two-Thirds Voting Approval Requirements Relating to Sections 6.2 and 7.4. Action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Party), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present.

(b) Seventy Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.

(i) A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors present.

(ii) The imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Parties who are being asked to make such contribution or pledge.

(iii) For purposes of this section, "imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any obligations of a withdrawing or terminated party imposed under Section 6.3.

3.8 Meetings and Special Meetings of the Board. The Policy Board shall hold up to three regular meetings per year, with the option for additional or special meetings as determined by the Chief Executive Officer or Chair of the Policy Board after consultation with the Chief Executive Officer. The Operations Board shall hold at least eight meetings per year, with the option for additional or special meetings. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency Meetings of the Boards may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

3.9 Selection of Board Officers.

3.9.1 Policy Board Chair and Vice Chair. The Policy Board shall select, from among themselves, a Chair, who shall be the presiding officer of all Policy Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Policy Board Chair and Vice Chair shall act as the overall Chair and Vice Chair for Monterey Bay Community Power Authority. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

(a) the person serving dies, resigns, is no longer holding a qualifying public office, or the Party that the person represents removes the person as its representative on the Board or;

(b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement

3.9.2 Operations Board Chair and Vice Chair. The Operations Board shall select, from among themselves, a Chair, who shall be the presiding officer of all Operations Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or

Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

(a) the person serving dies, resigns, or is no longer the senior executive of the Party that the person represents or;

(b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

. 3.9.3 Secretary. Each Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of each Board and all other official records of the Authority. If the Secretary appointed is an employee of the Authority, that employee may serve as Secretary to both Boards.

. 3.9.4 The Policy Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Policy Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5.

3.10 Administrative Services Provider. The Board(s) may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. An Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set

forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program. The Administrative Services Provider shall be either an employee or a contractor of the Authority unless a member agency is providing the service.

ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.1 Preliminary Implementation of the CCA Program.

. 4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

. 4.1.2 Implementation Plan. The Policy Board shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Policy Board in the manner provided by Section 3.7.

. 4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board(s) through resolution, including but not limited to the MBCP Implementation Plan and Operating Policies. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board(s), subject to the Parties' right to withdraw from the Authority as described in Article 6.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing April 1 or the date selected by the Authority. The fiscal year may be changed by Policy Board resolution.

5.2 Depository.

5.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board(s) shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board(s) in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board(s).

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The initial budget shall be approved by the Policy Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be approved by the Policy Board in accordance with the Operating Rules and Regulations.

5.3.2 Funding of Initial Costs. The County of Santa Cruz has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these Initial Costs paid by the County of Santa Cruz shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and the County of Santa Cruz shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such

reimbursement, the County of Santa Cruz shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Santa Cruz shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

5.3.3 CCA Program Costs. The Parties desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

5.3.4 Credit Guarantee Requirement. The Parties acknowledge that there will be a shared responsibility to provide some level of credit support (in the form of a letter of credit, cash collateral or interagency agreement) for Authority start-up and initial working capital as may be required by a third party lender. Guarantee requirements shall be released after program launch and as soon as possible under the terms of the third-party credit agreement(s). The credit guarantee will be distributed on a per-seat basis. Shared seat members will divide the credit guarantee among the cities sharing those seats. The term of the credit guarantee shall be the same term as specified in the banking agreement. Once a Party has made a credit guarantee, that guarantee shall remain in place until released, even if that Party withdraws from the Authority.

5.3.5 The County of Santa Cruz has agreed to provide initial administrative support on a cost reimbursement basis to the JPA once formed. This includes, but is not limited to, personnel, payroll, legal, risk management.

6.1 Withdrawal.

6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.

6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Policy Board which the Party's Director voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.

6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Parties the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may, immediately after an affirmative vote of the Party's governing board, withdraw its membership in the Authority without any financial obligation, except those financial obligations incurred through the Party's share of the credit guarantee described in 5.3.4, as long as the Party provides written notice of its intent to withdraw to the Authority Board no more than fifteen business days after receiving the report. Costs incurred prior to withdrawal will be calculated as a pro-rata share of start-up costs expended to the date of the Party's withdrawal, and it shall be the responsibility of the withdrawing Party to pay its share of said costs if they have a material/adverse impact on remaining Authority members or ratepayers.

. 6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of the Policy Board as provided in Section 3.7.1. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from the Party membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party's load. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, the Authority shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the

minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Policy Board, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.

6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and the Authority shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. Should such informal efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Authority. The costs of any such mediation shall be shared equally among the Parties participating in the mediation.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority and the Parties. The Authority shall defend, indemnify, and hold harmless the Parties and each of their respective Boards of Supervisors or City Councils, officers, agents and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

7.4 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Policy Board members as provided in Section 3.7.1. The Authority shall provide written notice to all Parties of proposed amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments.

7.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

7.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

7.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

7.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

Exhibit A

Definitions

"Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.)

"Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

"Agreement" means this Joint Powers Agreement.

"Annual Energy Use" has the meaning given in Section 3.7.1.

"Authority" means the Monterey Bay Community Power Authority.

"Authority Document(s)" means document(s) duly adopted by one or both Boards by resolution or motion implementing the powers, functions, and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

"Board" means the Policy Board of Directors of the Authority and/or the Operations Board of Directors of the Authority unless one or the other is specified in this Agreement.

"CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's program relating to CCA that is principally described in this Agreement.

"Director" means a member of the Policy Board of Directors or Operations Board of Directors representing a Party.

"Effective Date" means the date that this Agreement is executed by at least three Initial Participants from the Counties of Monterey, Santa Cruz, and San Benito and the municipalities within those counties, as further described in Section 2.1.

"Implementation Plan" means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

"Initial Costs" means all costs incurred by the County of Santa Cruz and/or Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of the Authority's initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

"Initial Participants" means those initial founding JPA members whose jurisdictions pass a CCA ordinance, whose Board seats will be allocated on a one jurisdiction, one seat basis (in addition to one seat for San Benito County) until such time as the number of member jurisdictions exceeds eleven, as described in Section 3.1.4.

"Operating Rules and Regulations" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

"Operations Board" means the board composed of City Managers and CAOs representing their respective jurisdictions as provided in section 3.1.4 who will provide oversight and support to the Chief Executive Officer on matters pertaining to the provision of electrical service to customers in the region, focusing on the routine, day-to-day operations of the Authority, as further set forth in section 3.3..

"Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.1 or 4.1.1 such that it is considered a member of the Authority.

"Party" means singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.1 or 4.1.1 such that it is considered a member of the Authority.

"Policy Board" means the board composed of elected officials representing their respective jurisdictions as provided in section 3.1.4 who will provide guidance/approval in the areas of strategic planning and goal setting, passage of Authority budget and customer rates, large capital expenditures outside the typical power procurement required to provide electrical service, and such other functions as set forth in section 3.3.

Exhibit B

List of Parties

The final Exhibit B will be attached once all parties have adopted the ordinance as required by Public Utilities Code Section 366.2(c)(12).

Exhibit C

Regional Allocation

Board seats in the Monterey Bay Community Power Authority will be allocated as follows:

i. One seat for Santa Cruz County

ii. One seat for Monterey County

iii. One seat for San Benito County

iv. One seat for the City of Santa Cruz

v. One seat for the City of Salinas

vi. One seat for the City of Watsonville

vii. One shared seat for remaining Santa Cruz cities including Capitola and Scotts Valley selected by the City Selection Committee

viii. One shared seat for Monterey Peninsula cities including Monterey, Pacific Grove, and Carmel selected by the City Selection Committee

ix. One shared seat for Monterey Coastal cities including Marina, Seaside, Del Rey Oaks, and Sand City selected by the City Selection Committee

x. One shared seat for Salinas Valley cities including King City, Greenfield, Soledad, Gonzales selected by the City Selection Committee

xi. One shared seat for San Benito County cities selected by the City Selection Committee

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA APPROVING THE JOINT POWERS AGREEMENT ESTABLISHING THE MONTEREY BAY COMMUNITY POWER AUTHORITY (MBCPA), AUTHORIZING THE EXECUTION OF THE AGREEMENT ON BEHALF OF THE CITY OF CAPITOLA, AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION FINDINGS

WHEREAS, AB 117, adopted as California state law in 2002, permits cities, counties, or city and county Joint Power Authorities to aggregate residential, commercial, industrial, municipal and institutional electric loads through Community Choice Aggregation (CCA); and

WHEREAS, there are currently five CCA programs operating in California - MCE Clean Energy, CleanPowerSF, Sonoma Clean Power, Peninsula Clean Energy and Lancaster Choice Energy – with dozens more in formation; and

WHEREAS, the City of Capitola passed Resolution No. 4061 on the 22nd of September, 2016 to explore the creation of a CCA program for the Monterey Bay region and participated, in cooperation with the County of Santa Cruz and other local governments, in a technical study that analyzed the potential for a CCA program in the Monterey Bay region; and

WHEREAS, the technical study shows that there are numerous potential benefits for cities and counties that aggregate their electrical load including: 1) an expectation of stable and competitively priced electric generation rates for residents, businesses and municipal operations compared to the electrical rates of Pacific Gas & Electric Company (PG&E), 2) greater use of renewable energy resources than is planned by PG&E, 3) significant greenhouse gas reductions as a result of a cleaner power supply than is offered by PG&E; and 4) economic development benefits and local jobs resulting in the creation of MBCP, lower electric rates, and the development of local power resources.

WHEREAS, the City wishes to be a community choice aggregator and has introduced the Ordinance as required by Public Utilities Code Section 366.2 in order to do so;

WHEREAS, the City Council has considered the proposed Joint Exercise of Powers Agreement, a draft of which is attached hereto as Exhibit A, under which the City of Capitola and other municipalities in the Monterey Bay tri-county region - consisting of Santa Cruz, Monterey and San Benito Counties and the cities within those counties - will become the initial members of Monterey Bay Community Power Authority ("MBCPA"); and

WHEREAS, Once the California Public Utilities Commission approves the implementation plan created by MBCPA, it will provide service to customers within the cities and counties that choose to join MBCP and to participate in the CCA program; and

WHEREAS, under Public Utilities Code section 366.2, customers have the right to opt-out of the CCE program and continue to receive service from the incumbent utility. Customers who wish to continue to receive service from the incumbent utility will be able to do so at any time.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Capitola hereby:

Section 1. Approves the Joint Exercise of Powers Agreement to form the Monterey Bay Community Power Authority; and

Section 2. This resolution and the establishment of the Monterey Bay Community Power Authority are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, as it is not a "project" since this action involves organizational and administrative activities of government that will not result in direct or indirect physical changes in the environment. (14 Cal. Code Regs. § 15378(b)(5)). Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs.§ 15061(b)(3)). A Notice of Exemption shall be filed as authorized by CEQA and the State CEQA guidelines.

Section 3. This resolution shall be effective upon the adoption of Ordinance No. _____, an Ordinance of the City of Capitola authorizing the implementation of a Community Choice Aggregation (CCA) Program.

BE IT FURTHER RESOLVED that the Mayor and/or City Manager is hereby authorized and directed to execute the Joint Exercise of Powers Agreement on behalf of the City of Capitola, subject to final review and approval by City Attorney and City Manager after minor modifications to add signature pages and Exhibit B, which will establish MBCPA with the City as a founding member.

I HEREBY CERTIFY that the above and foregoing Resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 9th day of February 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Stephanie Harlan Mayor

ATTEST: _____
Linda Fridy, City Clerk

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AUTHORIZING IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

The City Council of the City of Capitola does ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Capitola hereby finds and declares the following:

WHEREAS, Monterey Bay Community Power has investigated options to provide electric services to customers within the tri-county region of Monterey, Santa Cruz and San Benito Counties (Tri-County Region), including incorporated and unincorporated areas, with the intent of achieving greater local control and involvement over the provision of electric services, competitive electric rates, the development of clean, local, renewable energy projects, reduced greenhouse gas emissions, and the wider implementation of energy conservation and efficiency projects and programs; and

WHEREAS, Monterey Bay Community Power prepared a Feasibility Study for a community choice aggregation ("CCA") program in the Tri-County Region with the cooperation of the cities and counties under the provisions of the Public Utilities Code section 366.2. The Feasibility Study shows that implementing a community choice aggregation program would provide multiple benefits, including:

- Providing customers a choice of power providers;
- Increasing local control and involvement in and collaboration on energy rates and other energy-related matters;
- Providing more stable long-term electric rates that are competitive with those provided by the incumbent utility;
- Reducing greenhouse gas emissions arising from electricity use within the Tri-County Region;
- Increasing local renewable power generation capacity;
- Increasing energy conservation and efficiency projects and programs;
- Increasing regional energy self-sufficiency;
- Improving the local economy resulting from the implementation of local renewable and energy conservation and efficiency projects; and

WHEREAS, the Joint Powers Agreement creating the Monterey Bay Community

Power Authority ("Authority") will govern and operate the CCA program on behalf of its member jurisdictions. Under the Joint Powers Agreements, cities within the Tri-County Region may participate in the Monterey Bay Community Power CCA program by adopting the resolution and ordinance required by Public Utilities Code section 366.2. Cities choosing to participate in the CCA program will have membership on the Board of Directors of the Authority as provided in the Joint Powers Agreements; and

WHEREAS, the Authority will enter into Agreements with electric power suppliers and other service providers, and based upon those Agreements the Authority will be able to provide power to residents and businesses at rates that are competitive with those of the incumbent utility ("PG&E"). Once the California Public Utilities Commission approves the implementation plan created by the Authority, the Authority will provide service to customers within the unincorporated areas of the tri-county region of Monterey, Santa Cruz and San Benito Counties and within the jurisdiction of those cities therein who have chosen to participate in the CCA program; and

WHEREAS, under Public Utilities Code section 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility. Customers who wish to continue to receive service from the incumbent utility will be able to do so; and

WHEREAS, on the 22nd day of September 2016, the City Council held a public hearing at which time interested persons had an opportunity to testify either in support or opposition to implementation of the Monterey Bay Community Power CCA program in the City of Capitola; and

Section 2. **AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM**. Based upon the forgoing, and in order to provide businesses and residents within the City of Capitola with a choice of power providers and with the benefits described above, the City Council of the City of Capitola ordains that it shall implement a community choice aggregation program within its jurisdiction by participating as a group with the other counties and cities as described above in the Community Choice Aggregation program of the Monterey Bay Community Power Authority, as generally described in the Joint Powers Agreement approved through Resolution No. ___.

Section 3. **SEVERABILITY**. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. **ENVIRONMENTAL DETERMINATION**. This ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines, as it is not a "project" as it has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because energy will be transported through existing infrastructure (14 Cal. Code Regs. § 15378(a)). Further, this ordinance is exempt from CEQA as there is no possibility that this ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. § 15061(b)(3)). This ordinance is also categorically exempt because it is an action taken by

a regulatory agency to assume the maintenance, restoration, enhancement or protection of the environment (14 Cal. Code Regs. § 15308). The City Manager's Office shall cause a Notice of Exemption to be filed as authorized by CEQA and the CEQA guidelines.

Section 5. **PUBLICATION**. This ordinance shall be published and posted as required by law.

Section 6. **EFFECTIVE DATE**. This Ordinance shall be in full force and effect 30 days after the date of final passage.

This ordinance was introduced on the 9th day of February 2017, and was passed and adopted by the City Council of the City of Capitola on the 23rd day of February 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____
Stephanie Harlan, Mayor

Attest:

_____
Linda Fridy, City Clerk

DATE: JANUARY 25, 2017
RE: AMENDMENTS TO THE DRAFT JOINT POWERS AGREEMENT FOR MONTEREY BAY COMMUNITY POWER

Dear Mayor and Council Members,

On behalf of the Monterey Bay workforce, the International Brotherhood of Electrical Workers (IBEW) Local 234, the Monterey Bay California Chapter National Electrical Contractors Association (NECA), and the Monterey/Santa Cruz Counties Building & Construction Trades Council (BCTC), hereby submit language that is strongly supported by our collective to be included in the Draft Joint Powers Authority (JPA) Agreement for the emerging Monterey Bay Community Power (MBCP) Community Choice Aggregation (CCA) program.

It is important to note herein that, as primary stakeholders in the consideration of forming and launching a local CCA program—a new government agency that would serve the Monterey Bay community—we have not been provided an opportunity to review or comment on the Draft JPA Agreement that is now being presented to your governing body for approval. We feel that this is a breach of public trust and subversion of due process for such a monumental undertaking as forming a new government agency in our community.

The inclusion of this language in the proposed JPA Agreement will ensure that the Monterey Bay CCA program is committed to producing economic benefits to our community, including local job creation and retention, new investments in our local economy, and clean energy development in the Monterey Bay region served by the MBCP CCA program.

The Monterey Bay community deserves a CCA program that prioritizes local needs and delivers maximum benefit to the local economy. Our proposed amendments to the Draft JPA Agreement—modeled on the County of Alameda's recently adopted JPA Agreement[1] for the East Bay Community Energy (EBCE) CCA Program—protects those vital interests and makes the commitment to benefiting the local community clear and transparent.

Without a strong commitment to local benefits, we feel that the JPA Agreement would simply be insufficient to achieve these crucial goals for the Monterey Bay economy, and we urge you to stand up for the local workforce and business community that are your constituents on this important matter.

Thank you for your consideration, and we appreciate the opportunity to comment on these issues before you finalize and approve the MBCP JPA Agreement.

Respectfully,

Andy Hartmann
Business Manager
IBEW Local 234

Jerri L. Champlin
Executive Manager
Monterey Bay CA Chapter NECA

Ron Chesshire
Chief Executive Officer
Monterey/Santa Cruz BCTC

[1] http://www.ebce.org/files/managed/Document/76/EBCE JPA agreement October 4 County Approval Final.pdf

January 25, 2017

Submitted jointly by: The Monterey/Santa Cruz County Building and Construction Trades Council, The Monterey Bay Chapter of the National Electrical Contractors Association, and The International Brotherhood of Electrical Workers Local 234

Proposed Amendments to
JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE
Monterey Bay Community Power Authority
of
Monterey, Santa Cruz, and San Benito Counties

Recitals

…

D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and geothermal energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible.
    a. It is further desired to establish a long-term energy portfolio that prioritizes the use and development of ~~State, local and regional~~ local renewable resources and carbon free resources.
    b. In compliance with State law and in alignment with the Agency's desire to stimulate the development of local renewable power, the Agency shall draft an Integrated Resource Plan that ~~includes a range of local renewable development potential in the Monterey Bay Region and plans to incorporate local power into its energy portfolio as quickly as is possible and economically feasible.~~ will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency. The Authority shall prioritize the development of energy projects in Monterey County, San Benito County, Santa Cruz County and adjacent counties. Principal aspects of its planned operations shall be in a Business Plan as outlined in Section 4.1.3 of this Agreement.
    c. The Authority shall provide its customers energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. The Authority shall not procure energy from Category 3 eligible renewable resources (unbundled Renewable Energy Certificates or RECs) to achieve its renewable portfolio goals. However, for Category 3 RECs associated with generation facilities located within its service jurisdiction, the limitation set forth in the preceding sentence shall not apply.
    d. Demonstrate quantifiable economic benefits to the region (e.g. local workforce development, union and prevailing wage jobs, new energy programs, and increased local energy investments);
    e. Recognize the value of workers in existing jobs that support the energy infrastructure of the Monterey Bay region and Northern California. The Authority, as a leader in the shift to a clean energy, commits to ensuring it will take steps to minimize any adverse impacts to these workers to ensure a "just transition" to the new clean energy economy;
    f. Deliver local clean energy programs and projects using a stable, skilled workforce through such mechanisms as community benefit agreements, or other workforce programs that are cost effective, designed to avoid work stoppages, and ensure quality;
    g. Promote personal and community ownership of renewable resources, spurring equitable economic development and increased resilience, especially in low income communities;
    h. Provide and manage lower cost energy supplies in a manner that provides cost savings to low-income households and promotes public health in areas impacted by energy production; and

i. Create an administering agency that is financially sustainable, responsive to regional priorities, well managed, and a leader in fair and equitable treatment of employees through adopting appropriate best practices employment policies, including, but not limited to, promoting efficient consideration of petitions to unionize, and providing appropriate wages and benefits.
j. The Authority shall remain neutral in the event its employees, and the employees of its subcontractors, if any, wish to unionize.

Section 2.4

2.4.14 The Authority shall have the power to negotiate Community Benefits Agreements with the local building trades council and other interested parties; and

2.4.1~~4~~5 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

Section 4.1

4.1.3 The Authority shall cause to be prepared a local development Business Plan, which will include a roadmap for the development, procurement, and integration of local renewable energy resources. The Business Plan shall include a description of how the CCA Program will contribute to fostering local economic benefits, such as job creation and community energy programs. The Business Plan shall identify opportunities for local power development and how the CCA Program can achieve the goals outlined in Recitals C and D of this Agreement. The Business Plan shall include specific language detailing employment and labor standards that relate to the execution of the CCA Program as referenced in this Agreement. The Business Plan shall identify clear and transparent marketing practices to be followed by the CCA Program, including the identification of the sources of its electricity and explanation of the various types of electricity procured by the Authority. The Business plan shall cover the first five (5) years of the operation of the CCA Program and be reviewed and approved by the Authority within one (1) year after launch of the CCA Program. Progress on the implementation of the Business Plan shall be subject to annual public review.

4.1.~~3~~4 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 9, 2017

FROM: City Manager Department

SUBJECT: Council Member Review of Community Grant Recipients

RECOMMENDED ACTION: Receive grantee list and consider designating Council Members to research specific grant recipients.

BACKGROUND: At the January 26, 2017, City Council Meeting, Mayor Harlan requested an agenda item be added to the February 9 City Council meeting asking individual Council Members to consider visiting or researching Community Grant recipients prior to upcoming budget study sessions.

The Capitola Community Grant program helps fund 30 community groups and more than 40 separate programs. At the August 2, 2016, City Council Meeting, the Council approved two-year grants for community groups that run through June 30, 2018. The approved amount of $274,990 included a 2 percent cost of living adjustment over 2015.

FISCAL IMPACT: No anticipated fiscal impact.

ATTACHMENTS:

1. 2016-2017 Community Grants Council Approved
2. Grantee information worksheet 2016-18

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager 2/3/2017

Community Group/Program	Strategy	FY 16/17 Award
Advocacy, Inc.	Individual and Family Support	$7,680.00
Big Brothers Big Sisters of Santa Cruz County, Inc	Individual and Family Support	$2,886.00
Cabrillo Stroke and Disability Learning Center	Health Care	$7,168.00
Campus Kids Connection, Inc.	Education	$15,638.00
Central Coast Center for Independent Living	Individual and Family Support	$10,095.00
Community Action Board of Santa Cruz County, Inc.		**$1,378.00**
The Shelter Project (CAB)	Basic Needs	$1,378.00
Community Bridges		**$113,324.00**
Meals on Wheels for Santa Cruz County (CB)	Basic Needs	$59,327.00
Lift Line (CB)	Basic Needs	$47,934.00
Live Oak Community Resources (CB)	Individual and Family Support	$5,138.00
Child Development Division (CB)	Education	$925.00
Conflict Resolution Center of Santa Cruz	Community Development	$3,215.00
Court Appointed Special Advocates of Santa Cruz County	Protective Services	$3,169.00
Cultural Council of Santa Cruz County	Individual and Family Support	$997.00
Dientes Community Dental Care	Health Care	$1,403.00
Encompass Community Services		**$14,893.00**
Youth Services Counseling (Encompass)	Mental Health	$7,305.00
Santa Cruz AIDS Project (Encompass)	Individual and Family Support	$7,588.00
Families In Transition	Basic Needs	$2,521.00
Family Service Agency of the Central Coast		**$11,761.00**
Counseling - North County (FSA)	Mental Health	$4,903.00
I-You Venture (FSA)	Mental Health	$1,399.00
Senior Outreach (FSA)	Mental Health	$1,399.00
Suicide Prevention (FSA)	Mental Health	$1,216.00
Survivors Healing Center (FSA)	Mental Health	$492.00
WomenCARE (FSA)	Mental Health	$2,352.00
Grey Bears	Basic Needs	$14,864.00
Homeless Services Center		**$2,680.00**
Paul Lee Loft Shelter (HSC)	Basic Needs	$2,680.00
Hospice of Santa Cruz County	Health Care	$1,608.00
Monarch Services Servicios Monarca	Justice Services	$3,797.00
Native Animal Rescue	Environmental Quality	$1,200.00
O'Neill Sea Odyssey	Environmental Quality	$2,943.00
Parents Center Santa Cruz	Mental Health	$6,500.00
Santa Cruz Toddler Care Center	Education	$1,248.00
Second Harvest Food Bank Santa Cruz County	Basic Needs	$10,455.00
Senior Citizens Legal Services	Legal Services	$8,836.00
Senior Network Services, Inc.	Individual and Family Support	$2,563.00
Seniors Council of Santa Cruz and San Benito Counties		**$8,537.00**
Project Scout (Seniors Council)	Income Security	$3,437.00
Companion for Life/Lifeline (Seniors Council)	Basic Needs	$5,100.00
The Diversity Center	Health Care	$1,072.00
United Way		**$7,446.00**
Child Abuse Prevention (UW)	Protective Services	$6,470.00
2-1-1 Help Line (UW)	Individual and Family Support	$976.00
Vista Center for the Blind and Visually Impaired	Health Care	$1,898.00
Volunteer Center		**$3,215.00**
Santa Cruz Center (VC)	Basic Needs	$3,215.00
TOTALS		**$274,990.00**

2016-18 Community Grant Funding Program

Grantee Name	Director/Title	Contact Person/Title	Address	Phone/Fax
Advocacy, Inc.	Gary Edwards Director gary@advocacy-inc.org		5274 Scotts Valley Drive Suite 203 Scotts Valley, CA 95066	831-429-191 831-429-910
Arts Council of Santa Cruz	Michelle Williams Executive Director michelle@artscouncilsc.org		1070 River St. Santa Cruz, CA 95060	831-475-960 831-475-970
Big Brothers/Big Sisters	Marie L. Cubillas Executive Director postmaster@santacruzmentor.org		1500 41st Avenue, Suite 250 Capitola, CA 95010	831-464-869 831-464-869
Cabrillo College Stroke Center	Cynthia Fitzgerald Director cyfitzge@cabrillo.edu		6500 Soquel Drive Aptos, CA 95003	831-477-330
California Grey Bears	Tim Brattan Executive Director tim@greybears.org		2710 Chanticleer Avenue Santa Cruz, CA 95065	831-479-105 831-479-846
Campus Kids Connection, Inc.	Barbara Griffin Executive Director barbara@campuskidsconnection.com		820 Bay Avenue, Suite 109 Capitola, CA 95010	831-462-982 Barbara, x12 831-462-893
CASA of Santa Cruz County	Cynthia Druley Executive Director Cynthia@casaofsantacruz.org		813 Freedom Blvd. Watsonville, CA 95076	831-761-295 831-761-291
CCC for Independent Living	Elsa Quezada Executive Director equezada@cccil.org		318 Cayuga St., Suite 208 Salinas, CA 93901	831-757-296 831-757-554
Community Action Board, Inc.	MariaElena de la Garza Executive Director mariaelena@cabinc.org		406 Main Street, Suite 207 Watsonville, CA 95076	831-763-214 831-724-344
Community Bridges	Raymon Cancino Director raymonc@cbridges.org	Seth McGibben CAO sethm@cbridges.org	236 Santa Cruz Avenue Aptos, CA 95003	831-688-884 831-688-830
Conflict Resolution Program	Shauna Mora Executive Director director@crcsantacruz.org		1414 Soquel Ave., Suite 218 Santa Cruz, CA 95062	831-475-611 Cell 689-025
Dientes Community Dental Clinic	Laura Marcus Executive Director laura@dientes.org		1830 Commercial Way Santa Cruz, CA 95065	831-464-542 831-464-541
Diversity Center	Sharon Papo Executive Director spapo@diversitycenter.org		1117 Soquel Ave. Santa Cruz, CA 95062	831-425-542 831-425-074
Encompass Community Services	Monica Martinez CEO Monica.martinez@encompasscs.org		380 Encinal St. Suite 200 Santa Cruz, CA 95060	831-469-170 831-425-190
Families in Transition	Melisa Vierra Executive Director melisa@fitsantacruz.org		406 Main Street #326 Watsonville, CA 95076	831-728-022 831-728-979
Family Service Agency of the Central Coast	David A. Bianchi Executive Director dbianchifsa@gmail.com		104 Walnut Avenue, Suite 208 Santa Cruz, CA 95060	831-423-944 831-423-153 530-417-623
Homeless Services Center	Phil Kramer Executive Director pkramer@santacruzhsc.org		115 B Coral Street Santa Cruz, CA 95060	831-458-602 831-316-501
Hospice Caring Project	Michael Milward Executive Director mmilward@hospicesantacruz.org		940 Disc Drive Scotts Valley, CA 95076	831-430-300 831-430-927
Native Animal Rescue	Eve Egan Director	Eve Egan Frank Schmit, President eveandfrank@cruzio.com	1855 17th Ave. Santa Cruz, CA 95062	831-462-072 x211 831-476-301

O'Neill Sea Odyssey	Dan Haifley Executive Director dhaifley@oneillseaodyssey.org		2222 E. Cliff Drive, Suite 222 Santa Cruz, CA 95062	831-465-9550 831-462-9188
Parents Center	Celia Goeckermann ext. 52 Executive Director selah_selah@yahoo.com	Gwendolyn Webb Ext. 24	530 Soquel Avenue Santa Cruz, CA 95062	831-426-7322 831-426-2803
Santa Cruz Toddler Care Center	Sandy Davie Administrative Director Sandy@sctcc.org		1738 16th Ave. Santa Cruz, CA 95062	831-476-4120 831-476-4277
Save Our Shores	Katherine O'Dea Executive Director		345 Lake Ave., Suite A Santa Cruz, CA 95062	831-462-5660 831-462-6070
Second Harvest Food Bank	Willy Elliott-McCrea ext. 211 Executive Director willy@thefoodbank.org	Kevin Heuer kevin@thefoodbank.org	P.O. Box 990 Watsonville, CA 95077-0990	831-722-7110 831-722-0435
Senior Citizens Legal Services	Creighton Mendivil Directing Attorney creightonmendivil@seniorlegal.org		501 Soquel Avenue, Suite F Santa Cruz, CA 95062	831-426-8824 831-426-3345
Senior Network Services	Brenda Moss Executive Director BrendaMoss@cruzio.com		1777-A Capitola Road Santa Cruz, CA 95062	831-462-1433 831-476-4396
Seniors Council of Santa Cruz & San Benito Counties And Companion for Life	Clay Kempf Executive Director clayk@seniorscouncil.org press *8-15	Shary Green sharyg@seniorscouncil.org x114	234 Santa Cruz Avenue Aptos, CA 95003	831-688-0400 831-688-1225
United Way	Mary Lou Goeke Executive Director uwstaff@unitedwaysc.org	Brenda Gonzalez bgonzalez@unitedwaysc.org	P O Box 1458 Capitola, CA 95010	831-479-5460 Ext.202 831-479-5477
Vista Center for the Blind and Visually Impaired	Pam Brandin Executive Director pbrandin@vistacenter.org	Garlyn Serame gserame@vistacenter.org	413 Laurel Street Santa Cruz, CA 95060	831-458-9766 831-426-6233
Volunteer Center of Santa Cruz	Karen Delaney Executive Director contracts@scvolunteercenter.org		1740 17th Ave. Santa Cruz, CA 95062	831-427-5070 831-423-6267
Monarch Services	Laura Segura Executive Director laura@monarchscc.org	Leeann Juan Admin. Mgr. leeannj@monarchscc.org	233 East Lake Avenue Watsonville, CA 95076	831-722-7397 831-722-4990